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Modifying an Arbitration Award Due to 'Evident Miscalculation'



Judge Abraham J.
Gafni (Ret.)

Miscalculation of an award by an arbitrator represents one of the few grounds warranting modification. But what evidence and what procedures are required by a court when reviewing a contention of arbitrator miscalculation?

These issues were considered recently by the Supreme Court of Mississippi in *D.W. Caldwell v. W.G. Yates & Construction*, No. 2017-CA -00116- SCT, ___ So. 3rd ___ (May 10, 2018).

The matter involved a dispute between a general contractor and roofing subcontractor. During the arbitration that was neither recorded nor transcribed, "the arbitrator considered arguments, reviewed evidence, and heard witness testimony over the course of three days. He then reopened the proceedings for additional documentation before issuing his 13-page award ..." in favor of the subcontractor. The contractor filed a motion for clarification or correction of the arbitration award. The arbitrator, in dismissing the motion, concluded that "he lacked the authority to re-evaluate the merits of any claim already decided" as the award contained no computational or other errors,

The subcontractor filed a motion with the circuit court to confirm the award. The contractor countered with a motion to alter, amend or vacate, contending that the award contained an evident miscalculation. In response, the subcontractor, filed a request to limit the presentation of proof at the argument on the contractor's motion.

The circuit court first considered the subcontractor's motion to limit proof. After oral argument, it determined that there was an evident miscalculation as it related to retainage. (This retainage determination was later rejected by the Supreme Court because retainage amounts had been completely removed from the award as this issue was not ripe for review.) On this basis, the circuit court allowed a second phase of the hearing at which the parties were permitted to present a witness and 14 additional exhibits.

Based on this additional evidence and testimony, the circuit court found that a "facially evident miscalculation" (unrelated to retainage) would result in an improper double payment to the subcontractor and reduced the award. [READ MORE](#)

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