

2016 IL App (1st) 152364-U
No. 1-15-2364
June 30, 2016

SECOND DIVISION

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

T.D. BUTZBAUGH,)	Appeal from the Circuit Court
)	Of Cook County.
Claimant-Counter-Respondent-Appellee,)	
)	
v.)	No. 14 CH 19190
)	
BCI AIRCRAFT LEARING, INC.,)	The Honorable
)	Thomas R. Allen,
Respondent-Counter-Claimant-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Justices Simon and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* Where it does not appear on the face of an arbitration award that the arbitrator was grossly mistaken as to the law in reaching his decision, a reviewing court will not review the legal reasoning behind the decision, nor will it vacate the award. Where the appellant fails to provide the reviewing court with a sufficiently complete record on appeal from a circuit court order granting a petition to confirm an arbitration award, the reviewing court cannot review the claim of error and must assume that the arbitrator had a sufficient factual basis for its holding and that its award conforms with the law.

¶ 2 BCI, the respondent, maintains that the circuit court erred in affirming the arbitrator's award when: (1) the arbitrator exceeded his powers by ignoring the "plain language of the document [the employment agreement] on which the Award was based"; (2) when the award reflected " 'gross error[s] of law' on its face", specifically, permitting the employment agreement to govern despite Butzbaugh's, the claimant, alleged violation of Rule 1.8 of the Illinois Rules of Professional Conduct and violation of his fiduciary duty to BCI; and (3) when the arbitrator abused his discretion when he denied BCI's motion for a continuance due to the incarceration and unavailability of its key witness.

¶ 3 We find that on the face of the arbitration award, it does not appear that the arbitrator made a gross error of law. We also find that BCI failed to present this court with a sufficiently complete record by failing to include, *inter alia*, (1) a copy of the arbitration transcripts; and (2) a copy of the transcript, a bystander's report, or an agreed statement of facts from the circuit court hearing on the motions to confirm and vacate the arbitration award on June 10, 2015. Therefore, without a complete record, this court cannot review BCI's claims of error and we must assume that the arbitrator had a sufficient factual basis for the holding and that the award conforms with the law. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 157 (2005); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Accordingly, we affirm the circuit court's June 10, 2015 order that confirmed the arbitration award and denied BCI's petition to vacate the arbitration award.

¶ 4 BACKGROUND

¶ 5 Butzbaugh maintains in his brief that he served as the general counsel for BCI from May 2005 until April 2012 and that he made a demand for arbitration on June 14, 2012, following

his termination from BCI. Butzbaugh further maintains that in his demand, he sought damages for breach of contract related to an employment agreement between himself and BCI and that he also sought damages for the alleged retaliatory discharge against him. A multi-day hearing was held in Chicago, Illinois in May and June 2014. The transcripts from the hearings are not included in the record.

¶ 6 On August 6, 2014, the arbitrator issued an award and opinion in Butzbaugh's favor. Butzbaugh was awarded a total of \$448,750 representing: \$350,000 in performance bonuses that were not paid; \$82,500 for six months' severance pay; and \$41,250 in statutory damages related to the severance award. On November 3, 2014, the parties agreed to vacate the arbitration award subject to reinstatement. The parties later agreed to reinstate the arbitration award and on November 17, 2014, the circuit court entered an order reinstating the award in full. On December 1, 2014, Butzbaugh filed a motion in the circuit court to confirm the award in part and vacate the award in part. Butzbaugh sought to confirm the entire award, but wanted to vacate that part of the award which did not grant him attorneys' fees. BCI filed a counter-petition to vacate the award on February 13, 2015. In its counter-petition, BCI sought to vacate the arbitration award: (A) because of the arbitrator's failure to postpone the hearing due to the unavailability of a key witness; (B) because the arbitrator exceeded his powers; (C) because a gross error of law appeared on the face of the award. On June 10, 2015, the circuit court granted Butzbaugh's petition, with the exception of the attorneys' fees, denied BCI's cross-petition, and confirmed the award in its entirety. BCI filed a motion to reconsider on July 9, 2015, which was denied on July 24, 2015. On August 17, 2015, BCI filed its notice of appeal.

