NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

SCOTT P. SIGMAN	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	
GEORGE BOCHETTO, GAVIN P. LENTZ AND BOCHETTO & LENTZ, P.C.	
APPEAL OF: BOCHETTO & LENTZ, P.C.	No. 2349 EDA 2013

Appeal from the Judgment Entered September 18, 2013
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): No. 02534 June Term 2011

BEFORE: ALLEN, J., MUNDY, J., and FITZGERALD, J.*

MEMORANDUM BY MUNDY, J.: **FILED JUNE 19, 2014**

Appellant, Bochetto & Lentz, P.C. (hereinafter, B&L), appeals[1] from the September 18, 2013 judgment entered in favor of Appellee, Scott P. Sigman, following the denial of its petition to vacate the June 24, 2013 final arbitration award entered in favor of Appellee in the amount of $123,942.92. After careful review, we affirm.

The trial court summarized the underlying facts of this case as follows.

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* Former Justice specially assigned to the Superior Court.

[1] The arbitration award was entered only against Bochetto & Lentz, P.C. (B&L), and thus, the instant appeal was filed only by B&L. Attorneys George Bochetto and Gavin P. Lentz, in their individual capacities, have not participated in this appeal.

> From July 5, 2005 through March 6, 2009, [Appellee] was employed by B&L as an associate attorney. During [Appellee's] employment, he breached his fiduciary duties by stealing money from clients, B&L, and third parties. [Appellee] was charged by the Office of Disciplinary Counsel and the Supreme Court [] suspended [Appellee] from the practice of law for 30 months.

Trial Court Opinion, 8/6/13, at 2.

On March 4, 2009, George Bochetto (Bochetto), on behalf of B&L, entered into an agreement with Appellee to terminate Appellee's employment. ***See*** Agreement, 2/26/09; Appellee's Complaint, 6/27/11, Exhibit A. Pursuant to said agreement, Appellee was to receive specific referral fees for the cases that he worked on or played a role in generating. Agreement, 2/26/09, at ¶ 3. The agreement further provided that "[i]n the event the parties have any dispute or disagreement, they shall submit same to Harris Bock [(arbitrator)] for final and binding mediation." ***Id.*** at ¶ 9. On June 27, 2011, Appellee filed an action against Bochetto, Gavin P. Lentz, and B&L (collectively, Defendants) sounding in, *inter alia*, breach of contract and unjust enrichment, and sought to recover fees allegedly owed to him under the terms of the agreement. Appellee filed an amended complaint on July 19, 2011. Defendants filed preliminary objections to Appellee's amended complaint on July 26, 2011, arguing, *inter alia*, that Appellee's claims were subject to arbitration. ***See*** Preliminary Objections, 7/26/11, at ¶¶ 13-16. On August 22, 2011, the trial court sustained Defendants' preliminary objections, in part, and ordered that Appellee's breach of contract claim

against B&L be submitted to arbitration.[2] Trial Court Order and Opinion, 8/22/11, at 2-3.

On April 17 and 18, 2013, arbitration hearings were held in this matter. The record reveals that B&L stipulated during the arbitration proceedings that, but for Appellee's malfeasance while employed for B&L, he would be entitled to $227,350.03 in referral fees. Trial Court Opinion, 8/6/13, at 1; ***see also*** Interlocutory Mixed Findings of Fact, Conclusion of Law, and Interlocutory Order, 6/19/13, at ¶ 14. Following this two-day

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[2] B&L's remaining preliminary objections to Appellee's amended complaint, it should be noted, were stayed pending completion of "final and binding mediation." Trial Court Order and Opinion, 8/22/11. We conclude that the partial grant of Defendants' preliminary objections essentially created a separate action relative to the breach of contract claim submitted to arbitration against B&L, and the pendency of the remaining claims does not affect finality of the arbitration decision. ***See e.g.***, ***Fastuca v. L.W. Molnar & Assocs.***, 10 A.3d 1230, 1240 (Pa. 2011) (***Fastuca II***) (stating, the *sine qua non* of an [arbitration] award is its finality **in disposing of all the matters submitted by the parties to the arbitrator** for his or her decision[]") (citation omitted; emphasis added). In ***Fastuca II***, our Supreme Court reasoned that in order to constitute a final common law arbitration award,

> it must be a ruling by the arbitrator which finally resolves all disputed matters submitted to him or her by the parties and must, therefore, include the arbitrator's decision on all outstanding legal issues, and all necessary factual determinations.

