

No. 64518-8-1

IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION I

ALASKA DISTRIBUTORS CO.,

Claimant/Respondent,

v.

ALASKAN BREWING COMPANY,

Respondent/Appellant.

APPELLANT'S BRIEF IN REPLY

Christopher I. Brain (WSBA #5054)
Mary B. Reiten (WSBA #33623)
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
206.682.5600

Attorneys for Respondent/Appellant

RECEIVED
JUL 23 11 23 AM '09
KJ

ORIGINAL

TABLE OF CONTENTS

I. INTRODUCTION 1

II. ARBITRATOR ERROR IS APPARENT ON THE FACE OF
THE AWARD..... 1

III. ADCO DOES NOT CHALLENGE ALASKAN’S
SUBSTANTIVE ANALYSIS 3

 A. ADCO DOES NOT CHALLENGE ALASKAN’S LEGAL
 ANALYSIS OF RCW 19.126.040..... 3

 B. ADCO DOES NOT CHALLENGE ALASKAN’S LEGAL
 ANALYSIS OF THE ALLEGED CONDITION
 PRECEDENT 4

IV. THE ATTORNEYS’ FEE AWARD SHOULD BE REVERSED . 4

V. CONCLUSION..... 4

TABLE OF AUTHORITIES

Cases

Lindon v. Bambino Bean Co.,
57 Wn. App. 813, 790 P.2d 228 (1990) 2

Rules

RCW 19.126 1
RCW 19.126.040 1, 2, 3
RCW 62A.2-209(1)..... 2

I. INTRODUCTION

Only two, uncontested damage figures were presented to the arbitrator. If the arbitrator had applied and interpreted RCW 19.126.040, which he did not, he would have awarded a completely different amount. Hence, as Alaskan Brewing Company (“Alaskan”) pointed out in its opening brief, legal error appears on the face of the award. That is, error may be deduced solely by the amount awarded.

Further Alaska Distributors Co. (“ADCO”) does not challenge any of Alaskan’s legal analysis regarding what RCW 19.126.040 requires or how to interpret the word “may” in the parties’ contract. ADCO has conceded the correctness of these interpretations.

Finally, the attorneys’ fee award contradicts the arbitrator’s damages analysis. The arbitrator’s damages analysis relies solely on the parties’ contract, yet the attorneys’ fee award is based on the RCW 19.126, *et seq.*, a statute that the arbitrator declined to construe. This contradiction also constitutes legal error on the face of the award and is subject to review by this Court.

II. ARBITRATOR ERROR IS APPARENT ON THE FACE OF THE AWARD

Alaskan’s opening brief points out that the parties did not contest the damages calculations provided by either side. That is, Alaskan did not contest ADCO’s fair market price (“FMP”) calculation of \$5,537,520

should ADCO's position be correct. And ADCO did not contest Alaskan's calculation of \$1.4 million should Alaskan's position be correct. The arbitrator's decision hinged on three legal issues (1) whether the definition of FMP is required to be defined by the parties' contract under RCW 19.126.040; (2) whether the parties did so define FMP in their contract; and (3) the legal definition of "may" in the parties' contract. Because each of these issues are legal, legal error may be identified based solely on the amount awarded – that is the amount stated on the face of the award. Because the award of \$5,537,520 contradicts the plain language of the statute, RCW 19.126.040 (which does not set forth a formula for calculating FMP), and the parties' contract (which defines FMP in such a way that totals \$1.4 million), it is facially apparent that the award is based on legal error.

Further, the Court may look to the analysis provided by the arbitrator when it is not readily apparent on the face of the award that the controversy between the parties has been fully settled. *Lindon v. Bambino Bean Co.*, 57 Wn. App. 813, 816, 790 P.2d 228 (1990) ("The award implies there was a modification but it could not be recognized because there was no consideration," but that conclusion contradicts RCW 62A.2-209(1).). Like the arbitrator in *Bambino Bean Co.* who did not apply applicable law, here, the arbitrator also explicitly acknowledged he did not apply RCW 19.126.040. CP 19. But the arbitrator also held that "ADCO

is entitled by RCW 19.126.040(3) to the full [FMP] of its terminated distribution rights.” CP 19. This discrepancy calls out for appellate review.