¶ 7

ANALYSIS

¶ 8

Judicial Review of Arbitration Awards

¶ 9

BCI maintains that the circuit court erred in affirming the arbitrator's award: (1) when the arbitrator exceeded his powers by ignoring the "plain language of the document [the employment agreement] on which the Award is based"; (2) when the award reflected " 'gross error[s] of law' on its face", specifically, permitting the employment agreement to govern despite Butzbaugh violating Rule 1.8 of the Illinois Rules of Professional Conduct and violating his fiduciary duty to BCI; and (3) when the arbitrator abused his discretion when he denied BCI's motion for a continuance due to the incarceration and unavailability of its key witness, Brian Hollnagel.

¶ 10

The scope of judicial review of an arbitration award "is nothing like the scope of an appellate court's review of a trial court's decision because the Uniform Arbitration Act [citation] provides for limited judicial review of the arbitrator's award." *International Association of Firefighters, Local No. 37 v. City of Springfield*, 378 Ill. App. 3d 1078, 1080-81, (2008). Our supreme court has also long recognized that judicial review of an "arbitral award is extremely limited." *American Federation of State, County and Municipal Employees, AFL-CIO v. Department of Central Management Services*, 173 Ill. 2d 299, 304 (1996). Because the parties have chosen by a contractual agreement to have their dispute settled by an arbitrator, a court should not vacate an award because its interpretation differs from that of the arbitrator. *American Federation of State, County and Municipal Employees, AFL-CIO*, 173 Ill. 2d at 304, 05. Arbitration awards "should be construed, wherever possible,

so as to uphold their validity," and, it is presumed that the arbitrator did not exceed his authority. *Rauh v. Rockford Products Corp.*, 143 Ill. 2d 377, 386, (1991).

¶ 11 Section 12 of the Illinois Uniform Arbitration Act provides grounds for vacating an arbitration award where: (A) the award was procured by corruption, fraud, or other undue means; (B) there was evident partiality by an arbitrator appointed as a neutral party, or corruption in any arbitrator, or misconduct prejudicing the rights of any party; (C) the arbitrators exceeded their powers; (D) the arbitrators refused to postpone the hearing upon a showing of sufficient cause, or refused to hear evidence material to the controversy, or conducted the hearing contrary to the provisions of section 5 in a way that substantially prejudiced the rights of a party; or (E) there was no arbitration agreement between the parties and "the issue was not adversely determined in proceedings under Section 2 and the party did not participate in the arbitration hearing without raising the objection ***." 710 ILCS 5/12(a) (West 2010); *Clanton v. Ray*, 2011 IL App (1st) 101894, ¶ 24.

¶ 12 Therefore, the Act contemplates judicial disturbance of an award in instances of fraud, corruption, misconduct, mistake or failure to submit the partiality question to arbitration. *American Federation of State, County and Municipal Employees, AFL-CIO*, 173 Ill. 2d at 304-05. Gross errors of judgment in law or gross mistakes of fact are not grounds for vacating an award unless the mistakes or errors are apparent on the face of the award. *Rauh*, 143 Ill. 2d at 393. A reviewing court may review the legal reasoning used to reach a decision "[o]nly where it appears on the face of the award (and not in the arbitrator's opinion) that the arbitrator was so mistaken as to the law that, if apprised of the mistake, the award would be different." *Board of Education of City of Chicago v. Chicago Teachers Union, Local No. 1*,

86 Ill. 2d 469, 477 (1981). The party moving to vacate the award must present clear, strong, and convincing evidence that the award was improper. *Sloan Electric v. Professional Realty & Development Corporation*, 353 Ill. App. 3d 614, 621 (2004). Therefore, since the question of arbitrability is one of contract law, we review a circuit court's order confirming an arbitration award *de novo*. *Salsitz v. Kreiss*, 198 Ill. 2d 1, 15 (2001).

¶ 13 Plain Language of Employment Agreement - Performance Bonus

¶ 14 BCI first argues that the circuit court erred in confirming the arbitration award because the arbitrator exceeded his powers by ignoring the plain language of the employment agreement. BCI notes that the "Compensation; Benefits; Expenses" section of the employment agreement states, in pertinent part:

"Performance Bonus. Employee shall be entitled to a semi-annual performance bonus of up to Thirty Thousand Dollars (\$30,000), each to be paid on June 30 and December 31 of each calendar year."

