

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOEL S. ARIO, INSURANCE
COMMISSIONER OF THE
COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

v.

RELIANCE INSURANCE COMPANY
(IN LIQUIDATION)

Defendant.

No. 269 M.D. 2001

RECEIVED AND FILED
COMMONWEALTH COURT
OF PA (PHILA)
2010 MAR 26 P 2:56

IN RE: CONFIRMATION OF ARBITRATION AWARD ENTERED
AGAINST REPUBLIC WESTERN INSURANCE COMPANY

ORDER

AND NOW, this ____ day of _____, 2010, it is hereby ORDERED that the Motion to Confirm Arbitration Award ("Arbitration Award") Against Republic Western Insurance Company is GRANTED, and judgment shall be entered by the Prothonotary of the Commonwealth Court of Pennsylvania in favor of Joel S. Ario, Insurance Commissioner of The Commonwealth Of Pennsylvania, In His Official Capacity As The Statutory Liquidator of Reliance Insurance Company (In Liquidation) ("Reliance"), in the amount of [REDACTED] ([REDACTED] (Award Amount) plus [REDACTED] (Interest) due as of March 31, 2010).

SO ORDERED:

BONNIE BRIGANCE LEDBETTER
President Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOEL S. ARIO, INSURANCE
COMMISSIONER OF THE
COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

v.

RELiance INSURANCE COMPANY (IN
LIQUIDATION),

Defendant.

No. 269 M.D. 2001

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COMMONWEALTH COURT
OF PA (PHILA)

**IN RE: CONFIRMATION OF ARBITRATION AWARD ENTERED
AGAINST REPUBLIC WESTERN INSURANCE COMPANY**

**APPLICATION FOR RELIEF IN THE NATURE OF A
MOTION TO CONFIRM ARBITRATION AWARD**

Joel S. Ario, Insurance Commissioner of The Commonwealth of Pennsylvania, in his Official Capacity as Statutory Liquidator of Reliance Insurance Company (In Liquidation) (“Reliance”) moves this Court to confirm the Final Award entered by an Arbitration Panel on March 8, 2009 and clarified on April 15, 2009 (“Final Award”). A copy of the Final Award including the clarification is attached as sealed Exhibit “A”.¹

In support of this application, Reliance states:

¹ Pursuant to this Court’s August 7, 2009 Order and Memorandum, all “arbitration information” has been filed under seal or redacted in these pleadings. (*See id.* attached as Exhibit “B.”). However, to the extent necessary to obtain proper judgment for the amount of the Final Award, Reliance respectfully requests an Order be entered reflecting the actual amount.

1. Reliance Insurance Company was an insurance company with several subsidiaries which were merged into Reliance Insurance Company with approval of the Insurance Department of the Commonwealth of Pennsylvania.

2. On October 3, 2001, Reliance Insurance Company and its merged subsidiaries were declared insolvent by an Order of Liquidation (“Liquidation Order”) issued by this Court. By this same Liquidation Order, M. Diane Koken, Insurance Commissioner of the Commonwealth of Pennsylvania, including her successors in office, was appointed by this Court as Statutory Liquidator. In June 2007, Joel S. Ario became Insurance Commissioner and, pursuant to the Liquidation Order, is vested with title to all property, assets, contracts and rights of action of Reliance.

3. Republic Western Insurance Company (“Republic Western”) is an insurance company located in Arizona.

4. Jurisdiction is proper in this Court pursuant to 42 Pa. C. S. §§ 761(a)(2) & (3) and 40 Pa.C.S. §§ 221.4(b) & (d).

TREATIES AND ARBITRATION AGREEMENT

5. In 1997, Republic Western agreed to reinsure Reliance pursuant to the “Non-Obligatory Excess Workers’ Compensation and Employers’ Liability Variable Excess of Loss Reinsurance Agreement.” Reliance and Republic Western memorialized their agreement with two reinsurance placement slips (“Treaty”). The reinsurance covered excess workers’ compensation and employer’s liability business, effective December 1, 1997 through November

30, 1998 and December 1, 1998 to November 30, 1999. (See 1997 and 1998 Reinsurance Placement Slips attached under seal as Exhibits “C” and “D”).²

6. In the ordinary course of business, and following its liquidation, Reliance billed Republic Western for losses as they became due.

7. Republic Western failed to pay Reliance; accordingly, on September 20, 2007, Reliance initiated an arbitration against Republic Western for the overdue balances.

8. Under the terms of the Treaty, Reliance and Republic Western agreed that any disputes between the parties relating to the Treaty would be decided by and through binding arbitration.

9. At the outset of the arbitration, each party chose one arbitrator and the chosen arbitrators selected an umpire; collectively, they comprised the arbitration panel (“the Panel”). All three arbitrators were disinterested and had extensive experience in the reinsurance industry.

10. The parties agreed that the decision of the Panel would be final and binding upon the parties.

² Reliance also executed a draft of the wording of a full reinsurance contract (attached under seal as Exhibit “E”). Although Republic Western never signed that draft wording, there is no dispute that the parties’ agreement is reflected in the reinsurance placement slips, sealed Exhibits “C” and “D”.

