IN THE SUPREME COURT OF THE STATE OF NEVADA

MARION COLLINS,
Appellant/Cross-Respondent,
vs.
OCEAN WEST NEVADA CORP.,
Respondent/Cross-Appellant.

No. 65970

FILED

OCT 1 9 2015

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

This is an appeal and cross-appeal from a district court judgment in a breach of contract action. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.

The parties entered into a contract for respondent to make improvements to appellant's home to make it handicap accessible. The improvements would be paid for through a grant appellant received from the Department of Veteran Affairs (VA). Respondent substantially completed the improvements, but then appellant denied respondent access to the home to finish the work. Both parties sued and the matter went to arbitration where respondent was awarded $16,893.87. Appellant filed a request for a trial de novo and after a short trial, a judgment was entered wherein respondent received an additional $1,500 and appellant received $1,500. The district court also awarded respondent its costs but denied respondent's request for attorney fees. This appeal and cross-appeal followed.

As an initial matter, appellant argues that the district court lacked subject matter jurisdiction because respondent failed to exhaust its administrative remedies that were available under the escrow agreement. Because respondent's action is based on the building contract, not the escrow agreement, and exhaustion of administrative remedies was not

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statutorily mandated, the district court had subject matter jurisdiction.[1] *See Eluska v. Andrus*, 587 F.2d 996, 999 (9th Cir. 1978) (explaining that when exhaustion is statutorily mandated, the exhaustion requirement is jurisdictional but when it is not, the court has discretion to dismiss the action). Similarly, because the VA was not a party to the building contract that was the basis for respondent's breach of contract action and the VA was merely the escrowee of appellant's grant funds, appellant's argument that the VA was a necessary party is without merit. *See* NRCP 19(a) (defining necessary parties).

Further, we conclude that the district court did not err in awarding respondent damages for appellant's breach of the building contract because respondent was properly licensed to complete the work, appellant failed to pay respondent through the funds supplied by his VA grant or otherwise, and the timeframe for completing the project was extended.[2] *Whitemaine v. Aniskovich*, 124 Nev. 302, 308, 183 P.3d 137, 141 (2008) (providing that this court reviews contract interpretation de novo and the district court's findings of facts for substantial evidence). Also, the district court did not abuse its discretion in awarding respondent its costs as the prevailing party because the district court's order indicates

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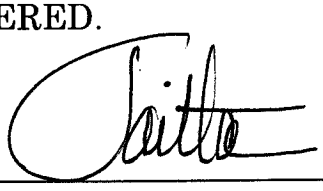
[1]We note that nothing in the record indicates that appellant presented this argument to the district court and requested dismissal.

[2]In regard to appellant's argument that the district court should have compelled arbitration between respondent and its subcontractor, who is not a party on appeal, because appellant was not a party to the arbitration agreement between respondent and the subcontractor, appellant did not have standing to compel arbitration between the two parties. *See generally Truck Ins. Exch. v. Palmer J. Swanson, Inc.*, 124 Nev. 629, 633-34, 189 P.3d 656, 659 (2008) (explaining that if one does not have an agreement to arbitrate with a party, then one cannot force that party to arbitrate).

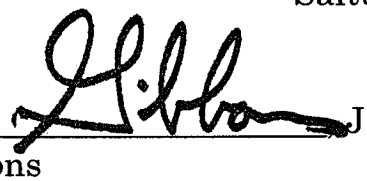
that the $1,500 award to respondent was in addition to the $16,893.87 that respondent had already received from the arbitrator. *Parodi v. Budetti*, 115 Nev. 236, 240, 984 P.2d 172, 174 (1999) (explaining that this court reviews an award of costs and fees for an abuse of discretion).

We conclude, however, that the district court abused its discretion in denying respondent's request for its attorney fees. *Id.* NAR 20(B)(2)(a) provides that if a party requests a trial de novo after an arbitration award of less than $20,000 and does not reduce the judgment by at least twenty percent, the non-requesting party is entitled to its fees incurred in the trial de novo. Because appellant failed to reduce respondent's award by at least twenty percent, the district court should have awarded respondent its attorney fees incurred in the trial de novo. Therefore, while we affirm the district court's judgment and award of costs, we reverse the court's denial of respondent's request for attorney fees and remand this matter for proceedings consistent with this order.

It is so ORDERED.



_____, J.
Saitta



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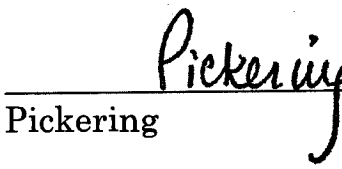
Gibbons



_____, J.
Pickering

cc: Hon. Stefany Miley, District Judge
Thomas J. Tanksley, Settlement Judge
Michael R. Pontoni
Jolley Urga Wirth Woodbury & Little
Eighth District Court Clerk