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======== Start of Answer #1 (1864 words) ========

PERSUASIVE BRIEF

I. STATEMENT OF FACTS

Riley Instruments, Inc. and LRI, Inc. entered into a contract under which LRI agreed to manufacture and supply computer chips to Riley in accordance with Riley's specifications. Their contract contained arbitration provision, under which the parties agreed to submit their dispute arising under their contract to final and binding arbitration to be conducted under the rules of the Manufacturers Arbitration Association. The provision also provided that the arbitrator shall award a reasonable attorney's fee to the prevailing party in the dispute.

The parties' initially submitted issues were: (1) whether LRI breached its contract and (2) whether LRI intentionally concealed a manufacturing flaw.

However, the arbitrator's Final Decision Award on May 9, 2014 did not reflect the LRI's concealment issue and the damages attributable as well as punitive damages remedy and award of reasonable attorney's fee.

We sent a letter to the Arbitrator Warren on May 27, 2014 notifying him of the omission.

Mark Stilton, an attorney representing LRI, mailed a letter on May 30, 2014 to the Arbitrator Warren objecting our request.

On July 11, 2014, Arbitrator Warren sent us an Amended Final Decision and Award, covering the omitted issue, awarding our fees, and inviting us to file an application for fees.

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LRI has filed a petition in the Superior Court to vacate the Amended Final Decision and Award on July 16, 2014.

II. ARGUMENTS

1. The Arbitrator had power to amend or change the award.

LRI's Point

LRI's argument is based on the ruling of Transport, Inc v. NPC, in which the court held that once the arbitrators have finally decided the submitted issues, they are in common law functus officio, meaning that their authority over those questions is ended.

Our Argument

Comparison with the Transport case

There is clear distinction between our case and Transport case. In Transport, Inc, the parties sought arbitration through three arbitrators and bifurcated their issues of liability and damages. The parties requested the arbitrators to issue first a "partial final award" on the question of liability. After the arbitrators issued a partial final award, which was in favor of Transport, Inc., one of three arbitrators died. The court in *Transport, Inc.* appointed an arbitrator to replace the deceased one and the reconstituted panel decided the issue of damages.

NPC sought to vacate the partial final award by seeking to select a new panel of arbitrators based on their argument that an arbitral decision is not final unless it conclusively decides every point required by and included in the submission of the parties.

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However, the held that because the parties agreed to a bifurcated decision on the issue of liability, the panel, before the death of the third arbitrator, is deemed to have ruled on the first part of the parties' submission. The court held that the original panel was functus officio and the reconstituted panel cannot be ordered to rearbitrate that issue.

There is clear distinction between Transport case and our case, because we are not currently dealing with the bifurcated decisions nor partial final award. We only had one arbitrator initially and that same arbitrator is dealing with the amendment and the court should deny LRI's petition.

Conclusion

Therefore, LRI's argument that the arbitrator had no power to amend or change the award was not a valid argument as they were using a wrong authority.

2. The purported amendment and the request therefor were timely.

LRI's Point

LRI argues that the amendment should be vacated because it was not timely under Columbia Code of Procedure, Section 1284, which requires that any request for a correction be made "not later than 10 days after service of a signed copy of the award on the applicant" and that the requested correction be made "not later than 30 days after service of a signed copy of the award on the applicant."

Our Argument

Section 1284 authorizes an arbitrator, upon written application of a party to the arbitration, to correct the award upon either of the grounds set forth in Section

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1286.6, subdivisions (a) and (c), where there is a miscalculation of amounts, a mistake in the description of a person or property referred to in the award, or where there is a defect in the form of the award that does not affect the merits of the controversy. *Classic Construction*

However, the Amendment of the arbitration award in this case does not fall within these subdivisions. The arbitrator was not correcting a miscalculation or description contained in the prior award or correcting a defect in its form. Rather he was resolving the remainder of the dispute submitted to him. Thus, the time limits specified in Section 1284 do not apply. *Classic Construction*

The arbitrator in this case, in his Amended Final Decision and Award, stated that he "intended, but neglected to state specifically that LRI intentionally concealed from Riley instruments the manufacturing defect and, therefore breached the term in the contract between the parties..." He further stated that he "inadvertently, neglected to make that finding explicit in the original Final Decision and Award and hereby corrects that omission by making it explicit that LRI's concealment was intentional and with a motive to deceive."

Conclusion

The time limits in Section 1284 do not apply in the arbitrator's Amended Final Decision and Award and the court should deny LRI's petition.

3. The Arbitrator did not exceed the scope of power he has by awarding the attorney's fees.

LRI's Point

LRI argues that the arbitrator exceeded his powers by (a) adding a finding, not made in the original award, regarding the alleged liability of LRI for an alleged

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intentional concealment, (b) recharacterizing the amount of the contract damages award, and (c) deciding that Riley Instruments is entitled to attorney's fees and claiming to retain the power to determine the amount.