ARBITRATION

11. The parties exchanged discovery, including the taking of depositions and the exchange of tens of thousands of pages of documents, and proffered arguments through motion practice and by written submissions to the Panel during the course of the proceeding.

12. The Panel held a nine (9) day hearing on January 26 through 30, 2009 and February 16 through 19, 2009.

13. On March 8, 2009, after consideration of the parties' pre-hearing submissions and exhibits, and all of the documentary evidence, testimony and argument presented by the parties during the hearing, the Panel issued its Final Award.

14. The Final Award provided that Republic Western was required to pay Reliance the sum of [REDACTED],³ representing losses due to Reliance under the Treaty ("Award Amount") within thirty (30) days of the Final Award, or April 7, 2009 ("Payment Date").

15. In addition, the Final Award provided that, as to any Award Amount which remained unpaid after the Payment Date, Republic Western shall pay interest to Reliance at the rate of six percent (6%).

16. On the Payment Date, Republic Western did not pay \$2,687,264.77⁴ of the Award Amount in accordance with the Final Award. Accordingly, under the Final Award,

³ The parties agreed to reduce the amount of the award to [REDACTED] for accounting reasons. However, under the Final Award, interest still applies for any amount unpaid since April 7, 2009.

⁴ Republic Western disclosed in its Petition to Intervene papers that it failed to pay this amount.

Republic Western owes the balance plus [REDACTED] in interest as of March 31, 2010. After March 31, 2010, interest continues to accrue at a rate of [REDACTED] per day. (See Interest Calculation in Accordance with Panel's Final Award, attached under seal as Exhibit "F").

17. On April 15, 2009, the Panel clarified its Final Award by issuing an addendum to its Final Award by stating that the Final Award had no provision for a setoff and the use of setoff to reduce the Final Award was not permitted. (See Exhibit "A" attached under seal).

DEMAND FOR RELIEF

18. WHEREFORE, Reliance requests that this Court confirm the Final Award issued by the Panel in favor of Reliance and against Republic Western, and requests that judgment be entered in the amount of [REDACTED] ([REDACTED] (Award Amount) plus [REDACTED] (Interest) due as of March 31, 2010).

In support of this Application, Reliance submits the accompanying Memorandum of Law.

Respectfully submitted,

Deborah F. Cohen

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Commonwealth of Pennsylvania,
in his official capacity as Statutory Liquidator
of Reliance Insurance Company (In
Liquidation)

Date: March 26, 2010.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOEL S. ARIO, INSURANCE
COMMISSIONER OF THE
COMMONWEALTH OF PENNSYLVANIA,

Plaintiff,

v.

RELIANCE INSURANCE COMPANY (IN
LIQUIDATION),

Defendant.

No. 183 M.D. 2002

2010 MAR 26 P 2:56

RECEIVED AND FILED
COMMONWEALTH COURT
OF PA (PHILA)

**IN RE: CONFIRMATION OF ARBITRATION AWARD ENTERED
AGAINST REPUBLIC WESTERN INSURANCE COMPANY**

**MEMORANDUM OF LAW IN SUPPORT OF APPLICATION FOR RELIEF
IN THE NATURE OF A MOTION TO CONFIRM ARBITRATION AWARD**

I. INTRODUCTION

Joel S. Ario, Insurance Commissioner of the Commonwealth Of Pennsylvania, in his Official Capacity as Statutory Liquidator of Reliance Insurance Company (In Liquidation) ("Reliance") submits this Memorandum of Law in support of his motion to confirm the Final Award issued by the Panel on March 8, 2009, and clarified on April 15, 2009 ("Final Award"; Exhibit "A" attached under seal) against Republic Western Insurance Company ("Republic Western"). As discussed below, this is a valid award issued after a full and fair arbitration proceeding. The parties agreed to, and submitted their dispute to, binding arbitration subject to confirmation by a court of competent jurisdiction. After extensive discovery, nine days of hearings and extensive briefing and arguments by counsel, the Panel issued an award comprised

of damages and interest. This award is valid and enforceable and, therefore, should be confirmed.

Accordingly, Reliance moves this Court for confirmation of the Final Award.

II. MATTER BEFORE THE COURT

The matter before the Court is Reliance's Motion to Confirm Arbitration Award.

Reliance requests that this Court grant the Motion to Confirm.

III. STATEMENT OF ISSUES INVOLVED

The issue involved in this Motion is whether this Court should confirm the Arbitration Award?

Reliance's suggested answer is yes.

IV. STATEMENT OF FACTS

Reliance and Republic Western entered into the "Non-Obligatory Excess Workers' Compensation and Employers' Liability Variable Excess of Loss Reinsurance Agreement," effective December 1, 1997 through November 30, 1998 and December 1, 1998 to November 30, 1999 as memorialized in two Placement Slips ("Treaty"; sealed Exhibits "C" and "D") by which Republic Western agreed to reinsure Reliance in connection with losses incurred by Reliance under certain excess workers compensation insurance policies. On September 20, 2007, Reliance commenced arbitration against Republic Western, seeking recovery for unpaid reinsurance balances on billings that Republic Western failed to pay under the Treaty.

