

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Total Pharmacy, Inc., f/k/a	:	
Choice Pharmacy Services, Inc.,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 10AP-1035
	:	(C.P.C. No. 09CVH-04-6540)
Oak Hills Manor, LLC, d/b/a Oak Hill	:	
Manor Care Center,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on May 26, 2011

Porter Wright Morris & Arthur LLP, Mark S. Stemm, L. Bradfield Hughes and Sheena L. Little, for appellee.

Mills, Mills, Fiely & Lucas, LLC, and Laura L. Mills, for appellant.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} Oak Hills Manor, LLC ("Oak Hills") is appealing the trial court's confirmation of the result of a binding arbitration between Oak Hills and Total Pharmacy, Inc. ("Total Pharmacy"). For the reasons set forth below, we affirm the judgment of the trial court.

{¶2} Oak Hills has assigned three errors in this appeal:

[I.] The Trial Court erred by not vacating the arbitration award due to the substantial bias of the Arbitrator in accordance with ORC 2711.10.

[II.] The Trial Court failed to hold a hearing to determine the nature of the bias of the Arbitrator in accordance with Ohio law.

[III.] The Trial Court erred by not vacating the arbitration award due to the manifest disregard of the law on contracts and lost profits in Ohio by the Arbitrator and the refusal of the Arbitrator to heed to recognizable legal principles.

{¶3} Ohio law strongly encourages binding arbitration. An award which results from binding arbitration can be vacated for only a few reasons and on only a few narrow grounds. R.C. 2711.10 provides:

In any of the following cases, the court of common pleas shall make an order vacating the award upon the application of any party to the arbitration if:

(A) The award was procured by corruption, fraud, or undue means.

(B) Evident partiality or corruption on the part of the arbitrators, or any of them.

(C) The arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(D)The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

{¶4} The third assignment of error does not allege that the arbitration or arbitrator violated any of the conditions required for vacating an award from a binding arbitration. The trial court was bound by R.C. 2711.10 and followed it in addressing this

issue. In abiding by the statute, the trial court proceeded appropriately. Stated in other words, the trial court did not err in following the applicable statute.

{¶5} The third assignment of error is overruled.

{¶6} The first and second assignments of error allege that the arbitrator was somehow biased and that the arbitration award should therefore be vacated, in accord with R.C. 2711.10(B). We find no merit in such an allegation.

{¶7} We note initially that Oak Hills specifically suggested that Thomas J. Bonasera serve as the arbitrator. Bonasera has been chosen in times past to lead the Columbus Bar Association and the Ohio State Bar Association. He has an excellent reputation as a lawyer and a public servant in Central Ohio. The suggestion from Oak Hills made good sense and was accepted by Total Pharmacy.

{¶8} Oak Hills expressed no reservations about Bonasera serving as the arbitrator when the actual evidentiary proceedings commenced. Oak Hills expressed no reservations when the evidentiary proceedings resumed three weeks later. Oak Hills apparently concluded that Bonasera was somehow biased only after he decided an award in favor of Total Pharmacy was justified by the facts demonstrated in the arbitration proceedings.

{¶9} R.C. 2711.10 does not provide that an arbitration award can be vacated merely because one of the parties to the arbitration does not like the outcome.

{¶10} The basis for the allegations of bias by Bonasera, first set forth in Oak Hills' motion to vacate the arbitration award in the common pleas court, is not completely clear.

The motion to vacate included an affidavit from James Renacci, an "owner" of Oak Hills Manor, LLC. The affidavit reads:

1. I am an owner of Oak Hills Manor, LLC.
2. The Arbitrator in this matter is a partner in a Columbus firm which, in approximately the last year, split off from the firm known as Buckingham, Doolittle and Burroughs ("BDB").
3. I was informed that the arbitrator's firm and BDB were in litigation in regards to the separation.
4. I utilized the services of BDB for approximately 20 years until a situation arose in which I learned that my attorney's wife at BDB, who is a partner of the Arbitrator, had created a partnership with my business partner while representing me at the same time. This was done with no disclosure to me.
5. I received a call from the President of BDB requesting assistance into an internal investigation.
6. My cooperation with the internal investigation caused a significant problem between my prior counsel and myself.
7. On the day of the Arbitration, I learned that the Arbitrator was now with the same firm that defected from BDB and was a partner with my previous attorney.

{¶11} The affidavit is simply wrong in some particulars. Bonasera left one respected law firm and joined another respected law firm, Dinsmore and Shohl LLP. Dinsmore and Shohl has over 25 partners in its Columbus office alone and has approximately an equal number of associates there. The firm has offices in nine other cities in Ohio, West Virginia, and Kentucky.

{¶12} The fact that two law firms could disagree to the point of litigation when one or more law firm partners transfer is not unheard of and is no reflection upon the members of either firm.

{¶13} The fact that Renacci has misgivings about the actions and activities of his former lawyer does not prevent the partners of his former lawyer from being fair and impartial. Renacci's affidavit does not approach the threshold of demonstrating that Bonasera was biased against Oak Hills. The affidavit does not even set forth facts sufficient to warrant an evidentiary hearing on the issue of bias.

{¶14} Neither the first nor second assignment of error should be sustained, based upon the record before us. Both are therefore overruled.

{¶15} All three assignments of error having been overruled, the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BROWN and FRENCH, JJ., concur.