Id. at 1241. Instantly, as noted, only Appellee's breach of contract claim against B&L was submitted to the arbitrator, and all outstanding legal issues and factual determinations with respect to said breach of contract claim were fully resolved by the arbitrator, who entered the final award, which is the subject of this appeal, in favor of Appellee, and against B&L only.

hearing, the arbitrator issued his interlocutory findings on June 19, 2013. The arbitrator concluded that Appellee engaged in multiple violations of his fiduciary obligations to B&L and its clients, but was nonetheless entitled to a portion of said referral fees, pursuant to the terms of the parties' termination agreement. Interlocutory Mixed Findings of Fact, Conclusion of Law, and Interlocutory Order, 6/19/13, at ¶¶ 15, 24-69, 85-86. Thereafter, on June 24, 2013, the arbitrator entered a final award in favor of Appellee in the amount of $123,942.92.

On July 2, 2013, B&L filed a motion to vacate the arbitration award on the basis it violated "clear public policy embodied in the rules governing the practice of law[,]" including the Rules of Professional Conduct and our Supreme Court's rulings concerning attorney misconduct. Motion to Vacate Arbitration Award, 7/2/13, at 1. On August 6, 2013, the trial court entered an order denying B&L's motion to vacate. In support of this order, the trial court reasoned as follows.

> While the conduct of [Appellee] is obviously repugnant, th[e trial] court should not, under these circumstances, function as a disciplinary authority. In fact, the aspects of this unfortunate situation have been handled by the [Pennsylvania] Supreme Court, the Office of Disciplinary Counsel, and the arbitrator. Under these circumstances, to grant this motion to vacate an arbitration award would be [a] redundant punishment and unjustly enrich B&L. The question becomes how much punishment is enough and when this [trial] court considers the bar suspension, sanctions, public embarrassment, and career disruption that has already been imposed, it borders on disingenuous to claim that [B&L] is entitled to all

> fees generated by [Appellee], especially in light of the reduction imposed by the arbitrator.

Trial Court Opinion, 8/6/13, at 3.

On August 8, 2013, B&L filed a notice of appeal from the trial court's August 6, 2013 order. On August 21, 2013, Appellee filed a petition to confirm the arbitration award. On August 29, 2013, the trial court denied said petition on the basis this matter was pending on appeal before this Court. Thereafter, on August 30, 2013, Appellee filed a motion to quash B&L's appeal on the basis that it was from an interlocutory order. On September 16, 2013, this Court entered an order denying Appellee's motion without prejudice, and directed B&L to ensure the arbitration award was reduced to judgment. *Per Curiam* Order, 9/16/13. On September 18, 2013, B&L filed a *praecipe* for judgment, and judgment was entered that same day.[3] B&L's August 8, 2013 notice of appeal has been treated as if it was filed after the entry of judgment, pursuant to Pa.R.A.P. 905(a)(5) (stating,

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[3] B&L's *praecipe* for judgment filed on September 18, 2013 states as follows.

> Kindly enter judgment on the [trial c]ourt's August 6, 2013 Order denying [B&L's] Motion to Vacate Arbitration Award pursuant to Pa.R.C.P. 227.4(2), and subject to the appeal therefrom now pending in the Superior Court at No. 2349 EDA 2013.

Praecipe for Judgment Pursuant to Pa.R.C.P. 227.4(2), 9/18/13. Additionally, the certified copy of the trial court docket reflecting the entry of the judgment does not include a monetary amount of the arbitration award.

"[a] notice of appeal filed after the announcement of a determination but before the entry of an appealable order shall be treated as filed after such entry and on the day thereof[]"). ***See*** *Per Curiam* Order, 9/16/13.[4]

On October 30, 2013, B&L filed its appellate brief in this matter, wherein it raised the following three issues for our review.

