

IN THE SUPREME COURT OF THE STATE OF NEVADA

STRUCTURAL CONTROL, INC.,
Appellant,
vs.
JAMES R. OLSON AND CANDACE
COLLINS OLSON,
Respondents.

No. 43497

FILED

MAR 09 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This appeal challenges a district court order that, among other things, confirmed an arbitration award and awarded attorney fees. Eighth Judicial District Court, Clark County; Sally L. Loehrer, Judge.

Appellant raises three issues on appeal. First, appellant contends that respondents failed to file the underlying case within the limitations period set forth in the parties' contract, and thus the district court erred in denying its motion for summary judgment. Second, appellant maintains that the district court improperly concluded that the arbitration was binding. Finally, appellant asserts that the district court improperly awarded additional attorney fees to respondents in addition to those awarded by the arbitrator.

We first address appellant's argument that the district court improperly concluded that the arbitration was binding. Although the district court had made clear at the June 13, 2002 hearing that the arbitration was to be non-binding, the district court found that, after the arbitration had been completed, the parties agreed that the arbitration would be binding. This court will not disturb a district court's factual

findings unless they are clearly erroneous and not based on substantial evidence.¹ Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion.² Having reviewed the record on appeal, we conclude that substantial evidence supports the district court's conclusion that the parties agreed to make the arbitration binding. Accordingly, it must be affirmed.³ Additionally, because appellant agreed to be bound by the award, we conclude that appellant has waived any argument based on the alleged running of the statute of limitations, and thus, we decline to consider that argument.⁴

Having addressed the first two issues, we now turn to appellant's contention that the district court improperly awarded attorney fees to respondents in addition to those awarded by the arbitrator. An attorney fee award resides within the discretion of the district court, and this court will not overturn such an award absent a manifest abuse of that

¹Guaranty Nat'l Ins. Co. v. Potter, 112 Nev. 199, 206, 912 P.2d 267, 272 (1996) (quoting Nevada Ins. Guaranty v. Sierra Auto Ctr., 108 Nev. 1123, 1126, 844 P.2d 126, 128 (1992)); Beverly Enterprises v. Globe Land Corp., 90 Nev. 363, 365, 526 P.2d 1179, 1180 (1974).

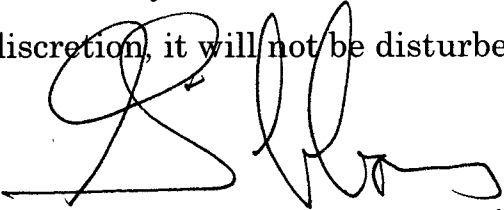
²Prabhu v. Levine, 112 Nev. 1538, 930 P.2d 103 (1996).

³Guaranty Nat'l, 112 Nev. at 206, 912 P.2d at 272.

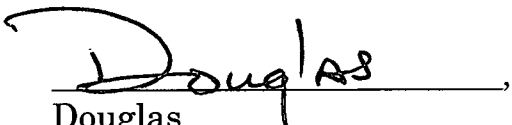
⁴See Todtman, Young, Tunick v. Richardson, 660 N.Y.S.2d 410 (N.Y. App. Div. 1997) (noting that in consenting to binding arbitration in New York after the underlying case was filed, the defendants had waived their right to urge dismissal of the case on the grounds of New Jersey's inherent authority to regulate the practice of law within its boundaries).

discretion.⁵ Here, appellant has failed to demonstrate that the district court manifestly abused its discretion in awarding respondents additional attorney fees. Because we cannot say that the award in this case represents a manifest abuse of discretion, it will not be disturbed.⁶

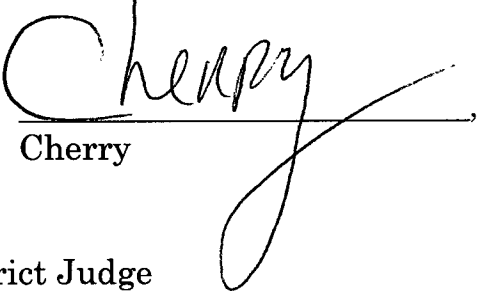
It is so ORDERED.⁷



Gibbons J.



Douglas J.



Cherry J.

cc: Hon. Sally L. Loehrer, District Judge
Eugene Osko, Settlement Judge
Parker Nelson & Arin, Chtd.
Olson, Cannon, Gormley & Desruisseaux
Eighth District Court Clerk

⁵County of Clark v. Blanchard Constr. Co., 98 Nev. 488, 653 P.2d 1217 (1982).

⁶Id.

⁷While appellant listed the May 6, 2004 order dismissing various parties pursuant to NRCP 41(e) in its notice of appeal, appellant makes no arguments with regard to that order in its briefs. Accordingly, we need not address appellant's purported challenge to that order. See Edwards v. Emperor's Garden Rest., 122 Nev. 317, ___ n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to address the district court's dismissal of certain claims because the appellant failed to address the issue in his briefs).