

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF NEWBERRY )  
 )  
 A and A Update and Review, Inc. )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Stuart Shough, )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 EIGHTH JUDICIAL CIRCUIT  
 (Non-Jury)

RECEIVED

APR 29 2014

SC Court of Appeals

**ORDER CONFIRMING  
 ARBITRATOR'S AWARD**

Docket No. 2009-CP-36475

JASHE & SOCIETIS  
 CLERK OF COURT

1 AM 10 54

FILED  
 NEWBERRY COUNTY

There are two motions before the Court: one by the Plaintiff to confirm an Arbitration Award and another by the Defendant to vacate, modify or correct the Arbitration Award. Both motions are brought pursuant to the Uniform Arbitration Act (§§15-48-10 to -240 of the South Carolina Code)( The Act).

**FACTS**

Initially, this matter was instituted when the Plaintiff filed its pleadings on November 17, 2009. Later the parties agreed to binding arbitration which became a Court Order filed on March 6, 2012, and under which Robert M. Erwin, Jr. of Greenwood, South Carolina, was appointed arbitrator. A final hearing was held before Mr. Erwin on August 8, 2012, and an Arbitration Order was issued on November 5, 2012. The Defendant made an application to modify the Arbitration Order which resulted in a Modification of Award dated July 30, 2013.

Thereafter, the Plaintiff made an application to modify the Modification of Award. As a result, the arbitrator issued his Second Modification of Award which he mailed to the parties on April 30, 2014, and filed with the Clerk of Court for Newberry County, South Carolina, on May 2, 2014. It is this Second Modification of Award which

the Plaintiff wishes to confirm and which the Defendant wishes to vacate, modify or correct.

### RESOLUTION

As a part of its motion the Plaintiff argues that the Second Modification of Award should be confirmed because the Defendant did not timely file his motion and did not specify any grounds to support it. The Court does not need to address this argument since Plaintiff's counsel had relocated, and the Defendant's motion may have been misplaced.

The second part of the Plaintiff's motion is that there is no basis to vacate, modify or correct the Second Modification of Award. Plaintiff's analysis is correct and its motion shall be granted.

When considering this issue, the Court must comply with §15-48-120 of the Act. Under that section if a party makes an application to confirm an arbitrator award, the Court "shall" confirm that award, unless there are grounds for "vacating (§ 15-48-130) or modifying or correcting (§ 15-48-140) the award." The Plaintiff argues that there are no grounds to vacate, modify or change the Second Modification of Award; the Defendant argues that there are grounds to do so.

Under § 15-48-130, there are five grounds upon which an award may be vacated, four of which deal with impropriety or arbitrariness of the arbitrator or the arbitration proceedings; the fifth ground deals with there being no arbitration agreement, which admittedly does not apply in this case. Under § 15-48-140 there are three grounds upon which an award may be corrected or modified: (1) where there was an evident miscalculation of figures or mistake in describing a person, thing or property in

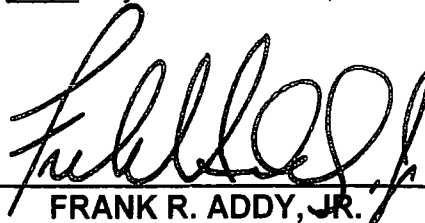
the award, (2) if the award was issued on a matter not submitted or (3) if the award was imperfect in form.

After reviewing the submission presented at the hearing, examining the record and listening to the arguments of counsel, nothing has been presented to support the Defendant's motion under either § 15-48-130 or § 15-48-140. His arguments are basically the same ones made by him before the arbitrator, which were considered and dealt with in both modifications of the first Arbitration Order. The Defendant's grounds for vacation, modification or correction are without merit. The Arbitration Order, the Modification of Award, and the Second Modification of Award were not the result of legal or procedural error. The Defendant's motion shall be denied.

The Defendant has not presented grounds to vacate, modify or correct the award as required by §15-48-120. Therefore, the Second Modification of Award dated April 30, 2014, awarding judgment to the Plaintiff in the modified amount of \$18,138.84 shall be confirmed and enrolled as a judgment of the Court.

#### ORDER

It is therefore, **ORDERED, ADJUDGED AND DECREED**, (1) the Second Modification of Award is hereby confirmed as the Order of this Court, (2) judgment is granted to the Plaintiff in the amount of \$18,138.84, and (3) this judgment shall be enrolled according to law and shall be enforced as any other judgment or decree. **AND IT IS SO ORDERED** this 24<sup>th</sup> day of November, 2014 at Greenwood, S. C.



FRANK R. ADDY, JR.  
PRESIDING JUDGE  
COURT OF COMMON PLEAS  
EIGHTH JUDICIAL CIRCUIT