> 1. Whether the Arbitration Award, which rewarded Appellee [] with discretionary, post-employment case commissions against his former firm, [B&L], should be vacated … where [Appellee] has been suspended from the practice of law by order of the Supreme Court due to a continuing pattern of unethical and criminal conduct while employed by [B&L], which included stealing legal fees, comingling client funds with his own, as well as perjuring himself and suborning a witness[']s] perjury in a case where he was sued by a third-party for his complicity in converting funds?
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> 2. Whether the Arbitration Award, which rewarded [Appellee] for his serial unethical and criminal behavior, should be reviewed under a *de novo* standard of review, because it implicates important, well-settled public policies involving the ethical standards applicable to associate attorneys vis-à-vis the public, clients and employing law firms … ?
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> 3. Whether the Arbitration Award, which rewarded [Appellee] for his serial unethical and criminal behavior with post-employment case

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[4] The trial court did not order B&L to file a concise statement of errors complained of on appeal, pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). The trial court did author a one-page opinion on September 3, 2013, wherein it adopted the reasoning of its prior opinion dated August 6, 2013.

> commissions, which were discretionary, should be vacated under the equitable forfeiture and the faithless servant doctrines where [Appellee] was found guilty of engaging in a continuing pattern of unethical and criminal conduct while employed by [] B&L [], which included stealing legal fees, comingling client funds with his own, as well as perjuring himself and suborning a witness[']s] perjury in a case where he was sued by a third-party for his complicity in converting funds?

B&L's Brief at 4-5 (string citations omitted).

Thereafter, on December 6, 2013, Appellee filed a second motion to quash this appeal, arguing that B&L failed to properly comply with this Court's September 16, 2013 order to enter judgment on the trial court's August 6, 2013 Order. Motion to Quash Appeal, 12/6/13, at ¶ 11. Specifically, Appellee contends that,

> [r]ather than file a proper entry of judgment … in the amount of $123,942.93 pursuant to the award entered by the arbitrator, B&L played a game and entered judgment without including the monetary amount of the award.

Id. at ¶ 8. Appellee further maintains that B&L violated Pennsylvania Rule of Appellate Procedure 1731 by failing "to pay the required security in the amount of 120% of the amount found due into th[e trial c]ourt in order to obtain a [s]upersedeas." ***Id.*** at ¶ 9. Appellee requests that we quash B&L's appeal, or in the alternative, compel B&L "to file an amended praecipe for entry of judgment that correctly reflects judgment entered in the amount of $123,942[.93] and immediately pay the required security in the amount of

120% of that amount found due into the [trial c]ourt if a [s]upersedeas is desired." ***Id.*** at ¶ 12.[5]

B&L filed its response to Appellee's second motion to quash on December 18, 2013, arguing, *inter alia*, that it fully complied with this Court's September 16, 2013 directive because "the [t]rial [c]ourt's August 6, 2013 Order – which gave raise to this appeal – did not contain a monetary award." Answer in Opposition to Appellee's Second Motion to Quash Appeal, 12/18/13, at 2, 3. On December 31, 2013, we denied this second motion to quash without prejudice to Appellee's right to again raise this issue before this Panel. *Per Curiam* Order, 12/31/13. We now turn to the merits of Appellee's second motion to quash.

Instantly, Appellee argues that B&L has failed to comply with this Court's September 16, 2013 *per curiam* order directing it to ensure the arbitration award was properly reduced to judgment. Motion to Quash Appeal, 12/6/13, at ¶¶ 8-9. Specifically, Appellee contends that this matter should be quashed because B&L failed to ensure that the judgment entered on the arbitration award included the monetary amount of said award. ***Id.*** For the following reasons, we disagree.

The record reveals that B&L filed its motion to vacate the arbitration award on July 2, 2013, and the trial court denied said motion on August 6,

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[5] The record reflects that a *supersedeas* was not sought below, and thus, this issue is moot relative to this appeal.

