

IN THE SUPREME COURT OF THE STATE OF NEVADA

PALM GARDENS LIMITED
PARTNERSHIP, A NEVADA LIMITED
PARTNERSHIP; AND JAMES M.
RHODES,

Appellants/Cross-Respondents,

vs.

THE GARDENS EAST, INC., A
NEVADA CORPORATION; PRESTIGE
DEVELOPMENT CORPORATION, A
FLORIDA CORPORATION; LOUIS E.
GOLDMAN, JR.; AND GLORIA
PATTERSON, AS SPECIAL
ADMINISTRATOR OF THE ESTATE
OF MARSHALL GOLDMAN,
DECEASED,
Respondents/Cross-Appellants.

No. 39271

FILED

FEB 13 2006

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

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment entered on an arbitration award. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

James M. Rhodes and the late Marshall Goldman, through their respective corporations, Palm Gardens Corporation and The Gardens East, Inc., formed Palm Gardens Limited Partnership for the purpose of developing 135 acres of land. The land was Marshall Goldman's contribution to the partnership, which Marshall's brother, Louis E. Goldman, Jr., later joined via his own organization, Prestige Development Corporation. A dispute arose between Rhodes and the Goldmans regarding Marshall's failure to inform Rhodes of a credit that had been applied against Marshall's down payment on the land, which resulted in a \$125,000 distribution to Marshall, but not to the partnership.

Rhodes and the partnership filed a complaint in district court and the Goldmans counterclaimed. Eventually, the parties stipulated to binding arbitration and agreed that "the arbitrator's decision shall be subject to appeal to the Nevada Supreme Court in the same manner that the parties would have a right to appeal a decision by a District Court Judge." The district court signed off on this stipulation.

After an extensive arbitration proceeding, an arbitrator awarded the Goldmans damages, attorney fees, costs, and prejudgment interest. The district court reviewed the arbitrator's decision and entered judgment on both the complaint and counterclaim in favor of the Goldmans and their respective corporations. Rhodes now appeals and the Goldmans cross-appeal.

A district court is only authorized to review an arbitrator's award under the confines of NRS Chapter 38, and this court's review of a district court's decision on an arbitration award is similarly limited. When parties to an arbitration agreement seek judicial review of an award, a court may vacate an award only on one of the grounds set forth in NRS 38.241,¹ and may modify or correct an award only on one of the

¹NRS 38.241(1) provides the following grounds for vacating an arbitration award:

(a) The award was procured by corruption, fraud or other undue means;

(b) There was:

(1) Evident partiality by an arbitrator appointed as a neutral arbitrator;

(2) Corruption by an arbitrator; or

(3) Misconduct by an arbitrator prejudicing the rights of a party to the arbitral proceeding;

continued on next page . . .

grounds set forth in NRS 38.242.² An arbitration award may also be vacated under limited common-law grounds, specifically when an

... continued

(c) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to NRS 38.231 [dictating arbitrator's conduct of the arbitration process], so as to prejudice substantially the rights of a party to the arbitral proceeding;

(d) An arbitrator exceeded his powers;

(e) There was no agreement to arbitrate, unless the movant participated in the arbitral proceeding without raising the objection under subsection 3 of NRS 38.231 not later than the beginning of the arbitral hearing; or

(f) The arbitration was conducted without proper notice of the initiation of an arbitration as required in NRS 38.223 so as to prejudice substantially the rights of a party to the arbitral proceeding.

²Under NRS 38.242(1), an award may be modified or corrected if:

(a) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing or property referred to in the award;

(b) The arbitrator has made an award on a claim not submitted to him and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

(c) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

arbitrator has manifestly disregarded the law.³ “Judicial inquiry under the manifest-disregard-of-the-law standard is extremely limited.”⁴

Manifest disregard of the law is something beyond and different from a mere error in the law or failure on the part of the arbitrators to understand or apply the law. A reviewing court should not concern itself with the correctness of an arbitration award and thus does not review the merits of the dispute. . . . [T]he issue is not whether the arbitrator correctly interpreted the law, but whether the arbitrator, knowing the law and recognizing that the law required a particular result, simply disregarded the law.⁵