III. ADCO DOES NOT CHALLENGE ALASKAN’S SUBSTANTIVE ANALYSIS

A. ADCO Does Not Challenge Alaskan’s Legal Analysis of RCW 19.126.040

Nowhere in its brief does ADCO challenge Alaskan’s legal analysis of RCW 19.126.040. ADCO does not challenge the analysis because it knows that RCW 19.126 *et seq.* does not define FMP, but rather requires the parties to define FMP in their agreements. RCW 19.126.040(3) (“The wholesale distributor is entitled to compensation for the laid-in cost of inventory and liquidated damages measured on the fair market price of the business as provided for in the agreement for any termination of the agreement by the supplier...”). Here, the parties defined FMP, but the arbitrator ignored that definition, applying one that the parties neither contemplated at the time of contracting nor understood to be required by statute. The application of a different definition of FMP than the one that the parties agreed to, which by statute was mandated to be in their agreement, constitutes legal error and consequently the arbitrator exceeded his authority.

B. ADCO Does Not Challenge Alaskan’s Legal Analysis of the Alleged Condition Precedent

The word “may” does not denote a “condition precedent.” In holding differently, the arbitrator made another error of law that also requires reversal and remand. ADCO does not challenge Alaskan’s analysis of this legal issue.

IV. THE ATTORNEYS’ FEE AWARD SHOULD BE REVERSED

As pointed out in Alaskan’s opening brief, the arbitrator’s award contains an error in the award of attorneys’ fees. The arbitrator’s analysis is purely contractual, ignoring the statute. Yet, in contradiction to the damages award, the arbitrator bases his award of attorneys’ fees solely on statute.

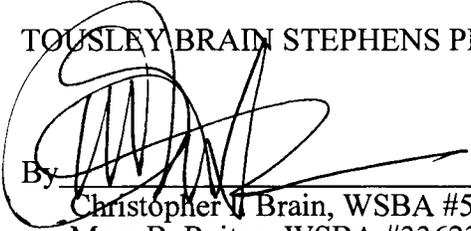
The contract requires the parties to bear their own fees. The arbitrator ignored this provision in the contract, which he had in his possession when making his award. This contradiction again illustrates the ambiguity in the arbitration award and constitutes legal error.

V. CONCLUSION

For the foregoing reasons and those stated in Alaskan’s opening brief, Alaskan moves this Court to reverse the arbitration award and remand for further hearing with instructions on the interpretation of the law.

DATED this 22nd day of March, 2010.

TOUSLEY BRAIN STEPHENS PLLC

By 

Christopher T. Brain, WSBA #5054
Mary B. Reiten, WSBA #33623
1700 Seventh Avenue, Suite 2200
Seattle, Washington 98101
206.682.5600

Attorneys for Respondent/Appellant

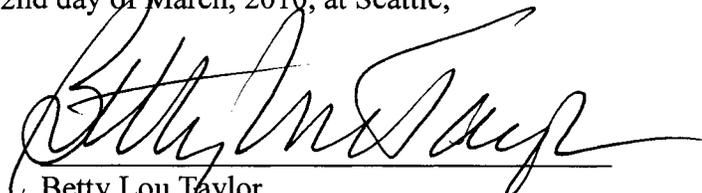
CERTIFICATE OF SERVICE

I, Betty Lou Taylor, hereby certify that on the 22nd day of March, 2010, I caused to be served true and correct copies of the foregoing to the following person(s) in the manner indicated below:

Paul Taylor, WSBA #14851	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
Joshua B. Selig, WSBA #39628	<input type="checkbox"/>	Hand Delivered via Messenger Service
BYRNES & KELLER LLP	<input type="checkbox"/>	Overnight Courier
1000 Second Street, Suite 3800	<input type="checkbox"/>	Facsimile
Seattle, WA 98104	<input type="checkbox"/>	Electronic Mail

I certify under penalty of perjury under the laws of the United States and the state of Washington that the foregoing is true and correct.

EXECUTED this 22nd day of March, 2010, at Seattle, Washington.


Betty Lou Taylor