Our argument

Arbitrator's award did not affect the merits of the controversy.

It is within the powers of the arbitrator to resolve the entire merits of the controversy submitted by the parties. *Monroe*

The parties' arbitration agreement in this case encompassed disputes arising under their contract. The parties disputed over the breach of the contract and the arbitrator's award did no more than resolve that dispute. Under these circumstances, the arbitrator was within his powers in resolving the questions of law presented to him.

Limited scope of judicial review of arbitration awards

An award rendered by an arbitrator pursuant to a contractual agreement to arbitrate is not subject to judicial review except on the grounds set forth in the Columbia Arbitration Act. *Monroe*

Although LRI petitioned to vacate the arbitrator's Amended Final Decision and Award, as Monroe court held, arbitration awards are subject to very narrow judicial review to ensure that an arbitrator's decision is the end of dispute. *Classic Construction*

Therefore, unless the court determines that there is any grounds for vacation, the arbitrator's decision will not vacated.

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Award of Attorney's fees

An award of attorney's fees for the arbitration itself is within the arbitrator's purview...It is the arbitrator, not the trial court, who is best situated to determine the amount of reasonable attorney's fees to be awarded for the conduct of the arbitration proceeding. *Marco*

In our case, the contract between the parties provided that "the arbitrator shall award a reasonable attorney's fee to the prevailing party in the dispute." Therefore, the arbitrator was compelled by the terms of the agreement to award Riley reasonable attorney's fee. The arbitrator stated in his amended decision that "Riley is correct in its assertion that it is entitled to recover a reasonable attorney's fee in accordance with the arbitration provision of the parties' contract..." As discussed above, this correction was based on the arbitrator's random choice but from the provision in the parties' contract.

Section 1286.6(b) of the Columbia Arbitration Act provides an award shall be corrected if "the arbitrators exceeded their powers and the award may be corrected without affecting the merits of the decision.

Because Riley was the prevailing party and the arbitrator had to award the reasonable attorney's fee according to the arbitration provision agreed by the parties. The Arbitrator Warren omitted to award in his original decision and he was compelled to correct this subject to the Section 1286.6(b).

Conclusion

The arbitrator did not exceed his powers in amending the decision and award and the court should deny LRI's petition.

4. The Arbitrator did not commit a grave error of law by awarding punitive

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damages in a contract case.

LRI's Point

LRI argues that the arbitrator committed a grave error of law by awarding punitive damages in a contract because punitive damages do not lie for breach of contract.

Our Argument

Arbitrators may base their decisions upon broad principles of justice and equity, and in doing so may expressly or impliedly reject a claim that a party might successfully have asserted in a judicial action. Moreover, they are not bound to award on principles of dry law, but may decide on principles of equity and good conscience, and make their award according to what is just and good...Thus, it is the general rule that, with narrow exceptions, an arbitrator's decision cannot be reviewed for errors of fact or law. *Monroe*

In *Monroe*, the court recognized the risk that the arbitrator would make a mistake but held that the risk is acceptable because (1) the parties have voluntarily and contractually agreed to bear that risk, and (2) because by enacting the Columbia Arbitration Act, the Legislature has reduced the risk by providing for judicial review in circumstances involving serious problems with the award itself or with the fairness of the arbitration process.

Here, the parties, LRI and Rile, agreed in their arbitration clause that their dispute arising under their contract shall be submitted to final and binding arbitration to be conducted under the rules of the Manufacturers Arbitration Association. By this agreement, the parties assumed the risk of arbitrator's potential mistake and the Legislature provided the provision of judicial review in cases of serious problems with the award or with the fairness of the arbitration

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process.

Despite the arbitrator's mistake based on the error of law, his decision cannot be reviewed for errors of fact or law.

Unless the contract, the submission, or the rules governing the arbitration provide otherwise, an arbitrator's choice of relief awarded to the prevailing party does not exceed his or her powers so long as it bears a rational relationship to the underlying contract and to the breach thereof as interpreted, expressly or impliedly, by the arbitrator. *Monroe*

Additionally, it is apparently proved that LRI intentionally concealed its manufacturing defect from Riley with a motive to deceive. The arbitrator's award of punitive damages did not exceed his powers because his choice bore a rational relationship to the underlying contract and to the breach thereof as interpreted by the arbitrator. The arbitrator stated in his Amended Final Decision and Award that LRI's intentional breach of contract warrants imposition of punitive damages to punish LRI for its unconscionable conduct.

Conclusion

The arbitrator's alleged error of law is an acceptable risk under the parties agreement to submit their dispute to the final and binding arbitration and the court should deny LRI's petition.

Question #1 Final Word Count = 1864

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