

IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL ROSHETKO,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
SUSAN JOHNSON, DISTRICT JUDGE,
Respondents,
and
HERBST GAMING, INC.,
Real Party in Interest.

No. 58288

FILED

JUL 18 2011

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

ORDER DENYING PETITION FOR
WRIT OF MANDAMUS OR PROHIBITION

This original petition for a writ of mandamus or prohibition challenges a district court order vacating an arbitration award and remanding the matter to the arbitrator for rehearing.


Petitioner argues that under Health Plan of Nevada v. Rainbow Medical, 120 Nev. 689, 100 P.3d 172 (2004), the district court lacked authority to remand the matter back to the arbitrator for rehearing. Petitioner misreads Health Plan of Nevada. In that case, this court pointed out that under NRS 38.237(4), a court may remand a matter to the arbitrator for certain limited actions, including, among other actions, to correct or modify an award for mathematical miscalculations, descriptive mistakes, or technical deficiencies in the form of the award, or for an arbitrator to clarify an award. Health Plan of Nevada, 120 Nev. at 695-96, 100 P.3d at 177. Because the aggrieved party in Health Plan of Nevada did not contend that the award was ambiguous or that it contained a mistake or deficiency, but instead argued that the arbitrator

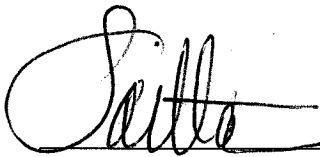
manifestly disregarded the law, this court concluded that remand under NRS 38.237(4) was inappropriate. Health Plan of Nevada, 120 Nev. at 696-97, 100 P.3d at 177. In so concluding, this court explained that in the event the district court agreed that the arbitrator manifestly disregarded the law, the proper remedy would be to vacate the award and also to remand the matter for a new arbitration hearing under NRS 38.241(3). Health Plan of Nevada, 120 Nev. at 697, 697 n.14, 100 P.3d at 177, 177 n.14.

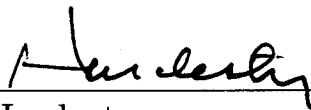
Here, the district court vacated the award and remanded the matter to the arbitrator under NRS 38.241(1) and (3), based on its findings that the arbitrator exceeded her authority and powers in rendering the arbitration decision and that, by doing so, the arbitrator acted arbitrarily and capriciously and disregarded the terms of the parties' agreement. The district court's decision denying petitioner's motion to confirm the award, granting real party in interest's motion to vacate the award, and remanding the matter to the arbitrator for rehearing under NRS 38.241(3) is not contrary to Health Plan of Nevada or any other controlling authority. 120 Nev. at 696-97, 100 P.3d at 177; see NRS 38.241(1)(d) (providing that a court may vacate an award if the arbitrator exceeded his or her authority); NRS 38.241(3) (providing that if the court vacates an award under NRS 38.241(1)(d), it may remand the matter for rehearing); Clark Cty. Educ. Ass'n v. Clark Cty. Sch. Dist., 122 Nev. 337, 341, 131 P.3d 5, 8 (2006) (recognizing that, in addition to the grounds listed in NRS 38.241(1), courts may review an arbitration award to determine whether the award is arbitrary, capricious, or unsupported by the parties' agreement). Although petitioner's writ petition is mostly devoted to argument as to why the arbitrator did not exceed her authority or act

arbitrarily or capriciously in rendering a decision, that argument is not properly before this court at this time; instead, if petitioner is aggrieved by the arbitrator's decision on rehearing, he may take the proper steps to challenge the decision as set forth in NRS Chapter 38. Accordingly, since our extraordinary intervention is not warranted, see NRS 34.170; NRS 34.330; Smith v. District Court, 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991), we

ORDER the petition DENIED.¹


_____, C.J.
Douglas


_____, J.
Saitta


_____, J.
Hardesty

cc: Hon. Susan Johnson, District Judge
Law Office of Daniel Marks
Jones Vargas/Las Vegas
Eighth District Court Clerk

¹In light of this decision, we vacate the stay imposed by our July 7, 2011, order.