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SIXTH DIVISION
February 8, 2013

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HINSDALE ORTHOPAEDIC ASSOCIATES, INC.,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 L 000060
)	
BEECH STREET CORPORATION,)	The Honorable
)	Daniel J. Pierce,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and R. Gordon concurred in the judgment.

ORDER

¶ 1 *HELD:* There is no evidence in the limited record to suggest that the JAMS panel exceeded its authority in ordering its partial arbitration award in favor of plaintiff and entering judgment thereon.

¶ 2 Defendant, Beech Street Corporation (Beech Street), appeals the circuit court's order confirming the partial arbitration award granted by a JAMS panel in favor of plaintiff, Hinsdale Orthopaedic Associates, Inc. (Hinsdale), and entering judgment thereon. Defendant contends the

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circuit court erred in confirming the arbitration award where the JAMS panel exceeded its authority on a number of bases. Based on the following, we affirm.

¶ 3

FACTS

¶ 4 The parties agreed to submit an underlying contract dispute to binding arbitration before a three-judge JAMS panel. The details of the contract dispute are not readily apparent from the limited appellate record. On August 17, 2011, the JAMS panel issued an interim award addressing two counts of plaintiff's second amended complaint, finding that defendant breached the parties' agreement and that plaintiff was entitled to consequential damages and prejudgment interest as a result. A subsequent hearing was held before the JAMS panel to determine the appropriate damages.

¶ 5 Following the hearing, on November 17, 2011, the circuit court issued a written partial final award granting plaintiff \$280,372.11 in consequential damages and \$115,849.46 in prejudgment interest, for a total of \$396,221.57. In concluding that consequential damages were proper, the JAMS panel reviewed the parties' agreement and, because it did not provide an express "model for damages for a breach of the type that occurred in this matter," the panel ascertained the intent of the parties from the language of the agreement itself. Ultimately, the JAMS panel concluded that, where defendant breached the underlying agreement, the appropriate damage award was one that "most accurately reflects both the intent of the Agreement of the parties and the conduct of the parties in relation to the cause and remediation of the breach." The JAMS panel then calculated the consequential damages based on evidence submitted by plaintiff in the form of spreadsheets and summaries of spreadsheets.

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¶ 6 The November 17, 2011, written award rejected defendant's resurrected argument that it was not the proper party from which to claim damages. Moreover, in the written award, the panel noted defendant's objection to the admission of the spreadsheets submitted by plaintiff, but rejected the argument in light of the panel's own evaluation of the documents and "Rule 17 of the JAMS Streamlined Rules which states that strict conformity to the rules of evidence is not required but that the Arbitrator shall be guided by the principles contained in the Federal Rules of Evidence or other applicable rules of evidence." With regard to prejudgment interest, the JAMS panel dismissed the portion of defendant's challenge that relied on an inapplicable statute and rejected defendant's unsupported challenge to plaintiff's method of calculating the prejudgment interest. Finally, the JAMS panel dismissed defendant's argument regarding overpayment, finding that any overpayment should be resolved with the third parties who provided those overpayments.

¶ 7 On December 15, 2011, defendant filed a motion to reconsider the arbitration award with JAMS, arguing that the panel erred in failing to consider an offset argument that would either reduce plaintiff's award or eliminate it entirely.

¶ 8 Meanwhile, on January 4, 2012, plaintiff filed, in the circuit court, an application for confirmation of the JAMS panel's partial arbitration award pursuant to the Illinois Uniform Arbitration Act (710 ILCS 5/11 (West 2010)). On January 30, 2012, defendant responded by filing a motion to stay proceedings, arguing that plaintiff's motion to confirm the November 17, 2011, partial arbitration award was premature on a number of bases. On February 21, 2012, defendant filed a response to plaintiff's application for confirmation of the award. On February

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27, 2012, plaintiff filed a response in opposition to defendant's motion to stay. Then, on March 6, 2012, plaintiff filed a reply in support of its application for confirmation of the arbitration award. Also, on March 6, 2012, defendant filed a reply in support of its motion to stay proceedings, as well as an alternative motion to vacate and/or modify the arbitration award.¹

¶ 9 Then, on March 15, 2012, following a telephonic hearing, the JAMS panel denied defendant's motion to reconsider.

¶ 10 On April 5, 2012, the circuit court entered a written order, denying defendant's motions to stay the proceedings and to vacate the arbitration award and granting plaintiff's application to confirm the award. The circuit court entered judgment in favor of plaintiff and against defendant in the amount of \$396,221.57 plus costs and fees. This timely appeal followed.

