

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

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SUCCESS VILLAGE APARTMENTS, INC., :
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 Plaintiff, :
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 v. : Civ. No. 3:03CV01337 (AWT)
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 AMALGAMATED LOCAL 376, UNITED :
 AUTOMOBILE, AEROSPACE & :
 AGRICULTURAL IMPLEMENT WORKERS OF :
 AMERICA (UAW) and INTERNATIONAL :
 UNION, UNITED AUTOMOBILE, :
 AEROSPACE & AGRICULTURAL IMPLEMENT :
 WORKERS OF AMERICA (UAW) AFL-CIO, :
 :
 Defendants. :
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RULING ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

Success Village Apartments, Inc. (the "Plaintiff") brings this action seeking to vacate two arbitration awards entered in favor of Amalgamated Local 376, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) and International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) AFL-CIO (collectively, the "Defendants"). Both sides have filed motions for summary judgment, and for the reasons set forth below the Defendants' motion is being granted.

I. Factual Background

The Plaintiff operates a private, resident-owned housing complex located on the Stratford/Bridgeport line. Employees of the Plaintiff are represented by the Defendants for purposes of

collective bargaining. At all relevant times the Plaintiff and the Defendants were parties to a collective bargaining agreement that was effective by its terms for the period from June 1, 1999 through May 31, 2002 ("the Collective Bargaining Agreement").

Article 10 of the Collective Bargaining Agreement sets forth the procedure governing grievances. A grievance is defined as "a difference of opinion between the Co-op and the Union or an employee involving the interpretation or application of the terms of this Agreement." Collective Bargaining Agreement, art. 10, sec. 2. Section 3 of Article 10 provides for the following procedure:

Section 3. All grievances that may arise between the Union and/or an employee and the Co-op shall be processed in the following manner.

Step 1 - The aggrieved employee and the Steward shall discuss the grievance orally with the Manager within ten (10) days after the Union and/or the employee became aware of the circumstances that gave rise to the grievance.

Step 2 - Grievances not settled through discussion at Step 1 will be reduced to writing, indicating the Article and Section of the Agreement alleged to have been violated, and presented to the Manager within five (5) working days after the discussion at Step 1. The Manager will respond to the grievance, in writing, within five (5) working days after receipt of the written grievance.

Step 3 - In the event that the grievance is not settled at Step 2, the grievance will be referred to the Grievance Committee, who with the Local Union President and/or the local Union Business Agent and an International Representative, will take up the matter with the representative designated by the Co-op's Board of Directors within five (5) working days after receipt of the Manager's written response at Step 2. The Co-op will respond, in writing, to the grievance within five (5) working days after the meeting.

Step 4 - In the event that the grievance is not settled at Step 3, the Union may refer the grievance to final and binding arbitration by filing with the Connecticut State Board of Mediation and Arbitration within thirty (30) days after receipt of the Co-op's response at Step 3. The arbitrator(s) shall hear only one grievance at a time. The parties shall share the expenses of the arbitration. The arbitrator(s) shall be confined in the decision to be rendered to the interpretation or application of the terms of this Agreement and shall have no power to add to, subtract from or modify this Agreement. The arbitrators shall not be empowered to grant a remedy which is retroactive more than ten (10) days prior to the meeting at Step 1 above.

Collective Bargaining Agreement, art. 10, sec. 3.

On March 8, 2002, Cecele Johnson, an employee of the Plaintiff employed in the bargaining unit represented by the Defendants, filed a grievance identified as CSBMA Case No. 2002-A-0873. On March 10, 2002, Antonio Teja, Jr., an employee of the Plaintiff employed in the bargaining unit represented by the Defendants, filed a grievance identified as CSBMA Case No. 2002-A-0874. The Plaintiff denied each grievance at Step 2 of the grievance procedure.

The Defendants submitted both disputes to Step 3 of the grievance procedure. No Step 3 meeting was held due to an ongoing disagreement between the parties over how many representatives of the Plaintiff could attend Step 3 meetings. On April 8, 2002, the Defendants submitted both grievances to the Connecticut State Board of Mediation and Arbitration ("the Board") for resolution. The Board appointed alternate panel members to conduct a hearing. The parties mutually agreed that

the issue before the three-member panel was whether the grievances were arbitrable. The Plaintiff argued at the arbitration hearing that the grievances were not arbitrable because no Step 3 meeting had been held. By a vote of two to one, the panel ruled that the grievances were arbitrable. The Plaintiff filed this action, challenging the panel's decision on arbitrability.

II. Legal Standard

In a motion for summary judgment, the burden is on the moving party to establish that there are no genuine issues of material fact in dispute and that it is entitled to judgment as a matter of law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986); White v. ABCO Eng'g Corp., 221 F.3d 293, 300 (2d Cir. 2000). The burden of showing that no genuine factual dispute exists rests upon the moving party. Carlton v. Mystic Transp., Inc., 202 F.3d 129, 133 (2d Cir. 2000) (citing Gallo v. Prudential Residential Servs., Ltd. P'ship, 22 F.3d 1219, 1223 (2d Cir. 1994)). Once the moving party has met its burden, in order to defeat the motion the nonmoving party must "set forth specific facts showing that there is a genuine issue for trial," Anderson, 477 U.S. at 255, and present such evidence as would allow a jury to find in his favor. Graham v. Long Island R.R., 230 F.3d 34, 38 (2d Cir. 2000).