The parties agreed that disputes regarding the Treaty would be decided by arbitration. The decision of the Panel was to be final and binding upon the parties, subject to confirmation by a court of competent jurisdiction. Following initiation of the arbitration, the parties conducted extensive discovery. Nine fact witnesses and two expert witnesses were deposed. Tens of thousands of pages of documents were produced. Extensive motion practice

was undertaken before the Panel, which raised and disposed of multiple discovery and evidentiary issues. Before the arbitration hearing, the parties submitted pre-hearing briefs outlining the cases they would present at the hearing. Nine days of hearings were conducted in January and February of 2009, in Philadelphia, Pennsylvania.

On March 8, 2009, the Panel issued its Final Award. In ¶ 1 of the Final Award, the Panel ordered Republic Western to pay [REDACTED],⁵ representing the then-outstanding losses due to Reliance under the Treaty within thirty (30) days of the Final Award, or April 7, 2009. In ¶ 5 of the Final Award, the Panel ordered Republic Western to pay interest of six percent (6 %) to the extent Republic Western failed to make payment on the date ordered. Republic Western wrongfully withheld \$2,687,264.77 of the Award Amount; accordingly, interest in the amount of [REDACTED] as of March 31, 2010 is due and owing.

Upon learning that Republic Western had failed to make a full and complete payment of the Award Amount, the Panel issued a clarifying addendum, stating that the Final Award had no provision for a setoff and the use of setoff to reduce the Final Award was not permitted. (*See* clarification attached under seal at Exhibit “A”).

⁵ The parties agreed to reduce the amount of the award to [REDACTED] for accounting reasons. However, under the Final Award, interest still applies for any amount unpaid since April 7, 2009.

V. ARGUMENT

A. Jurisdiction

Jurisdiction is proper in this Court pursuant to 42 Pa. C. S. §§ 761(a)(2) & (3) and 40 Pa.C.S. §§ 221.4(b) & (d). Pursuant to the Order of Liquidation dated October 3, 2001, this Court also assumed jurisdiction over the liquidation of Reliance.

B. Standard of Review

“In Pennsylvania, the scope of judicial review of common law arbitration awards is very narrow.” *Duquesne Light Co. v. New Warwick Min. Co.*, 660 A.2d 1341, 1346 (Pa. Super. 1995), *citing Mellon v. Travelers Ins. Co.*, 406 A.2d 759, 761 (Pa. Super. 1979); *see also Brown Associates, Inc. v. Allstar Drywall & Acoustics, Inc.*, 195 F. Supp.2d 681, 684 (E.D. Pa. 2002) (“judicial review of an arbitration award is extremely narrow and severely limited.”). Courts will not disturb an arbitrator’s award unless there is absolutely no basis for the arbitrator’s decision. *Brown*, 195 F. Supp. 2d at 684 (citing *United Transp. Union Local 1589 v. Suburban Transit Corp.*, 51 F.3d 376, 379 (3d Cir. 1995)). Moreover, Pennsylvania courts require parties to “petition to vacate or modify [an] award prior to its confirmation in order to contest its propriety. Once thirty days has passed from the setting of the award, it [becomes] mandatory that the [] court confirm such award upon petition of either party.” *Riley v. Farmers Fire Ins. Co.*, 735 A.2d 124, 130 (Pa. Super. 1999), *citing* 42 Pa.C.S. § 7342(b); *see also* 42 Pa. C.S. § 7313.

C. This Court Should Confirm the Arbitration Award

The arbitration represented a full and fair hearing of both parties' claims that satisfies the standards for confirming arbitration awards. There is thus no valid legal basis which justifies a failure to confirm the Panel's award.⁶

Therefore, this Court should confirm the Panel's award.

VI. **RELIEF SOUGHT**

For all the foregoing reasons, Reliance requests that this Court confirm the Final Award issued by the Panel in favor of Reliance and against Republic Western in the amount of [REDACTED] ([REDACTED] (Award Amount) plus [REDACTED] (Interest) due as of March 31, 2010).

Respectfully submitted,

Deborah F. Cohen

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Date: March 26, 2010

Attorneys for Joel S. Ario,
Insurance Commissioner of the
Commonwealth of Pennsylvania,
in his official capacity as Statutory Liquidator
of Reliance Insurance Company (In
Liquidation)

⁶ On April 8, 2009, Republic Western successfully petitioned this Court for leave to intervene to present an action against Reliance to determine its setoff rights. That action remains pending before this Court, but does not impact or affect Reliance's right to seek confirmation of the Final Award as issued by the Panel and entry of a judgment in accordance with its terms pursuant to this Application for Confirmation.

CERTIFICATE OF SERVICE

I certify that, on this date, I caused a true and correct copy of the foregoing Liquidator's Application for Relief in the Nature of a Motion to Confirm Under Seal and supporting papers to be served via email and U.S. First Class Mail upon the following:

Bruce Friedman, Esquire
Crystal Monahan, Esquire (via email only)
Rubin, Fiorella & Friedman
292 Madison Avenue, 11th Floor
New York, NY 10017

Kassem Lucas

Kassem Lucas

Dated: March 26, 2010