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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

JAMES MICELI,

Plaintiff and Respondent,

v.

STAPLES, INC. et al.

Defendants and Appellants.

D070676

(Super. Ct. No. 2012-00542919-CU-BT-CXC)

APPEAL from an order of the Superior Court of Orange County, Kim G.

Dunning, Judge. Affirmed.

Stroock, Stroock & Lavan, Julia B. Strickland, Marcos D. Sasso and Shannon E.

Dudic for Defendants and Appellants.

Hogue & Belong, Jeffrey L. Hogue and Tyler Belong; Niddrie Addams and John S. Addams for Plaintiff and Respondent.

Staples, Inc. and Citibank, N.A. (collectively, Staples) appeal an order denying a motion for attorney's fees filed by Staples after the court confirmed an arbitration award and entered judgment in their favor. The underlying arbitration award stated, "[Staples]

shall be entitled to recovery of reasonable attorney's fees and expenses in conjunction with the defense of this action," but did not award a specific dollar amount for such fees and expenses. The court determined it did not have authority to determine, or award Staples, a specific dollar amount and, accordingly, denied the motion.

On appeal, Staples asserts the court did have the authority to award a specific dollar amount based on the language in the arbitrator's award regarding reasonable fees and expenses or, in the alternative, the court should have remanded the matter to the arbitrator to determine the appropriate amount. We conclude the court did not have authority to do either and affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

James Miceli filed a lawsuit against Staples regarding certain billing policies governing his Staples credit card, issued by Citibank. Staples filed a motion to compel arbitration, the court granted the motion, Miceli filed a demand for arbitration with the American Arbitration Association (AAA), and the parties proceeded to arbitration. The governing arbitration agreement specified each party was to bear the expenses of its own attorneys but a party "may recover any or all expenses from another party if the arbitrator, applying applicable law, so determines." The agreement also specified the arbitrator's award would be final and binding "unless a party appeals it in writing to the arbitration firm within fifteen days of notice of the award."

At the conclusion of arbitration, the arbitrator issued an award (the Award) in favor of Staples, denying all claims asserted by Miceli and stating Staples "shall be entitled to recovery of reasonable attorney's fees and expenses in conjunction with the

defense of this action." The Award did not specify a dollar amount for attorney's fees and expenses but did, separately, order Miceli to reimburse Staples \$1,150 for administrative fees paid to the AAA. The Award concluded by stating "[a]ll claims not expressly granted herein are hereby, denied."

After receiving the Award, Staples filed an application for attorney's fees and costs with the arbitrator. In response, the arbitrator indicated the "more appropriate avenue" was for Staples "to have their attorney's fees submitted as part of the court confirmation process." Sixteen days after this response, and two months after the Award, Miceli asked the arbitrator to make findings regarding the basis of his decision, pursuant to a clause in the arbitration agreement requiring the same. The arbitrator responded by stating his jurisdiction over the matter had expired.

Miceli then moved to correct and confirm the award in superior court. Miceli argued the court should correct the award because the arbitrator exceeded his powers in three ways: (1) by stating Staples was entitled to recover attorney's fees because Staples had not asked for attorney's fees in its pre- or post-hearing briefs or during arbitration; (2) by awarding Staples reimbursement for AAA administrative fees because Staples had explicitly agreed to pay the fees at issue; and (3) by refusing to provide a brief statement of the reasons for the Award. In response, Staples argued the arbitrator did not exceed his powers and asked the court to confirm the Award.

At the hearing, Miceli initially argued the language regarding attorney's fees should be stricken from the Award, but also agreed when the court pointed out the Award did not include a specific amount. Staples argued the court could confirm the Award and

then make a determination of the appropriate dollar amount or, if the court was not inclined to do so, it should remand the matter to the arbitrator with instructions to make a finding regarding the appropriate dollar amount. With respect to the AAA administrative fee, Staples conceded the court could strike that language in the Award as they had previously agreed to cover the fee. At the conclusion of the hearing, the court stated its intention to correct the award by striking the language regarding the AAA administrative fees, and then confirm it, without altering the language regarding attorney's fees and expenses. Staples asked the court whether they could then bring a motion for attorney's fees, the court declined to comment, and both parties agreed to the court's stated approach.

Shortly thereafter, Miceli submitted a proposed judgment, which stated, in part, the court had confirmed the Award as stated on the record, all of Miceli's claims were denied, Staples was not entitled to recover any AAA administrative fees, and Staples was entitled to recover reasonable attorney's fees and expenses incurred in connection with the defense of the arbitration. The court struck the language regarding attorney's fees and expenses and then entered the judgment. Staples did not appeal the judgment, or the underlying confirmation of the Award.¹

Approximately two months later, Staples filed a motion for attorney's fees and a memorandum of costs. The court denied the motion, explaining the authority to award

¹ Miceli did file an appeal from the judgment, separately from the present appeal, but only argued the court erred in granting the motion to compel arbitration.

fees and expenses associated with the arbitration rested with the arbitrator and not the court, the arbitrator had chosen not to award a specific dollar amount, and the inconsistency of the Award did not give the court the power to award fees and expenses in place of the arbitrator.

