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# Summary of Health Plan of Nev., Inc. v. Rainbow Medical, LLC

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# *Health Plan of Nev., Inc. v. Rainbow Medical*, LLC, 100 P.3d 172 (Nev. 2004)[1]

## CIVIL PROCEDURE –ARBITRATION AWARDS

**Summary**

This case was an appeal and cross-appeal dealing with Nevada's Uniform Arbitration Act and the scope of judicial review of an arbitration award.

**Disposition/Outcome**

Although the court determined that the district court erred in remanding the arbitration results to the arbitrator for clarification, the arbitrator did not exceed his authority or manifestly disregard the law with regard to a statement contained in the award. Thus, the arbitration decision was upheld although it should not have been remanded based upon the dictates of NRS 38.237(1).[2]

**Factual and Procedural History**

Health Plan of Nevada ("HPN"), a health maintenance organization, contracted with Rainbow Medical, LLC ("Rainbow") on August 1, 1995 to provide pharmaceutical products and services to HPN members. Rainbow was formed by a friend of an HPN executive who was relatively inexperienced with regard to the services Rainbow was to perform. As compensation, Rainbow received a captitated, or flat rate, per HPN member for services provided as payment for its services.

In April or May 1996, HPN claimed to have received several complaints with regard to the quality of Rainbow's services, deficiencies which were subsequently cured. Later, HPN and Rainbow disputed Rainbow's service coverage area and fees. As a result, HPN allegedly told Rainbow that Rainbow would receive a capitation increase for additional services it provided.

Despite various meetings, the two businesses could not reach a final agreement as to their disputes. In May 1997, Rainbow obtained HPN's consent to assign its rights and duties to another pharmaceutical and service provider, First Class Pharmacy and Regency Health Services ("First Class"). However, the agreement between First Class and Rainbow stipulated that Rainbow retained rights to any retroactive capitation rate adjustments that might accrue for services performed before the time of transfer.

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[2] Nev. Rev. Stat. 38.237(1)(a)-(c) states in pertinent part that an arbitrator may correct or modify an award to address: mathematical miscalculations; mistakes in the description of a person, thing, or property referenced in an award; technical deficiencies in the form of an award; a submitted claim not referenced in an award; or to clarify an award.

In June 1997, Rainbow requested a retroactive capitation adjustment for services provided prior to the transfer, but HPN denied the request citing Rainbow's alleged failure to provide a high enough quality of service during its association with HPN. Rainbow thereafter initiated binding arbitration proceedings.

After twenty-two days of reviewing evidence and evaluating witness testimony, the arbitrator concluded that HPN had breached its duties of good faith and fair dealing and subsequently awarded Rainbow more than $5 million. In the award, the arbitrator concluded that HPN's initial decision to contract with Rainbow, which he described as a "totally green startup," was a policy decision that placed a heavy mentoring burden on HPN. That burden, cited the arbitrator, included HPN's duty to incubate Rainbow, and an affirmative duty to help Rainbow "crawl, walk, and run."

Owing to these statements, HPN filed a motion to set aside and vacate the arbitration award, claiming that the arbitrator either exceeded his powers or manifestly disregarded the law in making the assertions regarding the mentoring burden.

The district court determined that the arbitrator had exceeded his authority by imposing a mentoring burden on HPN, and then remanded the case to the arbitrator and asked him to reexamine his findings in light of the determination that HPN had no such duty. The arbitrator declared that the statement was gratuitous and had no bearing on the award. The district court then affirmed the award, thus giving rise to the appeal.

**Discussion**

In Nevada, the scope of judicial review of an arbitration award is limited.[3] The party attacking the validity of an arbitration award has the burden of proving, by clear and convincing evidence, the legal ground relied upon for the challenge.[4] In the instant case, HPN challenged the arbitrator's award on two grounds, one statutory and one based in the common law. Statutorily, HPN asserted that the arbitrator exceeded his powers pursuant to Nevada statute by imposing a mentoring burden in the award.[5] As to the common law, HPN contended that the arbitrator manifestly disregarded the law.

HPN also contended that, absent a statutory ground such as mathematical mistake, technical deficiencies in the form of an award, or the arbitrator's not addressing a submitted claim in an award, remand was improper. The court agreed, citing that the statement regarding the mentoring burden did not qualify under the statutory reasons for remand. However, that alone is not sufficient to vacate the award.

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[3] See Bohlmann v. Printz, 120 Nev. Ad. Rep. 52, 96 P.3d 1155, 1157 (2004); Colmar, Ltd. v. Fremantlemedia N. America, 801 N.E.2d 1017, 1029 (Ill. App. Ct. 2003).

[4] E.D.S. Const. v. North End Health Ctr., 412 N.W.2d 783, 785 (Minn. Ct. App. 1987); Saville Intern., Inc. v. Galanti Group, Inc. 438 N.E.2d 509, 511 (Ill. App. Ct. 1982); Korein v. Rabin, 287 N.Y.S.2d 975, 981 (App. Div. 1968).

[5] Nev. Rev. Stat. 38.241(1)(d)(2004).

The court examined the claim that the arbitrator exceeded his authority by stating that absent a showing of clear and convincing evidence to the contrary, the courts will assume that the arbitrator acted within the scope of his power.

Arbitrators exceed their power when they address issues or make awards outside the scope of the governing contract.[6] However, arbitrators do not exceed their power if their interpretation of an agreement is rationally grounded in the agreement. The arbitrator's mentoring statement under the circumstances of the subject case failed to go beyond the scope of the agreement. In fact, to the court, the arbitrator's statement was indicative of his understanding of the contract itself as well as an understanding as to the relationship between the two parties. With that knowledge, the arbitrator was able to determine that HPN had not been acting in good faith when it denied Rainbow's capitation rate increase based upon inadequate performance during the course of their inter-dealings.

Regarding the discussion of the mentoring burden as evidence of the arbitrator's manifest disregard for the law, the court held that the arbitrator never stated that the law imposed a mentoring burden on HPN as a result of its contract with Rainbow. Instead, like with the statutory analysis, the arbitrator was simply analyzing the relationship between the two parties in order to determine whether the denial of the capitation rate increase based upon Rainbow's performance was reasonable.

## Conclusion

Although the court recognized that the district court improperly remanded the case to the arbitrator for clarification, the arbitrator in no way exceeded the scope of his authority, neither did the arbitrator manifestly disregard the law. Instead, his statements regarding a mentoring burden were conducive to his conclusion that HPN was denying Rainbow's capitation rate increase in bad faith.

[6] Signal Corp. v. Keane Fed. Systems, 574 S.E.2d 253, 257 (Va. 2003).