

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 CA 1111

J. ARTHUR SMITH, III

VERSUS

CAMILLE C. CAZEDESSUS

Judgment Rendered: FEB 12 2010

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 559,425

Honorable William A. Morvant, Judge

J. Arthur Smith, III
Baton Rouge, LA
and
Nicole Dufrene Streva
Baton Rouge, LA

In Proper Person
Plaintiff – Appellant

Attorney for
Plaintiff – Appellant
J. Arthur Smith, III

E. Trent McCarthy
Baton Rouge, LA

Attorney for
Defendant – Appellee
Camille C. Cazedessus

BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

Hughes, Jr. concurs.

WELCH, J.

J. Arthur Smith, III appeals a judgment of the district court confirming an arbitration award against him and in favor of Camille C. Cazedessus. For reasons that follow, we affirm the judgment of the district court.

I. FACTUAL AND PROCEDURAL HISTORY

Mr. Smith is an attorney licensed to practice law in Louisiana. In January 2000, Mr. Cazedessus retained Mr. Smith to represent him in matters relating to his late father's succession proceeding. Under the terms of the contract of employment between Mr. Smith and Mr. Cazedessus, if a dispute arose as to the contract, the parties agreed to submit the dispute to arbitration by the Louisiana State Bar Association Lawyer Dispute Resolution Program.

On July 30, 2006, Mr. Cazedessus filed a request for arbitration with the Louisiana State Bar Association concerning a dispute over the amount of attorney fees that he incurred during the succession litigation. Mr. Smith agreed, pursuant to the contract of employment, to arbitrate the dispute. The arbitration hearing was held on April 23, 2007. At the arbitration hearing, the issues that were addressed concerned the attorney fees and expenses that were incurred by Mr. Cazedessus in his litigation; however, new issues were raised concerning Mr. Smith's actual billing process. Therefore, at the close of the arbitration hearing, Mr. Smith requested, and the arbitrator granted, additional time for Mr. Smith to respond and address those issues by providing supplemental documentation pertaining to his billing system. According to Mr. Smith, the supplemental information concerning that issue was delivered to the arbitrator on May 7, 2007.

On August 6, 2007, the arbitrator rendered an award ordering Mr. Smith, within thirty days, to issue a refund of legal fees and costs to Mr. Cazedessus in the amount of \$14,884.22 and rejecting Mr. Smith's request for an offset for legal fees and expenses that were never billed to Mr. Cazedessus.

On September 19, 2007, Mr. Smith commenced these proceedings in district court, seeking to vacate the arbitration award and to stay enforcement of the award. Essentially, Mr. Smith alleged that the arbitrator exceeded his authority because the award was made beyond the thirty days provided for in the arbitration rules agreed to by the parties, that the arbitrator erred as a matter of law in ordering Mr. Smith to pay Mr. Cazedessus within thirty days of the award, and that the award was prejudicially inaccurate because the arbitrator refused to consider Mr. Smith's requested offsets. Accordingly, Mr. Smith requested that the award be vacated in accordance with La. R.S. 9:4210, or alternatively stayed, pending judicial review of the award. Mr. Cazedessus responded to Mr. Smith's action and filed a motion to confirm the arbitrator's award in accordance with La. R.S. 9:4209.

On February 12, 2009, the district court rendered judgment denying Mr. Smith's request that the arbitration award be annulled, granting Mr. Cazedessus's request that the arbitration award be confirmed, confirming the arbitration award rendered in favor of Mr. Cazedessus and against Mr. Smith dated August 6, 2007, and casting Mr. Smith for all court costs.¹ From this judgment, Mr. Smith has appealed. Essentially, on appeal, Mr. Smith contends that the trial court erred in confirming the arbitration award and in failing to vacate the arbitration award.

II. LAW AND DISCUSSION

Louisiana Revised Statutes 9:4209 provides that, upon timely motion for an order confirming an arbitration award, a district court shall grant the order unless the arbitration award is vacated, modified, or corrected as provided by La. R.S. 9:4210 and 9:4211. Louisiana Revised Statutes 9:4210 provides:

In any of the following cases the court in and for the parish wherein the award was made shall issue an order vacating the award upon the application of any party to the arbitration.

