

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND BAIN,
Appellant,
vs.
MASTER SERIES AT THE LEGACY
COMMUNITY ASSOCIATION,
Respondent.

No. 35966

FILED

JUL 09 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order confirming an arbitration award in favor of respondent Master Series at the Legacy Community Association and against appellant Raymond Bain. We affirm the district court's order.

NRS 38.330(5) provides for confirmation of a non-binding arbitration award pursuant to NRS 38.135 if a civil action is not commenced within thirty days after a decision and award is served upon the parties.¹ Further, NRS 38.135 requires the district court to confirm an arbitration award upon a timely application of a party unless "grounds are urged for vacating or modifying or correcting the award."² The district court's power of review of arbitration decisions is limited to the statutory

¹1999 Nev. Stat., ch. 572, § 33, at 3016-17. NRS 38.330 was amended in 2001. See 2001 Nev. Stat., ch. 280, § 39, at 1283-85. Our decision in this case is based on the version of NRS 38.330 in effect prior to the 2001 amendment.

²NRS 38.135.

grounds, and this court may vacate an arbitration award when the arbitrator manifestly disregards the law.³

The record reveals that the arbitration proceedings in this case were commenced pursuant to NRS 38.300 et seq., which provide for mediation or arbitration of claims relating to residential property before the commencement of a civil action, that the parties submitted their dispute to non-binding arbitration, and that Bain failed to timely file a civil action as set forth in NRS 38.330(5) despite the arbitrator's advance notice of the parties' rights.

Additionally, nothing in the record supports Bain's contention that the arbitration award was procured by fraud, corruption, or other undue means; namely, racism, or that the arbitrator was partial and/or refused to consider his evidence at the arbitration hearing. Bain clearly violated the CC&Rs by failing to landscape his yards within the required time frames. Bain purchased his home in December 1994, the CC&Rs required him to complete his front yard landscaping within six months following purchase and his back yard landscaping within one year following purchase, and he failed to landscape his yards within the time periods provided for in the CC&Rs.

Further, the CC&Rs gave the Association the authority to fine Bain for failing to timely landscape his yards, and NRS 116.31031 permits the Association to impose fines upon homeowners for failure to comply with provisions of the CC&Rs so long as the fines are commensurate with the severity of the violation and do not exceed \$100.00 for each violation or

³Graber v. Comstock Bank, 111 Nev. 1421, 1427, 905 P.2d 1112, 1115 (1995).

a total amount of \$500.00.⁴ However, the statute also permits the imposition of additional fines if a violation is not timely cured.⁵

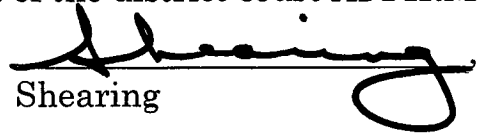
Finally, although Bain submitted landscaping plans and impact statements from neighbors expressing no concerns about his plans to the Association's architectural review committee in September 1997, this occurred nearly two years after he was required to complete landscaping on his property, and only after he was notified by the Association that he was in violation of the CC&Rs. Moreover, while the Association initially communicated to Bain that he needed to provide "professionally rendered" plans, which were not required by the CC&Rs, it later clarified its need for plans drawn to scale, waived fines already assessed, and later reduced the monthly assessment of fines to \$100.00.

As to Bain's contentions below that the arbitrator was racially motivated in limiting his requests for information on all of the property in the community to thirty homes and by denying his request for inspection of the community, the record suggests that Bain failed to properly exercise his right to conduct this discovery. As to Bain's contention that the arbitrator refused to consider his evidence at the arbitration hearing, the record suggests that Bain failed to elaborate on his claims, with the exception of producing photographs of the community, and the photos, by themselves, fail to demonstrate that the Association selectively enforced the CC&Rs against Bain. Thus, we conclude that the arbitrator's award was proper and that the district court did not err by confirming that award. Accordingly, we

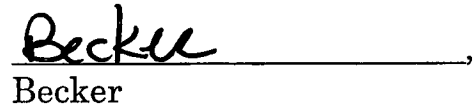
⁴NRS 116.31031(1)(b).

⁵NRS 116.31031(2).

ORDER the judgment of the district court AFFIRMED.

 J.
Shearing

 J.
Rose

 J.
Becker

cc: Hon. Valorie Vega, District Judge
Raymond Bain
Law Offices of Jay Hampton & Associates
Clark County Clerk