2013. Thereafter, B&L filed a *praecipe* for judgment on September 18, 2013, and judgment was entered that same day. In directing B&L to "enter judgment on the August 6, 2013 order denying the petition to vacate arbitrator's award[,]" this Court specifically cited ***Carroll v. State Farm Mut. Auto. Ins. Co.***, 616 A.2d 660 (Pa. Super. 1992)*, appeal denied*, 622 A.2d 1374 (Pa. 1993). ***See*** *Per Curiam* Order, 9/16/13. In ***Carroll***, a panel of this Court explained that an order confirming an arbitration award had to be reduced to judgment before it could be properly appealed. ***Carroll***, ***supra*** at 664, n.12. Accordingly, we viewed the trial court's refusal to vacate the arbitration award as the functional equivalent of an order confirming an arbitration award. ***See Snyder v. Cress***, 791 A.2d 1198, 1200-1201 (Pa. Super. 2002) (holding that, the entry of an order confirming a common law arbitration award was not required before an appeal of the trial court's refusal to grant a rule seeking modification of award could be pursued, where judgment had been entered in the matter, thus rendering a remand for a confirmation order ministerial in nature).

Herein, although Appellee is correct in averring that the September 18, 2013 judgment does not specify the final arbitration award amount of $123,942.92, this omission is ministerial in nature and does not warrant that we quash B&L's appeal. Pursuant to 42 Pa.C.S.A § 7320, "an appeal may be taken from … [a] court order confirming or denying confirmation of an

[arbitration] award[,]" or "[a] court order modifying or correcting an award." ***Id.*** at § 7320(a)(3), (4). Section 7342(b) further provides as follows.

> **§ 7342. Procedure**
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> …
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> **(b) Confirmation and judgment.--** On application of a party made more than 30 days after an award is made by an arbitrator under section 7341 (relating to common law arbitration) the court shall enter an order confirming the award and shall enter a judgment or decree in conformity with the order.

Id. at § 7342(b). The record in this matter reveals that the monetary amount of the verdict appears at numerous places on the docket, and the trial court possessed the authority under these Sections to correct this omission. Accordingly, for the foregoing reasons, we deny Appellee's second motion to quash this appeal.

We now turn to the merits of B&L's claims on appeal. Preliminarily, we note that although B&L's statement of questions involved contains three allegations of error, the "Argument" section of its appellate brief is divided into only two subsections.

> **I. The Arbitration Award Contravenes Well Established Public Policy, And Therefore Must Be Vacated.**
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> **II. [Appellee's] Abhorrent Conduct Must Result in Forfeiture of all Compensation.**

B&L's Brief at 16, 20.

Pursuant to Pennsylvania Rule of Appellate Procedure 2119(a), "[t]he argument [section of an appellate brief] shall be divided into as many parts as there are questions to be argued … followed by such discussion and citation of authorities as are deemed pertinent." Pa.R.A.P. 2119(a). "This Court will not act as counsel and will not develop arguments on behalf of an appellant." ***Bombar v. W. Am. Ins. Co.***, 932 A.2d 78, 93 (Pa. Super. 2007) (citation omitted); ***see also*** Pa.R.A.P. 2119(a). Because B&L has failed to divide its argument into as many parts as there are questions to be argued, its issues could be deemed waived. ***See*** Pa.R.A.P. 2119(a); ***In re Ullman***, 995 A.2d 1207, 1211 (Pa. Super. 2010) (citation omitted) (stating, "[t]his Court may … dismiss an appeal if the appellant fails to conform to the requirements set forth in the Pennsylvania Rules of Appellate Procedure[]"), *appeal denied*, 20 A.3d 489 (Pa. 2011). Nonetheless, to the extent our appellate review is not impeded, we shall proceed to address those claims properly briefed in the "Argument" section of B&L's appellate brief.

B&L first argues that the arbitration award in question should be vacated because it "contravenes strong public policy of the Commonwealth," particularly those policies embodied in the Pennsylvania Rules of Professional Conduct. B&L's Brief at 16-19. In support of this contention, B&L cites our Supreme Court's rationale in ***Westmoreland Intermediate Unit # 7 v. Westmoreland Intermediate Unit # 7 Classroom Assistants Educ. Support Personnel Ass'n, PSEA/NEA***, 939 A.2d 855 (Pa. 2007), which

provides that, "[u]pon appropriate challenge by a party, a court should not enforce a grievance arbitration award that contravenes public policy." ***Id.*** at 16, *quoting* ***Westmoreland***, ***supra*** at 865-866. For the following reasons, we disagree.