BCI maintains that the arbitrator exceeded his powers by awarding Butzbaugh \$325,000 in performance bonuses because doing so ignores the plain language of the agreement and revises the language of the employment agreement to "read the words 'up to' entirely out of the document" such that the bonus provision would mandate a minimum of \$30,000 to be paid semi-annually. BCI further maintains that "Exhibit B" to the Employment Agreement delineates the criteria which Butzbaugh was required to complete in order to receive a performance bonus. Because Butzbaugh failed to meet the criteria, BCI maintains that Butzbaugh was not owed \$325,000 in performance bonuses.

¶ 15 In reaching the conclusion that Butzbaugh was entitled to \$325,000 in performance bonuses, the arbitrator stated that Butzbaugh was not given the kind of "guidance, direction, or attention necessary to complete each of the 'Performance Bonus Criteria' ***" which were attached as an exhibit to the employment contract, nor was he given "ample opportunity to meet each and every one of the criteria." The arbitrator concluded that, although it was a "close call," Butzbaugh established by a preponderance of the evidence that "he substantially performed the criteria on which he was given an opportunity." The arbitrator also concluded that he decreased Butzbaugh's request for \$400,000 in performance bonuses to \$325,000 because he disagreed with Butzbaugh's characterization of the additional \$75,000 as discretionary bonuses, and that emails written by Butzbaugh and his counsel as well as Butzbaugh's proposed amendment to the employment agreement was dispositive on this issue. In the circuit court's June 10, 2015 order affirming the arbitrator's award, the court held, in pertinent part that, "[f]or the reasons stated on the record in open court *** [t]hat portion [of the award] pertaining to [Butzbaugh's] request for attorneys' fees, is denied, and the Arbitration Award *** is confirmed in its entirety."

¶ 16 BCI maintains that the arbitrator erred when it interpreted the employment contract. We note that the arbitrator calculated Butzbaugh's performance bonuses and arrived at the award based on testimony and evidence that was presented during the arbitration proceedings. However, the testimony and evidence that formed the basis for the arbitrator's award was not included in the record on appeal. The record does not contain: a copy of the arbitration transcripts or documentary evidence pertaining to the performance bonuses that was admitted during the arbitration proceedings to confirm the award.

¶ 17 Our supreme court has held that "[a]n issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding." *Corral*, 217 Ill. 2d at 156 (citing *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001)). Our supreme court has also held that "an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Foutch*, 99 Ill. 2d at 391-92. Further, where the record lacks information or evidence presented at a hearing, "it is presumed that the court heard adequate evidence to support the decision that was rendered' ***." *Hartman*, 195 Ill. 2d at 433 (citing *Skaggs v. Junis*, 28 Ill. 2d 199, 201-02 (1963)). Moreover, "[a]ny doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch*, 99 Ill. 2d at 392.

¶ 18 BCI failed to provide this court with a complete record. In the absence of a complete record it is impossible for this court to determine whether the arbitrator exceeded his powers when he construed the employment contract in a way that supported awarding Butzbaugh \$325,000 in performance bonuses and whether the circuit court erred in affirming the arbitrator's award. Therefore, without an adequate record preserving the claimed error, we must assume that the arbitrator had a sufficient factual basis for his holding and that the award conforms with the law. *Corral*, 217 Ill. 2d at 157; *Foutch*, 99 Ill. 2d at 392.

¶ 19 Gross Error of Law on Face of the Award

¶ 20 Next, BCI maintains that the circuit court erred in affirming the arbitration award when the award reflected " 'gross error[s] of law' on its face", specifically, permitting the

employment agreement document to govern despite Butzbaugh violating Rule 1.8 of the Illinois Rules of Professional Conduct and violating his common law fiduciary duty to BCI by entering into a transaction in which he benefited. BCI maintains that Butzbaugh failed to present evidence which established that he did not violate Rule 1.8(a) of the Rules of Professional Conduct or his fiduciary duty to BCI. Because Butzbaugh violated the Rules of Professional Conduct and breached his fiduciary duty, BCI asserts that the employment agreement is void.