None of the statutory grounds for vacating, modifying, or correcting an arbitration award set forth in NRS Chapter 38 applies to this case. Furthermore, after reviewing the arbitrator’s decision, the district court’s order, and the applicable portions of the record under the “manifest disregard of the law” standard of review, we conclude that the arbitrator and the district court did not manifestly disregard the law cited


³Bohlmann v. Printz, 120 Nev. 543, 546, 96 P.3d 1155, 1157 (2004); Graber v. Comstock Bank, 111 Nev. 1421, 1426, 905 P.2d 1112, 1115 (1995); Wichinsky v. Mosa, 109 Nev. 84, 89-90, 847 P.2d 727, 731 (1993).

⁴Bohlmann, 120 Nev. at 547, 96 P.3d at 1158 (citing Tim Huey Corp. v. Global Boiler, 649 N.E.2d 1358, 1363 (Ill. App. Ct. 1995) (recognizing manifest disregard of the law as an almost nonexistent standard of review); Bret F. Randall, Comment, The History, Application, and Policy of the Judicially Created Standards of Review for Arbitration Awards, 1992 BYU L. Rev. 759, 765-67 (noting that manifest disregard of the law is a virtually insurmountable standard of review)).

⁵Id. (internal quotation marks and footnote call numbers omitted).


by the parties in their appeal and cross-appeal in awarding the Goldmans damages, attorney fees, costs, and interest.⁶ Accordingly, we

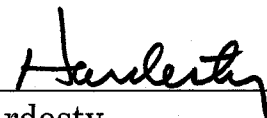
ORDER the judgment of the district court AFFIRMED.⁷


_____, C.J.
Rose



Gibbons J.


_____, J.
Douglas


_____, J.
Hardesty

cc: Hon. Lee A. Gates, District Judge
Corby D. Arnold
Marquis & Aurbach
Clark County Clerk

⁶Because we have determined that the agreement only contemplated review under NRS Chapter 38, we do not reach the issue of whether parties may contractually expand the scope of this court's review of arbitration awards. However, we are concerned that parties lack the ability to create subject matter jurisdiction in this court or alter the standard of review mandated by NRS Chapter 38.

⁷The Honorable A. William Maupin, Justice, and Ron Parraguirre, Justice, voluntarily recused themselves from participation in the decision of this matter.

BECKER, J., concurring:

While I agree with the result reached by the majority, I write separately to address an issue that they do not reach, namely, the parties' attempt to create appellate jurisdiction in this court. The arbitration agreement between Rhodes and the Goldmans states in relevant part:

The parties stipulate that the arbitrator's decision shall be subject to appeal to the Nevada Supreme Court in the same manner that the parties would have a right to appeal a decision by a District Court Judge. Accordingly, the parties will jointly retain a court reporter, who will record all of the proceedings. The parties will share 50/50 the daily appearance fee for the court reporter. In addition, the arbitrator shall enter a written decision and make formal findings of fact and conclusions of law.

Given the above language and the content of the parties' supplemental briefs, the parties clearly intended for their arbitration agreement to provide them a right to appeal an arbitration award to this court as if the award was the substantive equivalent of a district court judgment, *i.e.*, findings of fact would be reviewed for an abuse of discretion, while conclusions of law would be reviewed *de novo*.

However, I do not believe that the parties have the authority to contractually create jurisdiction in this court outside of NRS Chapter 38 and certain limited common-law grounds.¹ Accordingly, I would sever the

¹See John T. Jones Constr. Co. v. City of Grand Forks, 665 N.W.2d 698, 704 (N.D. 2003) (holding that parties to an arbitration agreement cannot contractually expand the scope of judicial review beyond that provided by statute).

relevant provision from the arbitration agreement,² apply the same manifest disregard of the law standard of review as the majority, and affirm.

Becker _____, J.
Becker

²See Kyocera Corp. v. Prudential-Bache, 341 F.3d 987, 1001-02 (9th Cir. 2003) (citing Little v. Auto Stiegler, Inc., 63 P.3d 979 (Cal. 2003), cert. denied, 540 U.S. 818 (2003)) (severing term expanding judicial scope of review from an arbitration clause because flaw did not permeate any other portion of the clause, nor was the review provision interdependent with any other provision).