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Friday, April 1, 2016

## Arbitrators' award of attorney's fees thrown out

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The Massachusetts Supreme Judicial Court recently voided an arbitration panel's award of attorney's fees because the terms of the parties' arbitration agreement did not specifically provide that the prevailing party could be awarded fees. *Beacon Towers Condo. Trust v. Alex*, 473 Mass. 472 (2016). The case involved a dispute between a condominium association trust and a unit owner regarding a common expense assessment. As required by the condominium bylaws, the parties submitted their dispute to arbitration and the arbitration panel found that the assessment against the unit owner was improper. In addition to awarding the unit owner the return of the assessment that he had paid under protest, the panel awarded him attorney's fees even though the arbitration agreement did not provide for an award of fees. The

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panel had found that the trust's defenses were meritless and reasoned that American Arbitration Association ("AAA") rule 47(d) (ii), allows for an award of fees where "authorized by law" and awarded fees relying on M.G.L. c. 231 § 6F, which allows for an award of attorney's fees where a party asserts defenses that are "wholly insubstantial, frivolous and not advanced in good faith." The trust filed suit in Massachusetts Superior Court under the Massachusetts Arbitration Act (M.G.L. c. 251 § 1 et seq.) challenging the fee award on the ground that the arbitration panel exceeded its authority. The Superior Court agreed, finding that M.G.L. c. 231 § 6F does not give an arbitrator the authority to award attorney's fees. The unit owner then appealed and the SJC, on its own motion, transferred the case from the Appeals Court.

The SJC held that the arbitration panel's award of attorney's fees exceeded its authority. An arbitrator exceeds his authority "... by awarding relief beyond that to which the parties bound themselves ... or by awarding relief prohibited by law." *Beacon Towers Condo. Trust*, 473 Mass. at 475 (internal quotation omitted). The arbitrator's authority is derived from the Massachusetts Arbitration Act, which has been interpreted by the Court to only allow an award of attorney's fees if the parties' arbitration agreement authorizes it. The Court noted two additional circumstances where a fee award is permitted even though the arbitration agreement does not specifically authorize it: (1) when a party prevails on a statutory claim and that statute provides that the prevailing party may recover attorney's fees; and, (2) as part of discovery sanctions if the arbitration is governed by the AAA rules.

The unit owner advanced two arguments as to why the fee award was justified despite the absence of authorizing language in the parties' agreement. First, the unit

owner argued that the panel's fee award was proper because AAA rule 47(a) allows the arbitration panel to award relief it deems "just and equitable." However, the Court pointed out that rule 47(a) also requires that the relief be within the scope of the parties' arbitration agreement. As conceded by the arbitration panel in its award, nowhere in the parties' agreement to arbitrate was there a provision permitting the award of attorney's fees. The Court further held that to allow an arbitrator to award fees whenever he believed it was "just and equitable" would render superfluous AAA rule 47(d)(ii), which provides that an arbitrator may award fees "if all parties have requested such an award or it is authorized by law or their arbitration agreement." Accordingly, the fee award could not be supported by rule 47(a).

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