¶ 21 A court may vacate an arbitration award only where a gross error of law or fact appears on the award's face. *Rauh*, 143 Ill. 2d at 393. A reviewing court may review the legal reasoning used to reach a decision "[o]nly where it appears on the face of the award (and not in the arbitrator's opinion) that the arbitrator was so mistaken as to the law that, if apprised of the mistake, the award would be different." *Chicago Teachers Union, Local No. 1*, 86 Ill. 2d at 477. The party moving to vacate the award must present clear, strong, and convincing evidence that the award was improper. *Sloan Electric*, 353 Ill. App. 3d at 621.

¶ 22 BCI relies on *Amerisure Mutual Insurance Co. v. Global Reinsurance Corp. of America*, 399 Ill. App. 3d 610, 616 (2010), for the proposition that an arbitration award is based on a gross error of law when the award is contrary to a "bedrock principle of law." BCI asserts that because the Rules of Professional Conduct have the force of law and because the presumption of undue influence arises when an attorney violates his fiduciary duty by benefiting from a transaction between himself and his client, entering an award in violation of either the Rules of Professional Conduct or the common law fiduciary duty is a gross error of law on the face of the award.

¶ 23 We find that BCI's reliance on *Amerisure* is misplaced. In *Amerisure*, on the face of the award, the arbitration panel ordered the appellant to pay the appellee's attorney fees "based on the finding by this panel of [the appellant's] violation of its duty of utmost good faith." *Amerisure*, 399 Ill. App. 3d at 613. The *Amerisure* court held that because "there is no methodology in the parties' agreement or under Illinois law for awarding attorney fees due to a violation of the duty of utmost good faith, we find the panel was so mistaken that if apprised of the law it would have made a different decision." *Amerisure*, 399 Ill. App. 3d at 625.

¶ 24 Here, contrary to the facts in *Amerisure*, the arbitrator's August 6, 2014 award, does not mention, on the face of the award, the facts upon which the award was based. There is no mention of the Rules of Professional Conduct nor is there any mention of Butzbaugh's common law fiduciary duty to BCI. The award, on its face, is devoid of any facts which would alert this court to the arbitrator making a gross mistake of the law. Because this court is limited to reviewing the face of the award, and not the opinion of the arbitrator, in determining whether a gross error of law exists (*Chicago Teachers Union, Local No. 1*, 86 Ill. 2d at 477), absent evidence of an error on the face of the award, we must assume there was no such error. Therefore, we find that the circuit court did not err when it entered an order confirming the August 6, 2014 arbitration award.

¶ 25 Even if the facts upon which the award was based were present on the face of the award, specifically a reference to the Rules of Professional Conduct or Butzbaugh's alleged breach of his fiduciary duty to BCI, we would still reach the same result and find that the circuit court did not err when it entered an order confirming the August 6, 2014 arbitration award.

¶ 26 In his August 6, 2014 opinion, the arbitrator found that the employment agreement was "a legally valid and enforceable contract between the parties. It was negotiated at arm's length, and not *** void as a result of any violation of Rule 1.8(a) of the Illinois Rules of Professional conduct [*sic*] or breach of fiduciary duty by the Claimant." The arbitrator also found that "[i]t was Mr. Craig Papayannis, a sophisticated business professional, well-versed and very experienced in contract negotiations, including employment contract negotiations, who insisted on a written employment agreement with Mr. Butzbaugh."

¶ 27 In its brief, BCI maintains that Butzbaugh failed to present evidence which established that he did not violate Rule 1.8(a) or his fiduciary duty to BCI, and he did not present evidence to rebut the following contentions: (A) Butzbaugh, after the fiduciary relationship had formed, allegedly made several changes to the employment agreement between he and BCI that were to his pecuniary benefit and BCI's detriment; (B) Butzbaugh failed to explain the significance of the provisions he allegedly inserted into the employment agreement; (C) Butzbaugh failed to inform BCI in writing that it could seek independent legal counsel with regard to its employment agreement; and (D) Butzbaugh failed to establish that BCI provided a written informed consent to Butzbaugh's role in the transaction, including whether Butzbaugh was representing BCI with regards to drafting the employment agreement. As a result of Butzbaugh failing to present evidence to rebut BCI's contentions, BCI maintains that the employment agreement is void. BCI's arguments rest on evidence that was not provided in the record on appeal. The record does not contain: (A) a copy of the arbitration transcripts or (B) a copy of the changes to the employment agreement allegedly made by Butzbaugh to confirm the award. Our supreme court has held that an issue relating to a fact finder's, herein

the arbitrator's, factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding. *Corral*, 217 Ill. 2d at 156.

