

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE N. HELM, INDIVIDUALLY
AND D/B/A ULTRA TAN,
Appellant,
vs.
TAN MAGIC,
Respondent.

No. 46954

FILED

APR 26 2007

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

ORDER VACATING AND REMANDING

This is an appeal from a district court order granting respondent's motion to strike appellant's trial de novo request and entering judgment on the arbitration award. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Respondent, Tan Magic, filed a complaint against appellant, George N. Helm, alleging claims of breach of contract, breach of warranty of merchantability, and negligence concerning the purchase and sale of a tanning bed. As Tan Magic's complaint had a probable jury award of less than \$40,000, the case proceeded through the court-annexed arbitration program.¹ The arbitrator found in favor of Tan Magic and awarded damages against Helm in the amount of \$20,400 for reimbursement of the purchase price of the defective equipment, \$3,000 in attorney fees, and \$500 in costs, for a total award of \$23,900.

¹NAR 3(A).

After the arbitrator entered his award, Helm filed a timely request with the district court for a trial de novo. Tan Magic moved to strike Helm's trial de novo request, based on Helm's alleged failure to participate in good faith during the arbitration proceedings. Helm opposed Tan Magic's motion to strike. On February 17, 2006, the district court entered an order granting Tan Magic's motion to strike Helm's trial de novo request and entering judgment on the arbitration award. Helm has appealed.

On appeal, Helm contends that the district court's February 17 order granting Tan Magic's motion to strike does not comply with the mandate of Chamberland v. Labarbera, which provides that all sanctioning orders striking trial de novo requests under NAR 22(A) "must be accompanied by specific written findings of fact and conclusions of law by the district court describing what type of conduct was at issue and how that conduct rose to the level of failed good faith participation."²

We agree, and we note that NAR 18(F) also provides that the district court "shall explain its reasons in writing" when striking a trial de novo request. Therefore, as the district court merely found that Helm "did not defend the case in good faith in the arbitration proceedings" and did not explain its reasons for so concluding, the order striking Helm's trial de novo request and entering judgment must be vacated.

Helm also argues that the district court erred in granting Tan Magic's motion to strike his trial de novo request for his failure to defend the case in good faith during arbitration proceedings. We note that, based

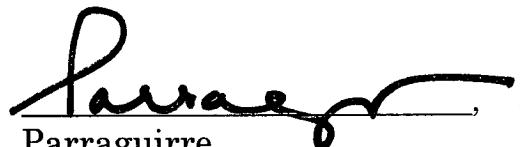
²110 Nev. 701, 705, 877 P.2d 523, 525 (1994) (emphasis added).

on the record before us, the district court may have abused its discretion.³ Nevertheless, we need not reach this issue, as the district court's order does not set forth the facts on which it relied in striking the trial de novo request.

Accordingly, the district court's February 17 order striking Helm's trial de novo request is vacated, and we remand this matter for further proceedings.

It is so ORDERED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

³See Gittings v. Hartz, 116 Nev. 386, 996 P.2d 898 (2000) (finding that mere failure of a party to attend or call witness in an arbitration hearing does not amount to . . . a lack of meaningful participation waiving right to trial de novo); Chamberland v. Labarbera, 110 Nev. 701, 877 P.2d 523 (1994) (holding that the district court abused its discretion when it imposed severe sanction of denying trial de novo request where defendant did not conduct discovery before arbitration hearing as a tactical decision and did not attend but had counsel cross-examine plaintiff at arbitration hearing).

cc: Hon. Jackie Glass, District Judge
Watson Rounds
Peter Dubowsky
Eighth District Court Clerk