

When is a Court Incorrect in Awarding Specific Fees?

From the desk of Cliff J. Wilson: In what context will an award for attorney fees or enhanced prevailing party fees stemming from an arbitration likely be overturned? Read on to see how the Oregon Court of Appeals recently answered this question in a case involving contractual arbitration.

Claims Pointer: The Oregon Court of Appeals reversed the \$27,035.50 in attorney fees awarded to plaintiff for work performed during an arbitration governed by the Oregon Uniform Arbitration Act, finding that the relevant statute limits the recovery of fees to those incurred in any post-arbitration judicial proceeding. The Court of Appeals also required reconsideration of a \$3,000.00 award for enhanced prevailing party fees due to conflicting conclusions made by the trial court, including that the defendant's legal positions were both reckless and also objectively reasonable. This case is important in distinguishing arbitration and judicial proceedings and limiting unsupported fee awards.

Weitman Excavation, LLC v. CPM Development Corp., 276 Or App 583 (February 24, 2016)

CPM Development Corp ("CPM"), a general contractor, and Weitman Excavation LLC ("Weitman"), an excavation subcontractor, placed bids on a major airport utility project. Weitman submitted its bid to CPM and CPM incorporated that bid into its own for the project. When CPM was awarded the contract, it notified Weitman and provided a subcontract containing new terms as well as an arbitration clause. Weitman never signed the subcontract and withdrew from the project when the parties could not reach an agreement as to the new terms.

CPM initiated arbitration proceedings under the Oregon Uniform Arbitration Act, claiming that Weitman breached their contract. Weitman argued that the parties never entered into a contract compelling arbitration. It brought a declaratory judgment action in court, seeking a declaration that CPM had no enforceable contractual rights. CPM filed a petition to compel arbitration and stay the court proceedings. While the matter was under advisement, the arbitration proceeded as scheduled.

While CPM prevailed in the arbitration, the trial court found that no contractual agreement existed and overturned the arbitration award. Weitman was awarded attorney fees under

ORS 36.715(3), of which \$27,035.50 was for fees incurred during the arbitration. Weitman was also awarded an enhanced prevailing party fee of \$3,000.00, due to CPM's "recklessness" in pursuing arbitration when there was a good faith disagreement as to the appropriateness of that forum. Weitman's request for additional attorney fees under ORS 20.105 was denied by the trial court because CPM's legal positions, while unsuccessful, were objectively reasonable.

The Oregon Court of Appeals reversed the attorney fee award and vacated and remanded the prevailing party award in order for the trial court to reconsider. The Appeals court concluded that the lower court erred in awarding attorney fees for work related to the arbitration proceeding because the statutory text provides for reasonable attorney fees incurred in a judicial proceeding following an arbitration award as part of an effort to vacate, modify or correct the arbitration award. It does not allow for fees directly incurred in the arbitration proceeding itself. By its nature, an arbitration proceeding takes place outside a judicial proceeding. Thus, the court reversed Weitman's \$27,035.50 attorney fee award incurred in the arbitration.

The court also reviewed the \$3,000.00 enhanced prevailing party fee award and concluded that the award, which was based in part on a

case in point...

Contact: Cliff Wilson | www.smithfreed.com | email: cwilson@smithfreed.com

Ph: 503.227.2424 | Fax: 503.227.2535 | 111 SW 5th Ave, Suite 4300 | Portland | OR | 97204

This article is to inform our clients and others about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in this email without seeking professional counsel.



When is a Court Incorrect in Awarding Specific Fees?

case in point...

determination that CPM was “reckless” in pursuing arbitration, was incompatible with the trial court’s other conclusions and could result in legal error. Specifically, the trial court’s characterization of CPM as “reckless” was contrary with its conclusions that CPM’s legal positions were objectively reasonable and pursued in good faith. The Court of Appeals decided that without more information, CPM could not be considered reckless for adopting an objectively reasonable but ultimately unsuccessful position. In this case at least, the Oregon Court of Appeals concluded that the trial court’s award of attorney fees and an enhanced prevailing party fee to be inappropriate absent express statutory authority and consistent conclusions by the trial court.

The trial court’s award for attorney fees incurred in arbitration was reversed and the enhanced prevailing party fee award was vacated and remanded for reconsideration.



Contact: Cliff Wilson | www.smithfreed.com | email: cwilson@smithfreed.com

Ph: 503.227.2424 | Fax: 503.227.2535 | 111 SW 5th Ave, Suite 4300 | Portland | OR | 97204

This article is to inform our clients and others about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in this email without seeking professional counsel.