Preliminarily, we note arbitration in this Commonwealth may proceed in one of three forms, "each of which is created by statutory provisions that prescribe the nature of the claims subject to resolution and the extent to which judicial authority may be imposed upon the underlying dispute." ***Fastuca v. L.W. Molnar & Assocs.***, 950 A.2d 980, 987 (Pa. Super. 2008) (***Fastuca I***), *affirmed*, 10 A.3d 1230 (Pa. 2011). These three forms are statutory arbitration, judicial arbitration, and common law arbitration. ***Id.*** at 988.

Statutory arbitration is a function of the Uniform Arbitration Act as adopted in this Commonwealth. ***See*** 42 Pa.C.S.A. §§ 7301–7320. "Application of statutory arbitration is limited to those instances in which 'the agreement to arbitrate is in writing and expressly provides for arbitration pursuant to [the Uniform Arbitration Act] or any other similar statute[.]'" ***Fastuca I***, ***supra*** at 988, *citing* 42 Pa.C.S.A § 7302.

Judicial arbitration consists of either of the following: compulsory arbitration before a three-member panel of the Bar, where the claim does not "involve[] title to real property[] or … where the amount in controversy, exclusive of interest and costs, exceeds $50,000[,]" 42 Pa.C.S.A.

§ 7361(b); and voluntary arbitration of pending judicial matters "referred by consent of the parties to one or more appointive judicial officers or other persons for hearing or hearing and disposition." ***Id.*** § 7362(a).

Lastly, **common law arbitration** encompasses all claims in which an agreement between the parties contemplates resolution of their disputes by arbitration, but does not call specifically for application of the Uniform Arbitration Act. ***See id.*** § 7341.

Instantly, this matter falls under common law arbitration. The parties' agreement to terminate Appellee's employment, while specifying resolution of disputes by binding mediation, made no express reference to the Uniform Arbitration Act.[6] Rather, as noted, this agreement merely provided that, "[i]n the event the parties have any dispute or disagreement, they shall submit same to Harris Bock [(arbitrator)] for final and binding mediation[]." Agreement, 2/26/09, at ¶ 9.

Appellate review of a common law arbitration proceeding is prescribed by statute, specifically 42 Pa.C.S.A. § 7341. This Section provides, in relevant part, as follows.

> **§ 7341. Common law arbitration**
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> The award of an arbitrator in a nonjudicial arbitration … is binding and may not be vacated or modified unless it is clearly shown that a party was denied a

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[6] It is undisputed that under the parties' agreement, arbitration was intended notwithstanding the use of the term "mediation."

> hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award.

42 Pa.C.S.A. § 7341.

"By its plain language, section 7341 grants a trial court only limited authority to vacate or modify an arbitrator's disposition dependent upon a showing of specific circumstances and an exacting standard of proof." ***Fastuca I***, ***supra***. An appellant is required to establish "both the underlying irregularity and the resulting inequity by 'clear, precise, and indubitable' evidence." ***Id.***, *citing* ***McKenna v. Sosso***, 745 A.2d 1, 4 (Pa. Super. 1999), *appeal denied*, 759 A.2d 924 (Pa. 2000).

In the case *sub judice*, the record reveals that B&L was afforded a comprehensive arbitration hearing that was conducted over the course of two days, April 17 and 18, 2013, and has failed to establish that "fraud, misconduct, corruption or other irregularity" resulted in the arbitration award entered in favor of Appellee. ***See*** 42 Pa.C.S.A. § 7341. Rather, B&L would have this Court vacate said arbitration award based on its public policy argument. We note there exists no published decision in this Commonwealth that has utilized public policy as a ground to vacate an arbitration award involving an attorney's unethical conduct, and we decline to carve out such a rule in this instance. Our Supreme Court has recognized that where a party seeks to invalidate an arbitration award on the basis of public policy, as is the case here, "[s]uch public policy … **must be well-**

defined, dominant, and ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests." ***Westmoreland***, ***supra***; ***see also Burstein v. Prudential Prop. and Cas. Ins. Co.***, 809 A.2d 204, 207 (Pa. 2002) (emphasis added). To the extent B&L cites case law that is applicable to statutory arbitration, in an attempt to have its public policy argument applied to this matter of common law arbitration, we decline to do so. ***See*** B&L's Brief at 16-19.