DISCUSSION

I

General Legal Principles and Standard of Review

When the parties agree to submit their dispute to arbitration, the arbitrator has the power to decide, with finality, all issues within the agreed upon scope of the arbitration.

(Moore v. First Bank of San Luis Obispo (2000) 22 Cal.4th 782, 787 (Moore).)

Following arbitration, either party can ask the court to confirm, correct, or vacate the arbitrator's award, but there are very limited statutory grounds upon which the court may correct or vacate the award. (Code Civ. Proc., §§ 1285, 1286.2, subd. (a), 1286.6; see also *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 27-28 [explaining the principle of arbitral finality].) One such ground is when the arbitrator exceeds his or her authority, but the arbitrator does not do so by rendering a legally, or factually, inaccurate decision, so long as the decision is within the scope of his or her authority under the governing agreement. (Code Civ. Proc., §§ 1286.2, subd. (a)(4), 1286.6; *Moshonov v. Walsh* (2000) 22 Cal.4th 771, 775–776; *Moore*, at p. 784.)

The question of whether a party is entitled to attorney's fees in the first instance is a purely legal question which we review de novo. (*Apex LLC v. Korusfood.com* (2013) 222 Cal.App.4th 1010, 1016-1017.) We review the appropriateness of the specific

amount of fees awarded for an abuse of discretion. (*Ibid.*) We presume an order granting or denying a request for fees is correct, indulge all inferences and presumptions to support the order, resolve evidentiary conflicts in favor of the prevailing party, and accept the trial court's resolution of factual disputes. (*Id.* at p. 1017.) We review determinations regarding whether the arbitrator exceeded his or her authority, thereby permitting the court to void or modify his or her award, de novo. (*Safari Assoc. v. Superior Court* (2014) 231 Cal.App.4th 1400, 1408 (*Safari*); *Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362, 376, fn. 9.)

II

Analysis

A

The Court Did Not Have the Authority to Award Fees

Staples asserts the court impermissibly failed to enforce the Award, which stated Staples was entitled to attorney's fees and expenses, by not determining and awarding a specific dollar amount for fees and expenses in response to their postjudgment motion. For the reasons set forth below, we agree with the court's conclusion it did not have the authority to make such a determination or award.

When the scope of arbitration, as defined by an agreement between the parties, includes attorney's fees, the arbitrator has the sole authority to determine whether to award fees and the appropriate amount to award. (See *Moore, supra*, 22 Cal.4th at p. 787; *DiMarco v. Chaney* (1995) 31 Cal.App.4th 1809, 1816 [issue of amount of attorney's fees and costs is a matter for the arbitrator to decide] (*DiMarco*); *Corona v.*

Amherst Partners (2003) 107 Cal.App.4th 701, 706 [arbitrator, and not the court, had the sole authority to award fees].) This is, in part, because the arbitrator, as the adjudicator of the underlying dispute, is better situated than the court to determine the reasonableness of the submitted fees. (*DiMarco*, at pp. 1816-1817.) Even if the arbitrator errs in his or her decision to award, or refusal to award, attorney's fees, the court does not have the power to vacate or correct the award so long as the arbitrator's decision was within the scope of the issues submitted to arbitration. (*Moore*, at p. 784 [arbitrator does not exceed his or her powers "by denying the party's request for fees, even where such a denial order would be reversible legal error if made by a court in civil litigation"]; *Safari, supra*, 231 Cal.App.4th at p. 1410 [applying *Moore* and reaching a similar conclusion].)

Here, the arbitrator's award stated Staples was entitled to reasonable fees and expenses but did not award a specific dollar amount. Staples argues the court's denial of its motion for attorney's fees essentially corrected the Award without statutory grounds to do so by removing the provision therein indicating Staples was entitled to attorney's fees and expenses. Conversely, the court concluded the arbitrator did not actually award a specific amount for attorney's fees and expenses and, even if the arbitrator was incorrect in leaving the determination of the appropriate amount to the court, the court was without authority at this point to correct the Award to add a specific amount. We agree with the court.

Although the arbitrator, and not the court, had the sole authority to award fees *and* to determine the exact amount to award, he did not make a determination as to the amount stating Staples should instead "have their attorney's fees submitted as part of the

court confirmation process." (See *DiMarco, supra*, 31 Cal.App.4th at p. 1816.)

