

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-255

NOVEMBER TERM, 2002

	}	APPEALED FROM:
	}	
Lake Construction Limited	}	Chittenden Superior Court
Company	}	
	}	
v.	}	DOCKET NO. S1544-00 CnC
	}	
Ram N. Sinha	}	Trial Judge: Mary Miles Teachout
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Defendant Ram Sinha appeals the superior court' s orders confirming and refusing to vacate an arbitration decision. We affirm.

In the fall of 1999, pursuant to the parties' agreement, plaintiff Lake Construction Limited Company began remodeling a house Sinha owned in Shelburne, Vermont. The following summer, Sinha ordered Lake Construction to leave the premises. Lake Construction billed Sinha for the work performed, and then filed a mechanic' s lien when the bill went unpaid. In November 2000, Lake Construction filed a suit seeking \$52,450 plus interest, penalties, and attorney' s fees; however, in January 2001 the parties agreed to submit the matter to arbitration. Each party selected a contractor to act as an arbitrator, and both parties agreed to a third arbitrator. Both parties were represented by counsel, retained experts, and conducted discovery before the arbitration hearing, which was held on July 13, 2001 at the premises where the work had been performed. Following the hearing, the arbitrators agreed upon an award in favor of Lake Construction for \$36,200 plus interest and penalties as set forth in 9 V.S.A. § 4007. The award provided that the decision would not become final until the third arbitrator, as agreed by the parties, rendered a decision regarding attorney' s fees and costs. On August 7, 2001, Sinha submitted a motion for reconsideration to the arbitrators, and the motion was denied the following month. On October 24, 2001, the third arbitrator awarded Lake Construction \$30,687 in attorney' s fees and costs. One day later, Lake Construction moved in superior court to confirm the arbitration award.

On November 13, 2001, having retained new counsel, Sinha filed a motion opposing Lake Construction' s motion to confirm the arbitration award. On December 7, however, Sinha' s new attorney withdrew the motion and filed a motion for leave to withdraw as Sinha' s counsel. On December 23, acting pro se, Sinha wrote a letter to the superior court attaching a copy of a letter he had sent to the Vermont Consumer Protection Agency and asking the court to postpone execution of the mechanic' s lien until the attorney general had had an opportunity to review the case. On January 7, 2002, the superior court granted Lake Construction' s motion to confirm the arbitration award, and judgment was entered the following day. In response to Sinha' s written objection filed on January 9, the court gave Sinha until March 8 to file a statement of reasons for opposing the judgment. On March 8, Sinha filed a motion to vacate the arbitration award. The court denied the motion on May 13, ruling that it was not timely filed under 12 V.S.A. § 5677(c), and that V.R.C.P. 59 was inapplicable.

On appeal, Sinha first argues that the superior court erred by granting Lake Construction's motion to confirm the arbitration award without first affording Sinha a hearing and an opportunity to be heard on the motion. According to Sinha, the court should have granted him a hearing, given that (1) his attorney had timely filed the November 13, 2001 motion opposing confirmation of the award; (2) his attorney moved to withdraw as his counsel on the same day that the November 13 motion was withdrawn; and (3) he himself notified the court in his December 23, 2001 letter that he opposed confirmation of the award.

We find no error. Given "the importance of arbitration as an alternative to litigation for the efficient resolution of disputes," Vermont courts will uphold arbitration awards whenever possible; otherwise, "arbitration would become merely 'another expensive and time consuming layer to the already complex litigation process.'" Springfield Teachers Ass'n v. Springfield Sch. Dirs., 167 Vt. 180, 183-84 (1997) (quoting R.E. Bean Constr. Co. v. Middlebury Assocs., 139 Vt. 200, 204-05 (1980)). Under the Vermont Arbitration Act, the superior court "shall confirm" an arbitration award upon application of a party "unless it finds grounds for vacating or modifying the award." 12 V.S.A. § 5676. The limited grounds for vacating or modifying awards are set forth in 12 V.S.A. § 5677(a) (court shall vacate award if award was procured by fraud or arbitrators acted impartially, exceeded their authority, or conducted unfair proceedings) and 5678(b) (court shall modify award if there is evident mistake or miscalculation, arbitrators made award upon matter not submitted to them, or award is imperfect in form), respectively. Cf. Matzen Constr., Inc. v. Leander Anderson Corp., 152 Vt. 174, 177 (1989) (scope of superior court's review of arbitration award is limited to ensuring that arbitration proceedings fall within boundaries of due process; court may not reweigh evidence or review merits of controversy).