¹ The February 12, 2009 judgment of the district court incorrectly states that the arbitration award was rendered August 6, 2008, when it was actually rendered August 6, 2007.

A. Where the award was procured by corruption, fraud, or undue means.

B. Where there was evident partiality or corruption on the part of the arbitrators or any of them.

C. Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or of any other misbehavior by which the rights of any party have been prejudiced.

D. Where the arbitrators exceeded their powers or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

Where an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

In this case, the parties specifically agreed to follow the rules of the Louisiana State Bar Association Lawyer Dispute Resolution Program. These rules set forth the power of the arbitrator. Among other things, these rules provided as follows:

33. Closing of Hearing

The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or is satisfied that the record is complete, the arbitrator shall declare the hearing closed and a minute entry thereof shall be recorded. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as provided for in Rule 32², and the date set for their receipt is later than that set for the receipt of briefs, the later shall be the date of closing the hearing. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearing.

* * *

36. Waiver of Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection thereto in writing, shall be

² Rule 32 provides “[t]he arbitrator may issue such orders for interim relief as may be deemed necessary to safeguard the property that is the subject matter of the arbitration without prejudice to the rights of the parties or to the final determination of the dispute.”

deemed to have waived the right to object.

* * *

39. Time of Award

The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than thirty days from the date of closing the hearing or, if oral hearings have been waived, from the date of [the Louisiana State Bar Association's] transmittal of the final statements and proofs to the arbitrator.

According to the record, the arbitration hearing in this matter was held on April 23, 2007. The arbitrator then allowed Mr. Smith to provide supplemental documentation. According to Mr. Smith, this supplemental documentation was transmitted to the arbitrator on May 7, 2007, and thereafter, on August 6, 2007, the arbitrator made his award. Mr. Smith contends that the award was untimely because it was made more than thirty days from the date of closing the hearing; and therefore, the award should be vacated because the arbitrator exceeded his authority in making the award after his power had terminated. While we note that the supplemental documentation was delivered by Mr. Smith to the arbitrator on May 7, 2007, the record before us does not disclose exactly when those documents were supposed to be filed with the arbitrator in accordance with Rule 33 or otherwise when the closing of the hearing occurred herein.

Nevertheless, assuming that the record did establish that the award made by the arbitrator on August 6, 2007 was not made within thirty days of the closing of the hearing, there is no evidence that Mr. Smith filed a written objection to the timeliness of the award in the arbitration proceeding as required by Rule 36. Instead, after the award was made in favor of Mr. Cazedessus, Mr. Smith filed a petition in district court seeking to vacate the award. A party should not be permitted to wait and see whether the arbitrator will rule in his or her favor before asserting his or her objection. **Anzalone v. Doan**, 540 So.2d 385, 386 (La. App. 1st Cir. 1989) (quoting **Five Keys, Inc. v. Pizza Inn, Inc.**, 99 N.M. 39, 42, 653 P.2d

870, 873 (1982)). Accordingly, we must conclude that any objection Mr. Smith may have had to the arbitration award premised on its purported untimeliness was waived by his failure to object before the award was rendered against him.

Because we find no support in the record for Mr. Smith's contention that the arbitration award should be set aside because the arbitrator exceeded his authority, nor does the record disclose any other basis to vacate or modify the award, the February 12, 2009 judgment of the district court denying Mr. Smith's request that the arbitration award be annulled, granting Mr. Cazedessus's request that the arbitration award be confirmed, confirming the arbitration award rendered in favor of Mr. Cazedessus and against Mr. Smith dated August 6, 2007, and casting Mr. Smith for all court costs is affirmed.

III. CONCLUSION

For all of the above and foregoing reasons, the February 12, 2009 judgment of the district court is hereby affirmed. Each party is to bear their own costs of this appeal.

AFFIRMED.