IN THE SUPREME COURT OF THE STATE OF NEVADA

MAJESTIC RESORTS, INC.,
Appellant,
vs.
HILTON HOTELS CORPORATION; CONRAD HOTELS USA; AND CONRAD HOSPITALITY, LLC,
Respondents.

No. 52057

FILED

FEB 26 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order confirming an arbitration award. Eighth Judicial District Court, Clark County; Elizabeth Goff Gonzalez, Judge.

Appellant asserts that the district court erred by confirming the arbitration award and by denying its motion to vacate the award on the basis of evident partiality, since one of the arbitrators on the panel failed to disclose that he and respondents' counsel were partners at the same law firm 13 years earlier.[1] Respondents assert that appellant waived any evident partiality claim by not timely invoking it and by not first challenging the arbitrator's continued position on the panel in accordance with the arbitration rules, as required under NRS 38.227(6). Regardless, respondents assert, the arbitrator's past business relationship with respondents' counsel did not give rise to a "reasonable impression of partiality," such that he was required to disclose the relationship.

[1]Respondent Hilton Hotels Corporation's general counsel also worked at the same law firm as the arbitrator, but she did not represent Hilton during the arbitration proceeding. Her association with that law firm ended 11 years before the arbitration proceeding in this matter.

A district court decision confirming an arbitration award when evident partiality is alleged is reviewed de novo. Thomas v. City of North Las Vegas, 122 Nev. 82, 97, 127 P.3d 1057, 1067 (2006). If an arbitrator fails to disclose a past relationship with any of the parties to the arbitral proceeding, or their counsel or representatives, the district court, upon timely objection by a party, may vacate the arbitration award, if it finds that the undisclosed relationship gives rise to a "'reasonable impression of partiality.'" Id. at 99, 127 P.3d at 1068-69 (quoting Schmitz v. Zilveti, 20 F.3d 1043, 1047 (9th Cir. 1994)); NRS 38.227(1)(b) and (4); NRS 38.241(1)(b).

Here, although appellant initially objected to the arbitrator's continued service on the panel upon being made aware of the arbitrator's past relationship with opposing counsel,[2] when the arbitrator declined to recuse himself, appellant did not pursue its objection in accordance with the arbitral organization's procedures, instead withdrawing its objection before the panel rendered its decision. The arbitrator in question specifically asked appellant's representative whether he agreed with counsel's decision to withdraw the objection, and appellant's representative responded, "I'm fine with that." Appellant did not thereafter renew its objection; however, after the panel rendered its decision awarding no damages to either party, but awarding respondents' attorney fees and costs, appellant moved to vacate the award. The district

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[2]According to the briefs and the record, about one month before the arbitration began, respondents' counsel informed appellant that he and the arbitrator used to work for the same law firm. Appellant, however, maintains that it did not become aware of the extent of that relationship until the arbitration hearing was underway.

court denied the motion and confirmed the award, finding that appellant had waived any issue regarding evident partiality by not following the arbitration rules in pursuing its challenge.

Having considered the parties' arguments and reviewed the record, we conclude that the district court did not err by denying appellant's motion to vacate the arbitration award and by instead confirming the award. Appellant consented to the arbitrator's continued service on the panel when it withdrew its objection and declined to further pursue its administrative remedies, and thus it waived its objection. NRS 38.227(6) (providing that "[i]f the parties to an arbitral proceeding agree to the procedures of an arbitral organization . . . for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award" on evident partiality grounds); see also Venetian Casino Resort v. Dist. Ct., 118 Nev. 124, 130, 41 P.3d 327, 330-31 (2002) (discussing waiver based on failure to object); Fininen v. Barlow, 47 Cal. Rptr. 3d 687, 691 (Ct. App. 2006) (rejecting appellant's argument that the lower court erred by refusing to vacate an award based on an incomplete or untimely disclosure, when, among other things, the appellant consented to the arbitrator's participation); Rothman v. RE/MAX of New York, Inc., 711 N.Y.S.2d 477, 478 (App. Div. 2000) (recognizing that by proceeding with arbitration without challenging the arbitrator after becoming sufficiently aware of a relationship between the arbitrator and opposing counsel, "petitioners effectively waived any objections they had in connection with the relationship").

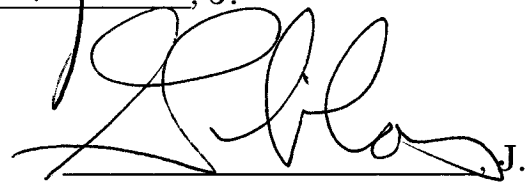
While appellant asserts that it felt pressured to withdraw its objection after the arbitrator refused to stay the proceedings, as the arbitrator pointed out, appellant had the option of submitting its objection

in writing to the organization's administration in accordance with the organization's rules, by which the parties had agreed to abide. The arbitrator stated on the record that if appellant submitted a written objection, the objection would be decided on an expedited basis, and he assured appellant that the panel would not render any decision until appellant had the opportunity to pursue its administrative remedies. And although appellant asserts that any written challenge to the arbitral organization's administrative body would have been futile, since the challenged arbitrator was the managing director of the organization, and thus "wielded considerable clout" with its administrative decision makers, there is nothing in the record indicating that if appellant had made a written objection to the administration, it would have been rejected out of hand. See Vigorito v. UBS PaineWebber, Inc., 557 F. Supp. 2d 303, 307-08 (D. Conn. 2008) (rejecting argument that no waiver occurred because, as a "reluctant response to an awkward, uncomfortable situation not of their making," plaintiffs' counsel declined to object to arbitrator's late conflict disclosure and instead expressly assented to his continued participation on the panel). Accordingly, because appellant withdrew its objection and consented to the arbitrator's continued participation, the district court properly denied its motion to vacate the arbitration award under NRS 38.227(6). Thus, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Cherry

_____, J.
Saitta



_____, J.
Gibbons

cc: Hon. Elizabeth Goff Gonzalez, District Judge
Howard Roitman, Settlement Judge
Hutchison & Steffen, LLC
Morris Peterson/Las Vegas
Eighth District Court Clerk