

66313-5

66313-5

RECEIVED  
COURT OF APPEALS  
DIVISION ONE

III -7 2011

FILED  
COURT OF APPEALS  
STATE OF WASHINGTON  
2011 JUL -7 PM 3:58

No. 66313-5-I

---

**COURT OF APPEALS  
THE STATE OF WASHINGTON  
DIVISION I**

---

JOHN DAVIN BAILEY,

Appellant,

v.

DEANNA AIMEE BAILEY,

Respondent.

---

**REPLY BRIEF OF APPELLANT**

---

Steven B. Shea, WSBA 10718  
Attorney for Appellant  
3014 Hoyt Avenue  
Everett, WA 98201  
Telephone: (425) 258-4242  
Facsimile: (425) 252-3964

**ORIGINAL**

**TABLE OF CONTENTS**

1. TABLE OF AUTHORITIES ..... 1

2. POINTS DISPUTED BY APPELLANT AS  
CONTAINED IN BRIEF OF RESPONDENT ..... 2

    A. Mrs. Bailey states there was no authority for the  
Appellant’s position that if a violation of the  
parties’ due process rights occurs that the Arbitration  
Award may be vacated. ..... 2

    B. Mrs. Bailey states that there is no right to due  
Process in the arbitration process. ..... 2

    C. Mrs. Bailey says that no hearing was ordered  
Pursuant to paragraph 3 of the statute. ..... 3

3. CONCLUSION ..... 4

**1. TABLE OF AUTHORITIES**

**A. Statutory Authority**

RCW 7.04A.230(1) ..... 2

RCW 7.04A.150 ..... 2

RCW 7.04A.150(a)(11) ..... 2

**B. Case Law**

Hanson v. Shim, 87 Wn. App. 538, 551, 943 P.2d  
322 (1997) ..... 2

Puget Sound Bridge and Dredging Co. v.  
Lake Washington Shipyards, 1 Wn.2d 401,  
96 P.2d 257 (1939) ..... 3

**2. POINTS DISPUTED BY APPELLANT AS CONTAINED IN BRIEF OF RESPONDENT.**

Mrs. Bailey raised approximately three points which need to be responded to as follows:

**A. Mrs. Bailey states that there was no authority for the Appellant's position that if a violation of the parties' due process rights occurs that the Arbitration Award may be vacated.<sup>1</sup>**

Mrs. Bailey states that Mr. Bailey failed to state any authority for the proposition that if a violation of the parties' due process rights occurs, the Arbitration Award is subject to vacation. That it is specifically addressed in the Appellant's Brief at page 11. The authority for that portion is RCW 7.04A.230(1). The case of *Hanson v. Shim*, 87 Wn. App. 538, 551, 943 P.2d 322 (1997), also is authority for the proposition that if due process rights are not followed in the arbitration that the Award is subject to being vacated. Therefore, the Respondent's Brief is inaccurate where it states there was no authority for the Appellant's position.

**B. Mrs. Bailey states that there is no right to due process in the arbitration process.<sup>2</sup>**

Mrs. Bailey ignores her own authority in stating that neither party has the rights to due process. Mrs. Bailey cites RCW 7.04A.150 which specifically states that there must be a "fair and expeditious disposition of the proceeding." RCW 7.04A.150(a)(11).

According to Mrs. Bailey's position, the Arbitrator could decide under her rules to listen only to evidence from one side without

---

<sup>1</sup> Brief of Respondent, Page 9

<sup>2</sup> Brief of Respondent, Page 11

notice to the other and decided in a summary proceeding wherein one party knows nothing of a specific issue or the evidence that supports it. That is exactly what happened here. That cannot be considered a fair disposition of the proceeding. In addition, Mrs. Bailey was allowed to submit evidence, over an objection, with no right to cross examine or the opportunity to refute the testimony in any way (appraisal).

**C. Mrs. Bailey says that no hearing was ordered pursuant to paragraph 3 of the statute.**

Mr. Bailey disagrees with the position of Mrs. Bailey that no hearing was ever ordered. That is not correct. The mediation was - subsumed into the arbitration hearing and, in fact, the arbitration began with submittal of different evidence, additional evidence, and unrebutted evidence. That constituted the hearing that is referred to by Mr. Bailey. There was no independent gathering of evidence as in the case of *Puget Sound Bridge and Dredging Co. v. Lake Washington Shipyards*, 1 Wn.2d 401, 96 P.2d 257 (1939). This was not a case where there was no objection to the procedure. There was objection to the procedure by Mr. Bailey. He objected to the appraisal being submitted, he objected to the lack of an ability to cross-examine the witness, and was given no notice beyond the summary disposition of those issues by arbitrator.

The *Puget Sound Bridge and Dredging Co. v. Lake Washington Shipyards*, *supra*, talks about consent<sup>3</sup>. Here, there was no consent to the reception of evidence ex parte or through informal inquiry and investigation. There was objection at all stages of that process. That was a denial of Mr. Bailey's due process rights.

---

<sup>3</sup> Brief of Respondent, page 15

The Court should remember that the issue of the appraisal to be submitted by Mrs. Bailey came up only after the evidence was submitted in the case. As previously stated, there was no waiver of any rights to cross examine Mrs. Bailey's witnesses. That right was not given to the arbitrator to decide.

**3. CONCLUSION.**

With these clear due process violations, the Superior Court Judicial Officer erred in failing to vacate the Arbitration Award and should have ordered this matter go to trial.

Mr. Bailey respectfully requests that this Court vacate the Order confirming the Arbitration Award so that all of the evidence may be heard in a proper judicial setting so that there was no violation of Mr. Bailey's due process rights.

RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of July, 2011.

  
STEVEN B. SHEA, WSBA No. 10718  
Attorney for Appellant

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2011 JUL -7 PM 3:59

**COURT OF APPEALS  
THE STATE OF WASHINGTON  
DIVISION I**

JOHN DAVIN BAILEY,

Appellant,

and

DEANNA AIMEE BAILEY,

Respondent.

**No. 66313-5-1**

**Snohomish County  
Superior Court  
No. 08-3-02262-7**

**DECLARATION OF  
SERVICE**

I, Kim A. Biden, hereby declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. I am a paralegal for Steven B. Shea, attorney for the above-named Appellant.

2. On the 7th day of July, 2011, I had delivered by messenger a copy of the *Reply Brief of Appellant* and filed in the above matter addressed to:

Lorna Bigsby  
Attorney at Law  
2918 Colby Avenue, Suite 201  
Everett, WA 98201

**ORIGINAL**

DECLARATION OF SERVICE -1

Steven B. Shea  
Attorney at Law  
3014 Hoyt Avenue  
Everett, WA 98201

DATED this 7<sup>th</sup> day of July, 2011.



Kim A. Biden

Law Office of Steven B. Shea  
Attorney for Appellant  
3014 Hoyt Avenue  
Everett, WA 98201  
(425) 258-4242  
F: (425) 252-3964