

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

SUMMIT PARK EAST ASSOCIATES, and	: SEPTEMBER TERM 2004
HOTWIRE COMMUNICATIONS LTD.,	
Plaintiffs,	: No. 0139
v.	
	: Commerce Program
URBAN CABLE WORKS OF PHILADELPHIA	
Defendant.	: Superior Court Docket
	No. 1438 EDA 2006

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OPINION

ALBERT W. SHEPPARD, JR., J. August 18, 2006

This Opinion is submitted relative to plaintiffs', Summit Park East Associates and Hotwire Communications, Ltd. ("Summit"), appeal of this court's Order of May 2, 2006 affirming the Award of Arbitration, dated February 6, 2006.

This action arises from a demand by Urban Cable Works of Philadelphia ("Urban") for access to Summit Park to install equipment and provide cable TV services to certain tenants. Summit refused to provide Urban with access, claiming it had a right to be told the identity of the residents who requested cable service, including apartment numbers and building designations, the date the requests were made and the date Urban made the decision to offer CATV services to these Park residents. Summit also contended that Urban's proposed compensation to Summit was inadequate.

After the parties failed to reach an agreement regarding just compensation and reasonableness of the installation, Urban filed a demand for arbitration with the American Arbitration Association. In response, Summit filed this civil action seeking declaratory and injunctive relief against Urban. Thereafter, Summit filed a motion seeking to stay the arbitration proceeding. On October 20, 2004, this court denied Summit's motion. Summit filed an appeal to the Superior Court. Summit also filed a motion for reconsideration and petition for certification for immediate appeal with this court. The Petitions were denied and Superior Court quashed the appeal.

Prior to the arbitration, the parties had stipulated that the only issue to be determined at Arbitration was just compensation due Summit for the lost value of its premises by reason of Urban's proposed installation of a cable television system.

The Arbitration was held on January 30, 2006. During the arbitration Summit presented the testimony of two witnesses, James N. Dertouzos, an economist specializing in mass media, including cable television pricing and competition and George C. Hoesz, a real estate appraiser. Urban presented the testimony of Maureen Mastroieni, a real estate appraiser. On February 6, 2006, the Arbitrator issued an Award requiring Urban to pay Summit the sum of \$1.00 per building or a total of \$21.00 as full compensation for the loss in value to the property pursuant to 68 P.S. section 250.506-B(c).

On March 9, 2006, Summit filed a Petition to Vacate the Arbitration Award on the ground that the Arbitrator rejected competent testimony regarding the loss of value of Summit's premises. Based on a careful review of Summit's Petition, Urban's response in opposition and after oral argument, this court denied Summit's Petition to Vacate on May

2, 2006. Judgment was entered on the February 6, 2006 Arbitration Award. This timely appeal followed.

Judicial review of an arbitration award is very narrow.¹ Borgia v. Prudential Insurance Company, 750 A.2d 843, 846-847 (Pa. 2000). Arbitrators are the final judges of law and fact and their award will not be disturbed for mistakes of either. Id. Such awards are binding and may not be vacated or modified absent "a showing of a denial of a hearing or fraud, misconduct, corruption, or similar irregularity leading to an unjust, inequitable, or unconscionable award." Id. (*citing* 42 Pa.C.S.A. §7341).

Summit contends that the Award was based on irregularities since the Arbitrator allegedly rejected competent expert testimony regarding the loss of value to Summit's premises resulting from Urban's cable installation. An irregularity which requires reversal of an arbitration award refers to the process employed in reaching the result of the arbitration, **not** to the result itself. Gwin Engineers, Inc. v. Cricket Club Estates Dev. Group, 555 A.2d 1328, 1329 (Pa. Super. 1989). A cognizable irregularity may appear in the conduct of either the arbitrators or the parties. McKenna v. Sosso, 745 A.2d 1, 4 (Pa. Super. 1999). Our Supreme Court has stated that the phrase "other irregularity" imports "such bad faith, ignorance of the law and indifference to the justice of the result" as would cause a court to vacate an arbitration award. Allstate Insurance Company v. Fioravanti, 451 Pa. 108, 299 A.2d 585, 589 (Pa. 1973). Attempts to add to, or reopen, litigated issues or to rekindle the reconsideration of the merits are not subject to appeal.

¹ See 42 Pa. C.S.A. §7314 and 42 Pa. C.S.C. §7341.

Summit as the petitioner "bears the burden to establish both the underlying irregularity and the resulting inequity by 'clear, precise and indubitable evidence.'" Garganov. Teminix Int'l, Co. L.P., 784 A.2d 188, 193 (Pa. Super. 2001). Summit has failed to satisfy this burden.

Under the Act, an operator is liable to the landlord for "any physical damage caused by the installation, operation or removal of CATV system facilities." Adelphia Cablevision Assocs. of Radnor, L.P. v. University City Hous. Co., 755 A.2d 703 (Pa. Super. Ct. 2000)(*quoting* 68 P.S. § 250.505-B). A landlord is also entitled to just compensation from the operator for the loss in value of the property resulting from the "permanent installation of CATV system facilities on the premises." 68 P.S. § 250.506-B(a).

In determining reasonable compensation for the landlord, evidence of the following must be considered: (1) "that a landlord has a specific alternative use for the space occupied or to be occupied by CATV system facilities, the loss of which will result in monetary loss to the owner. . . ." and (2) "that installation of CATV system facilities upon such multiple dwelling premises will otherwise substantially interfere with the use and occupancy of such premises to an extent which causes a decrease in the resale or rental value thereof" 68 P.S. § 250.506-B(c). Further, in determining the damages to a landlord under section 250.506-B, "compensation shall be measured by the loss in value of the landlord's property." Id. If there is an increase in value in the landlord's property resulting from the installation of CATV system facilities that amount "shall be deducted from the compensation" due the landlord. Id.

The Act does not limit compensation to "incidental or symbolic" loss. *See Weinberg v. Comcast Cablevision of Phila., L.P.*, 759 A.2d 395 (Pa. Super. 2000).

Rather, the Act invites a landlord to present evidence such as alternative use for the space, monetary loss from not being able to use that space, and a decrease in resale or rental value due to the occupation by the cable equipment. *Id.* (citing 68 P.S. § 250.506-B(c)).

Summit does not point to any irregularity that occurred during the Arbitration proceeding to support its contention. Nor does Summit point to any evidence that the Arbitrator was indifferent to Summit's presentation that would cause this court to vacate the Award. Summit was given the opportunity to conduct a full and complete hearing; witnesses were permitted to testify and were subject to cross-examination. The Arbitrator was entitled to weigh the evidence presented and assess its credibility. In performing this function, the Arbitrator was free to believe all, part or none of the evidence. Here, the Arbitrator, after being presented with the expert testimony by both sides, weighed the testimony and determined that the testimony of Urban's expert was more credible. Consequently, this court does not find any irregularity in the proceeding nor does it find that the result was unjust since the Award is supported by the evidence presented. The fact that Summit is disappointed with the amount of the Award is not ground to vacate the Award and reopen issues already decided.

Accordingly, for these reasons, the court's Order dated May 2, 2006 should be affirmed.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.