Regardless of the accuracy of that decision, Staples did not dispute it, or the associated Award, within the 15 days specified by the arbitration agreement and the decision thus became final and binding. Moreover, Staples acquiesced to the court confirming the Award without correcting it or remanding the matter to the arbitrator to add a specific amount for attorney's fees, and did not appeal the resulting judgment. The time for Staples to argue the court, or the arbitrator, should have corrected or otherwise altered the Award to include a specific dollar amount has passed.

Staples argues the court nevertheless had the authority to award a specific dollar amount in response to its postjudgment fees motion, but the two cases Staples relies on do not support this assertion. (See *Guevara v. Brand* (1992) 8 Cal.App.4th 995 (*Guevara*) and *County of Kern v. Jadwin* (2011) 197 Cal.App.4th 65 (*Jadwin*).) In *Guevara* and *Jadwin*, the reviewing courts concluded the trial court could award fees in response to a postjudgment motion for fees *where there was no statutory or judicial authority requiring a determination of costs at the time of the arbitrator's award*. (See *Guevara*, at p. 998; *Jadwin*, at p. 72.) Both cases arise from—and rely primarily on legal authority specific to—mandatory judicial arbitration as required by statute in certain types of cases. (*Guevara*, at pp. 996-997; *Jadwin*, at p. 68.) As such, the relevant statutes and judicial authority defined the scope of the arbitration, and where they did not require the award to include a determination of costs, the court could make one. Here, however, arbitration was pursuant to a contractual agreement which placed the decision to award fees, as well as the appropriate amount to award, squarely within the authority

of the arbitrator. We are not aware of any authority, nor does Staples provide any, indicating a court may set the specific dollar amount for a fee award in the absence of the arbitrator doing so in the context of contractual arbitration.

Staples also argues the arbitrator properly awarded it fees as the prevailing party under Code of Civil Procedure sections 1032 and 1033.5, subdivision (a)(10)(A) and Civil Code section 1717, subdivision (a).² There is no dispute the arbitrator had the authority to award reasonable attorney's fees under the arbitration agreement pursuant to applicable law, including the cited statutes. The arbitrator failed to award a specific amount. There is no authority to permit the court, in place of the arbitrator, to specify the amount following confirmation of the award and entry of judgment.

B

The Court Did Not Have the Authority to Remand the Matter to the Arbitrator

In the alternative, Staples argues the court should have remanded the matter to the

² Code of Civil Procedure section 1032, subdivisions (a)(4) and (b) defines "prevailing party" to include "the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant" and states, in part, "a prevailing party is entitled as a matter of right to recover costs in any action or proceeding."

Code of Civil Procedure section 1033.5, subdivision (a)(10)(A) defines costs under section 1032 to include attorney's fees when permitted by contract.

Civil Code section 1717, subdivision (a) states, in part, "[i]n any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs."

arbitrator to determine the appropriate dollar amount for the fees award. As the court had already confirmed the award and entered judgment, we conclude the court also lacked the authority to remand the matter to the arbitrator in connection with Staples's fees motion.

Staples relies exclusively on *DiMarco, supra*, 31 Cal.App.4th 1809, to argue the court could remand the matter to the arbitrator. In *DiMarco*, the superior court determined the arbitration agreement required the arbitrator to award fees to the prevailing party and the arbitrator exceeded his authority by not doing so, permitting the court to correct the award to add fees. (*Id.* at pp. 1812-1813.) The reviewing court agreed the arbitrator had exceeded his powers, but concluded the superior court erred by including an actual dollar amount for attorney's fees in the corrected award and directed the court to instead remand the matter to the mediator for a determination of the appropriate amount of fees to award. (*Id.* at p. 1818.)

Here, the court had already confirmed the Award and entered judgment, without altering the fees provision or remanding the matter back to the arbitrator. Further, Staples acquiesced to the confirmation and did not appeal the resulting judgment. As a result, the court no longer had the ability to correct the Award or remand the matter back to the arbitrator for correction. (See *Delaney v. Dahl* (2002) 99 Cal.App.4th 647, 658-660 [an arbitrator's award may be amended at any time prior to judicial confirmation].)

C

The Reasonableness of the Fees Requested Is Not Relevant

Finally, Staples asserts the amount of fees requested in their motion for attorney's fees was reasonable. As we conclude the court did not have the authority to award a

dollar amount for fees and expenses in the first instance, we need not address the reasonableness of the specific fees and expenses submitted by Staples.

DISPOSITION

The order is affirmed. Respondent is awarded costs on appeal.

McCONNELL, P. J.

WE CONCUR:

HUFFMAN, J.

AARON, J.