Moreover, B&L's argument plainly disregards the fact that the policy concerns of the public were previously addressed by the Office of the Disciplinary Board of the Supreme Court of Pennsylvania, and that the vacation of the arbitration award in question would result in redundant punishment. As the trial court properly noted in its opinion,

> [w]hile the conduct of [Appellee] is obviously repugnant, th[e trial] court should not, under these circumstances, function as a disciplinary authority. In fact, the aspects of this unfortunate situation have been handled by the Supreme Court, the Office of Disciplinary Counsel, and the arbitrator. Under these circumstances, to grant this motion to vacate an arbitration award would be redundant punishment and unjustly enrich B&L. The question becomes how much punishment is enough and when th[e trial court considers the bar suspension, sanctions, public embarrassment, and career disruption that has already been imposed, it borders on disingenuous to claim that [B&L] is entitled to all fees generated by [Appellee], especially in light of the reduction imposed by the arbitrator.

Trial Court Opinion, 8/6/13, at 3.

Accordingly, for all the foregoing reasons, B&L's first claim of error must fail.

Alternatively, B&L argues that even if this Court does not conclude that the arbitration award in question is unenforceable, we should review the award in question under a *de novo* standard, consistent with the decisions of other jurisdictions that have addressed this issue, and conclude that Appellee must "forfeit any alleged compensation he claims is owed to him." B&L's Brief at 20. We disagree.

Again, we observe that there are no published decisions in this Commonwealth in which our appellate courts have properly applied a *de novo* standard of review to cases involving common law arbitration. ***See e.g.***, ***Richmond v. Prudential Prop. & Cas. Ins. Co.***, 856 A.2d 1260, 1264 (Pa. Super. 2004) (reiterating that a common law arbitration award is not reviewable for an error of law), *appeal denied*, 875 A.2d 1076 (Pa. 2005). Rather, as discussed, the standard of review for a common law arbitration is set forth in Section 7341, and provides great deference to the arbitrator. ***See Fastuca I***, ***supra.*** This Court has consistently recognized "[w]hile the pronouncements of courts in sister states may be persuasive authority, those pronouncements are **not binding** on this Court." ***Umbelina v. Adams***, 34 A.3d 151, 160 n.3 (Pa. Super. 2011) (emphasis added), *appeal denied*, 47 A.3d 848 (Pa. 2012).

Additionally, to the extent B&L argues that it is entitled to relief in this matter pursuant to the legal theories of agency, equitable forfeiture, the law of fraudulent inducement, and the faithful servant doctrine, we conclude that B&L's arguments are misplaced. ***See*** B&L's Brief at 20-24, *referencing* ***Fidelity Fund, Inc. v. Di Santo****,* 500 A.2d 431 (Pa. Super. 1985); ***Shapiro v. Stahl***, 195 F.Supp. 822 (M.D. Pa. 1961); and ***In re Miller's Estate***, 31 Pa.C.C. 577 (Pa. Orph. 1905).

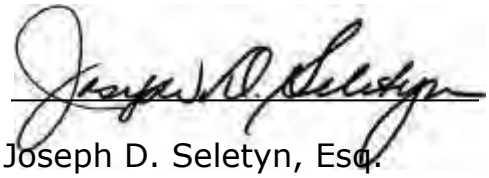
The record reveals that following hearings conducted on April 17 and 18, 2013, the arbitrator addressed each of these legal theories and found them to be inapplicable to the instant matter. ***See*** Interlocutory Mixed Findings of Fact, Conclusion of Law, and Interlocutory Order, 6/19/13, at ¶¶ 18-19. As noted, the standard of review in common law arbitration matters affords great deference to the arbitrator, and B&L's attempt to relitigate these theories on account of its dissatisfaction with the arbitrator's findings is not a proper basis upon which to vacate the arbitration award. ***See McKenna***, ***supra*** (stating, "[t]he arbitrators are the final judges of both law and fact, and an arbitration award is not subject to a reversal for a mistake of either[]") (citation omitted). For all of the foregoing reasons, we conclude that B&L's second claim of error merits no relief.

Accordingly, we decline to conclude that the arbitration award in question is void as against public policy. Accordingly, we affirm the

September 18, 2013 judgment entered on the final arbitration award in favor of Appellee in the amount of $123,942.92.

Judgment affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/19/2014