Here, Sinha did not raise any of the statutory grounds for vacating or modifying the award before it was confirmed. Hence, the court was compelled under § 5676 to confirm the award, and to enter judgment in favor of Lake Construction. See 12 V.S.A. § 5679 (upon granting of order confirming or modifying award, judgment shall be entered). Sinha's November 13, 2001 motion was withdrawn, and in any case did not raise any of the statutory grounds for vacating or modifying an award. In addition to being untimely filed, see 12 V.S.A. § 5677(c) (application to vacate award shall be made within thirty days of delivery of copy of award), Sinha's December 23, 2001 letter to the superior court did not directly seek to vacate or modify the award or cite any of the statutory grounds for doing so. Rather, the letter merely sought postponement of execution of the mechanic's lien and attached a copy of another letter Sinha had sent to the Vermont Consumer Protection Agency. The latter letter briefly referred to an unexplained conflict of interest by an unidentified arbitrator, but did not identify any of the statutory factors for modifying or vacating an award. Instead, the letter focused on factual allegations concerning the merits of the case. Given this state of affairs, the court properly confirmed the award and entered judgment in favor of Lake Construction without holding a hearing.

Sinha also argues that the superior court should have, at minimum, granted him a hearing on his March 8, 2002 motion to vacate the arbitrator's award. Again, we disagree. As the court indicated, the motion to vacate was not timely filed, and hence there was no reason for a hearing. In any event, Sinha does not discuss what specific facts he is relying on in support of this argument; rather, he merely references his entire March 8 motion. Through memoranda and affidavits, Lake Construction refuted each of the allegations in Sinha's motion, all of which appear to be either totally lacking in merit or concerning factual matters that had been considered in the arbitration proceeding. Thus, the court was not required to hold a hearing before denying the motion, even putting aside the fact that it was untimely filed. See A.M. Varityper v. Rabbo, 146 Vt. 471, 474-75 (1986) (trial court need not hold hearing to consider post-trial motions that are frivolous or totally lacking in merit).

Next, Sinha argues that the award was not signed by each of the arbitrators as required under the parties' agreement and 12 V.S.A. § 5663(a). We find no merit to this argument. All three arbitrators signed off on the principal award on the form submitted by the parties. Pursuant to the parties' agreement, the third arbitrator alone determined the issue of attorney's fees and costs. Accordingly, that decision was signed by that arbitrator alone.

Finally, Sinha challenges the arbitrator's award of attorney's fees, arguing that (1) he should not be assessed attorney's fees for resisting a demand for payment that exceeded the ultimate award by one third; and (2) he should have been afforded a hearing on his claim that the fees were excessive. Again, these arguments fail because Sinha did not file a timely motion to vacate or modify the award. In any event, Lake Construction "substantially prevailed" in the arbitration proceeding and thus was entitled to attorney's fees under 9 V.S.A. § 4007. As for the alleged excessiveness of the fees, the third arbitrator reduced the hourly rate and the number of hours claimed by Lake Construction's

attorney. The arbitrator also refused Lake Construction's request that his fee be borne by Sinha. In short, the arbitrator evaluated the parties' requests concerning attorney's fees and costs and exercised his discretion in determining the appropriate amount of reimbursement to assess.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

James L. Morse, Associate Justice