¶ 11 DECISION

¶ 12 Defendant contends the JAMS panel exceeded its authority where it held defendant responsible for the payment of claims despite contrary terms in the parties' agreement, awarded damages that were not foreseeable based on the parties' agreement, awarded damages that were based on inadmissible evidence, awarded damages without considering defendant's offset argument aimed at preventing plaintiff's double recovery, and improperly awarded prejudgment interest. Defendant additionally contends that the JAMS panel prematurely confirmed its award despite the continuation of proceedings between the parties.

¹Plaintiff filed a response to defendant's motion to vacate and/or modify the award on March 21, 2012, and a supporting memorandum on March 27, 2012.

¶ 13 Whether an arbitration panel exceeded its authority is a question of law, which we review *de novo*. *Anderson v. Golf Mill Ford, Inc.*, 383 Ill. App. 3d 474, 478 (2008). However, "[j]udicial review of an arbitrator's award is extremely limited, more limited than appellate review of a trial court's decision. [Citations.] Courts must construe awards, wherever possible, to uphold their validity. [Citation.] A court may vacate an award where a gross error of law or fact appears on the face of the award. [Citation.] Review under the 'manifest disregard of the law' standard requires that the arbitrators deliberately disregarded what they knew to be the law. [Citation.]" *Id.*

¶ 14 Based on the limited record before this court, we conclude that the JAMS panel did not exceed its authority in rendering its November 17, 2011, partial arbitration award. The appellate record does not contain the arbitrators' August 17, 2011, interim award and does not contain a transcript from the subsequent hearing where the panel determined the appropriate amount of consequential damages and prejudgment interest. The supreme court has firmly established that it is the appellant's burden to provide this court with a sufficient record to review the challenges raised on appeal. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). "In 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. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id.* at 392.

¶ 15 The circuit court's November 17, 2011, partial award indicates that its prior interim award decided the matter of defendant's breach of the parties' agreement. Defendant does not challenge the August 17, 2011, interim award. However, to the extent defendant's argument that the panel

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exceeded its authority in finding defendant was responsible under the contract for the payment of damages is related to the interim finding that defendant breached the agreement, we presume the arbitrators' award was in conformity with the facts and the law. *Id.* Moreover, defendant's argument challenges the panel's interpretation of contractual language, yet the contract does not appear in the appellate record. Because the contract does not appear in the record, we must presume the panel acted within the scope of its powers when issuing the award. *United Auto Insurance Co. v. Wilson*, 407 Ill. App. 3d 39, 44 (2011) ("[w]e must presume that arbitrators act within their authority").

¶ 16 Additionally, because we lack the ability to review the parties' agreement and any hearings held before the JAMS panel, we must base our decision on the arbitrators' written orders. Following our review, we do not find a gross error of fact or law on the face of the November 17, 2011, award. Rather, it is clear from the JAMS panel's November 17, 2011, written order that the arbitrators interpreted the parties' contract and considered defendant's arguments. In so doing, the panel reiterated its finding that defendant breached its obligations under the parties' contract and was liable for damages in an amount related to the intent of the contract and "the conduct of the parties in relation to the cause and remediation of the [underlying] breach." The panel concluded that plaintiff was entitled to damages in the amount it would have received had defendant not committed the billing errors which constituted the underlying breach.

¶ 17 To the extent the JAMS panel failed to expressly consider the offset argument defendant raised in its motion to reconsider, the circuit court's March 15, 2012, order denying that motion

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explained that the arbitrators again reviewed the language of the parties' agreement and there was no language to support defendant's argument. The arbitrators concluded that any challenges to plaintiff's double recovery were reserved to those third parties providing the excess payments, and not defendant.

¶ 18 This court has stated that "[i]f the arbitrators interpret the contract and issues submitted to them, then the parties are bound by that decision as long as the interpretation is 'a reasonably possible one.'" *Shearson Lehman Brothers, Inc. v. Hedrich*, 266 Ill. App. 3d 24, 28 (1994).

Based on the limited appellate record, we resolve all doubts against appellant and, without the ability to review the contract because of its absence in the appellate record, we must find the JAMS panel's written orders of November 17, 2011, and March 15, 2012, provide reasonably possible interpretations of the parties' agreement.

¶ 19 Turning to defendant's argument that the JAMS panel prematurely confirmed its November 17, 2011, award while additional proceedings continued between the parties, we conclude defendant has waived review of its argument by failing to cite to relevant authority or the pages of the record relied upon in violation of Illinois Supreme Court Rule 341(h)(7) (effective July 1, 2008).

¶ 20 CONCLUSION

¶ 21 We conclude that there is no evidence in the record to suggest that the JAMS panel exceeded its authority in ordering its partial arbitration award in favor of plaintiff and entering judgment thereon.

¶ 22 Affirmed.

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