In assessing the record, the trial court must resolve all

ambiguities and draw all inferences in favor of the party against whom summary judgment is sought. Anderson, 477 U.S. at 255; Graham, 230 F.3d at 38. "This remedy that precludes a trial is properly granted only when no rational finder of fact could find in favor of the non-moving party." Carlton, 202 F.3d at 134. "When reasonable persons, applying the proper legal standards, could differ in their responses to the question" raised on the basis of the evidence presented, the question must be left to the jury. Sologub v. City of New York, 202 F.3d 175, 178 (2d Cir. 2000).

III. Discussion

The question presented here is whether the grievance is arbitrable despite the fact that one of the steps in the grievance procedure was not followed. Thus, this dispute is over a procedural issue. "Once it is determined . . . that the parties are obligated to submit the subject matter of a dispute to arbitration, 'procedural' questions which grow out of the dispute and bear on its final disposition should be left to the arbitrator." John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543, 557 (1964).

The Plaintiff argues that the arbitration awards should be set aside because the arbitrators exceeded their authority.

[T]he scope of authority of arbitrators generally depends on the intention of the parties to an arbitration, and is determined by the agreement or submission. Such an agreement or submission serves not

only to define, but to circumscribe, the authority of arbitrators. If it is clear that the arbitrator has exceeded his authority, the award cannot stand.

Local 1199, Drug, Hosp. and Health Care Employees Union, RWDSU,

AFL-CIO v. Brooks Drug Co., 956 F.2d 22, 25 (2d Cir. 1992)

(internal quotation marks and citations omitted). However, a

“high degree of deference” is afforded to arbitrators. Wackenhut

Corp. v. Amalgamated Local 515 and Int’l Union, United Plant

Guard Workers of Am., 126 F.3d 29, 31 (2d Cir. 1997). “The

principal question for the reviewing court is whether the

arbitrator’s award draws its essence from the collective

bargaining agreement, since the arbitrator is not free merely to

dispense his own brand of industrial justice.” Id. (citation and

internal quotation marks omitted). “Under this standard, we have

said that an arbitration award must be upheld when the arbitrator

offer[s] even a barely colorable justification for the outcome

reached.” Id. (citation and internal quotation marks omitted).

“The contractual theory of arbitration . . . requires a reviewing

court to affirm an award it views as incorrect—even very

incorrect—so long as the decision is plausibly grounded in the

parties’ agreement.” Id.

A review of the rulings of the Board shows that the awards

“drew their essence” from the Collective Bargaining Agreement.

The Plaintiff argued before the panel that the grievances were

not arbitrable because there was no appeal of the Step 2 denial

of the grievance. The Plaintiff contended that to appeal the Step 2 denial, the Defendants had to request and attend a face-to-face Step 3 meeting because such a meeting is a prerequisite for submission of a matter to arbitration. The Plaintiff also argued that the Defendants' justification for not requesting or attending a face-to-face Step 3 meeting did not excuse their failure to follow all the steps of the grievance procedure. The Defendants argued before the panel that they appealed the Plaintiff's Step 2 denial of the grievances and that their failure to request and attend a face-to-face Step 3 meeting was excusable in view of the ongoing disagreement between the parties over how many representatives the Plaintiff was entitled to have at Step 3 meetings.

The panel found that the Defendants had appealed the Step 2 denials of the grievances. The panel concluded that the evidence showed unequivocally that there had been an appeal because that fact was clearly stated on the face of the grievance form introduced into evidence at the arbitration hearing. The Board's ruling then states the following:

Our second premise is that a fair reading of the language in the CBA fails to convince us that the same expressly mandates a face to face Third Step meeting as a prerequisite to submit a grievance to arbitration. Therefore, the Panel is not at liberty to impose or infer such a requirement and dismiss the grievance due to a failure to hold such a meeting. . . . Practically speaking, we discern that the primary purpose for holding a third step meeting would be to express Local 376's disagreement with the Step 2 denial and to indicate that

they are appealing the same to arbitration. That expression of disagreement, is what precludes a waiver of that right.

Plaintiff's Rule 56(a)(1) Statement (Doc. No. 12) Ex. B ("Johnson Ruling") at 6 (footnotes omitted); Plaintiff's Rule 56(a)(1) Statement (Doc. No. 12) Ex. C ("Teja Ruling") at 6 (footnotes omitted). The panel also noted that the Collective Bargaining Agreement required the Defendants to "take up the matter with the representative designated by" the Plaintiff and that in this case that meeting would have been with the property manager, who was the person who wrote the Step 2 decision. Johnson Ruling at 6, fn.8; Teja Ruling at 6, fn.8.