¶ 28 BCI failed to provide this court with a complete record. In the absence of a complete record, it is impossible for this court to analyze the legal reasoning of the arbitrator and determine if the circuit court erred in affirming the arbitrator's award based on an alleged gross error of law. Therefore, without an adequate record preserving the claimed error, we must assume that the arbitrator had a sufficient factual basis for the holding and that the award conforms with the law. *Corral*, 217 Ill. 2d at 157; *Foutch*, 99 Ill. 2d at 392.

¶ 29 **Arbitrator's Failure to Postpone the Arbitration**

¶ 30 Finally, BCI maintains that the circuit court erred in affirming the arbitration award when the arbitrator abused his discretion by denying BCI's motion for a continuance due to the unavailability of a key fact witness.

¶ 31 Section 12(a)(4) of the Act provides that a court shall vacate an arbitrator's award where the "arbitrators refused to postpone the hearing upon sufficient cause being shown therefor." 710 ILCS 5/12 (a)(4) (West 2010). BCI maintains that it showed sufficient cause. Specifically, BCI maintains that because the individual most acquainted with Butzbaugh's performance during his employment was incarcerated, established "clear, strong, and convincing evidence in favor of a continuance." Moreover, BCI maintains that the request for a relatively short continuance, of about six months, would not have prejudiced Butzbaugh, but that the denial of the continuance significantly prejudiced the presentation of BCI's defense.

¶ 32 In Illinois, the decision to grant or deny a continuance of an arbitration hearing rests with the discretion of the arbitrator. *Taxman v. First Illinois Bank of Evanston*, 336 Ill. App. 3d 92, 96 (2002). An abuse of discretion occurs only if it can be said that no reasonable person would take the position adopted by the [arbitrator]. *Taxman*, 336 Ill. App. 3d at 97.

¶ 33 Again, BCI's argument is predicated on evidence that is not in the record. The record does not contain a copy of the motion to continue that BCI filed during the arbitration proceedings or a copy of the arbitration transcripts containing the arguments and the arbitrator's ruling on the motion. Our supreme court has also held that “an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis.” *Foutch*, 99 Ill. 2d at 391-92. Moreover, “[a]ny doubts which may arise from the incompleteness of the record will be resolved against the appellant.” *Foutch*, 99 Ill. 2d at 392.

¶ 34 BCI has failed to provide this court with a complete record. In the absence of a complete record, it is impossible for this court to determine whether the arbitrator abused his discretion when he denied BCI's motion to continue the arbitration and whether the circuit court erred in affirming the arbitrator's award subsequent to the alleged error. Therefore, without an adequate record preserving the claimed error, we must assume that the arbitrator had a sufficient factual basis for the holding and that the award conforms with the law. *Corral*, 217 Ill. 2d at 157; *Foutch*, 99 Ill. 2d at 392. Accordingly, we affirm the circuit court's June 10,

2015 order that confirmed the arbitration award and denied BCI's petition to vacate the arbitration award.

¶ 35

CONCLUSION

¶ 36

Our supreme court has held that an arbitration award may be vacated only where a gross error of law appears on the face of the award and we found that the face of the award does not reveal a gross error of law. *Rauh*, 143 Ill. 2d at 393; see *Chicago Teachers Union, Local No. 1*, 86 Ill. 2d at 477. Our supreme court has also held that “an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error***.” *Foutch*, 99 Ill. 2d at 391. Because BCI has filed an incomplete record of the arbitration proceedings, this court cannot review BCI's remaining claims of error and must assume that the arbitrator had a sufficient factual basis for the holding and that the award conforms with the law. *Corral*, 217 Ill. 2d at 157; *Foutch*, 99 Ill. 2d at 392. Accordingly, we affirm the circuit court's June 10, 2015 order that confirmed the arbitration award and denied BCI's petition to vacate the arbitration award.

¶ 37

Affirmed.