The last sentence of Step 3 contemplates that the Plaintiff will respond to the grievance within five working days "after the meeting." Thus, although the first sentence of Step 3 may not expressly state the fact, Step 3 contemplates a meeting. Nonetheless, the court concludes that the panel provided a reasonable justification for the Board's ruling, one which more than satisfied the requirement of at least a "barely colorable justification." Wackenhut Corp., 126 F.3d at 31.

The panel correctly observed that the primary purpose for holding a face-to-face Step 3 meeting, i.e., to express disagreement with the Step 2 denial and put the employer on notice that the matter would be taken to arbitration, had been served in this case because the Defendants' expression of

disagreement was contained in joint exhibit 2, which was introduced into evidence at the arbitration hearing, and this document put the Plaintiff on notice of the disagreement.

At the time the panel reached its conclusion it had to consider the fact that no Step 3 meeting had been held due to the ongoing disagreement over how many representatives the Plaintiff was entitled to have a Step 3 meeting and, thus, the Plaintiff was in a position to thwart the ability of the Defendants to have a Step 3 meeting and proceed to arbitration on a timely basis notwithstanding the fact that Step 3 has specific deadlines of five working days for holding the Step 3 meeting and for the response thereafter by the Plaintiff.

The Board's ruling reflects the fact that the Step 2 answers were dated March 20, 2002, and the panel took notice that each case file reflected that the case was submitted to the Board on April 8, 2002. Thus, both of the five working day periods provided for in Step 3 had run on the date the case was submitted to the Board.

The Board's ruling in each case also noted in footnote 8 that "that meeting required Local 376 to meet with the Property Manager. . . . In this case, the Property Manager was the one who wrote the Step 2 decision." Johnson Ruling at 6, fn.8; Teju Ruling at 6, fn.8. Thus, although the panel's conclusion to the effect that the language requiring that the matter be "taken up

with" the representative of the Plaintiff did not require a meeting appears to be incorrect, the arbitrators were correct in noting that, in this case, the meeting that was required was a meeting with the same individual who wrote the Step 2 decision.

Under these circumstances, the arbitrators' conclusion that each case was arbitrable because in a case where the right to arbitrate was not waived by the Defendants, where the Defendants would never have been able to literally comply with the Step 3 procedure as written while the dispute over how many representatives the Plaintiff was entitled to have at Step 3 meetings was ongoing, and where the Defendants had substantially complied with and satisfied the purposes of the grievance procedure, is plausibly grounded in the Collective Bargaining Agreement.

The Plaintiff also argues that the awards should be vacated because the panel acted in manifest disregard of the law. "A court will vacate an arbitral award on this ground only if 'a reviewing court . . . find[s] both that (1) the arbitrators knew of a governing legal principle yet refused to apply it or ignored it altogether, and (2) the law ignored by the arbitrators was well defined, explicit, and clearly applicable to the case.'" Banco de Seguros del Estado v. Mutual Marine Office, Inc., 344 F.3d 255, 263 (2d Cir. 2003) (citing Greenberg v. Bear, Stearns & Co., 220 F.3d 22, 28 (2d Cir. 2000)). The Plaintiff argues that

the panel disregarded the legal principle that a contract must be construed to effectuate the intent of the parties as expressed in the language used so as to give reasonable effect to each of its provisions. The Plaintiff emphasizes that contractual terms are to be given their ordinary meaning when the language is clear and unambiguous. However, the Plaintiff does not address in its analysis the fact that under its proposed construction of the requirements of the Collective Bargaining Agreement, the Plaintiff could thwart the Defendants' ability to have any matter arbitrated within the time frame that was clearly contemplated by the parties at the time they entered into the Collective Bargaining Agreement simply by refusing to resolve the ongoing dispute over how many representatives it was entitled to have at a Step 3 meeting, or by otherwise failing to make possible a Step 3 meeting. The decision by the panel gives effect to the intent of the parties, expressed in the language used by them in the Collective Bargaining Agreement, that the Defendants not be delayed in proceeding to arbitration beyond a certain time period. At the same time, the analysis in the Board's ruling puts weight on the intent of the parties with respect to the purpose to be served by the requirement that there be a Step 3 meeting and concludes that here the purpose to be served by the requirement of the meeting had been served. Thus, the court finds unpersuasive the Plaintiff's argument that the panel acted

in manifest disregard of the law.

The Plaintiff also argues that the panel's award offends well-established public policy favoring freedom of contract and efficient resolution of disputes. Here, the Plaintiff simply asks the court to substitute its interpretation of the contract for that of the arbitrators, which is not the role of the court.

IV. Conclusion

For the reasons set forth above, the Defendants' Motion for Summary Judgment (Doc. No. 8) is hereby GRANTED, and Plaintiff's Motion for Summary Judgment (Doc. No. 11) is hereby DENIED.

Because the Plaintiff has filed a motion to stay the case which is being granted, the Clerk shall not enter a judgment in favor of the Defendants until September 25, 2006.

It is so ordered.

Dated this 1st day of September, 2006, at Hartford,
Connecticut.

/s/Alvin W. Thompson

Alvin W. Thompson
United States District Judge