

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

August 1, 2000

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**No. 99-1033**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**LAKE STATES, INC., F/K/A LAKE  
STATES BASEMENT SYSTEMS, INC.,**

**PLAINTIFF-RESPONDENT,**

**V.**

**HARJEET SINGH WALIA,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: STANLEY A. MILLER, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. Harjeet Singh Walia appeals from a judgment affirming an arbitrator's award in favor of Lake States, Inc. for the sum of \$12,431.93. Walia contends that the judgment must be reversed because the

arbitrator committed misconduct during the arbitration when he refused to decide Walia's counterclaim. Because Walia failed to meet his burden of proof that the arbitrator was guilty of misconduct, we affirm.

## BACKGROUND

¶2 The facts essential to disposition of this appeal are not in dispute. Lake States and Walia entered into a building contract. Lake States agreed to build an addition to Walia's house for \$30,300. The contract contained a provision that all disputes were to be resolved by arbitration under the auspices of the American Arbitration Association. During the construction a dispute arose, and Walia refused to pay Lake States. Lake States commenced an action to collect under the terms of the contract. Walia answered, denying any breach of contract. He also counterclaimed, asserting that Lake States breached the contract by failing to perform the work on time and by performing defective work. Lake States moved for arbitration pursuant to the contract. On November 13, 1997, the trial court ordered that both Lake States's claim and Walia's counterclaim be submitted to arbitration. The matter was assigned to the American Arbitration Association (AAA).

¶3 On February 3, 1998, AAA sent a letter to both parties outlining the rules of the process and the fees required to be paid for each claim. Among other provisions, the rules provide that a party filing an answer containing a counterclaim must pay a filing fee of \$750. The rules also provided for an exchange of all exhibits intended to be submitted at any hearing, and that no new claim could be made once the time for filing the original answer to the demand for arbitration had expired. Walia's attorney answered and filed a counterclaim, but he did not pay the filing fee because his client was out of the country. When

Walia returned on June 1, 1998, he objected to paying the filing fee and instead had his counsel move for reconsideration of the order for arbitration. The motion for reconsideration was denied. On June 14, 1998, Walia was advised through his counsel, that the counterclaim filing fee had still not been paid and that if it was not paid by July 24, 1998, the arbitrator would have the discretion, pursuant to the rules, to suspend or terminate the proceedings. Walia subsequently paid the filing fees. The checks were dated July 14, 1998, but were not cashed until July 28, 1998.

¶4 The arbitration hearing occurred on July 29, 1998. On August 5, 1998, the arbitrator awarded Lake States \$12,431.93.<sup>1</sup> The arbitrator did not render a decision on the counterclaim. Walia moved to reconsider the award, but the motion was denied.

¶5 Lake States moved for judgment on the arbitrator's award. The trial court granted the motion. In its order, the trial court held: "The arbitration award, hereby confirmed in all respects, resolves all of plaintiff's claims and defendant's counterclaims ...." It further held that Walia "has not made the required showing of misconduct on the part of the arbitrator or other conduct of facts necessary for

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<sup>1</sup> The parties dispute whether Walia was permitted to submit evidence on the counterclaim. Walia contends that he was prohibited from doing so, and Lake States argues that he was allowed to present such evidence, admit exhibits and call witnesses. We need not resolve this dispute because our decision is based on other grounds. See *Gross v. Hoffman*, 227 Wis. 2d 296, 300, 277 N.W.2d 663 (1938) (if a decision on one point disposes of an appeal, the appellate court will not decide the other issues raised).

the vacation or modification of the arbitration award pursuant to Sec. 788.10 or 788.11.”<sup>2</sup> Walia now appeals.

## ANALYSIS

¶6 We review an arbitrator’s award independently without deference to the trial court’s decision. *See City of Madison v. Local 311, Int’l Ass’n of*

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<sup>2</sup> WISCONSIN STAT. § 788.10 (1997-98) provides:

**Vacation of award, rehearing by arbitrators.** (1) In either of the following cases the court in and for the county wherein the award was made must make an order vacating the award upon the application of any party to the arbitration:

(a) Where the award was procured by corruption, fraud or undue means;

(b) Where there was evident partiality or corruption on the part of the arbitrators, or either of them;

(c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced;

(d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

(2) Where an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

WIS. STAT. § 788.11 provides:

**Modification of award.** (1) In either of the following cases the court in and for the county wherein the award was made must make an order modifying or correcting the award upon the application of any party to the arbitration:

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the award;

(b) Where the arbitrators have awarded upon a matter not submitted to them unless it is a matter not affecting the merits of the decision upon the matters submitted;

(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

(2) The order must modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

*Firefighters, AFL-CIO*, 133 Wis. 2d 186, 190, 394 N.W.2d 766 (Ct. App. 1986). We shall not overturn an arbitrator's decision "for mere errors of law or fact, but only when 'perverse misconstruction or positive misconduct [is] plainly established, or if there is a manifest disregard of the law, or if the award itself is illegal or violates strong public policy.'" *City of Madison v. Madison Prof'l Police Officers Ass'n*, 144 Wis. 2d 576, 586, 425 N.W.2d 8 (1988) (citation omitted). Arbitration awards are presumed to be valid and the invalidity of such an award must be demonstrated by clear and convincing evidence. *See Kemp v. Fisher*, 89 Wis. 2d 94, 100, 277 N.W.2d 859 (1979). For reasons which we shall set forth, Walia has not met his burden to warrant overturning the arbitrator's decision and award.

¶7 Walia contends that the arbitrator's refusal to allow him to present evidence relating to his alleged counterclaim and to render an award resolving the issues presented warrants vacatur. *See* WIS. STAT. §§ 788.10(1)(c) & (d). After reading the record, we must reject his claim. It is uncontroverted that Walia was late in paying his fee for the counterclaim. Nor is there any dispute that he failed to timely submit any documents he intended to use at the hearing. The record reflects that Walia did not want to submit to the arbitration, nor did he want to pay the fees associated with it. He submitted payment only after he was warned that his claim would not be considered if he refused to comply with the filing fee requirements. Unfortunately, his submission came too late.

¶8 Although the record confirms that AAA received Walia's payment the day before the arbitration, the timing was insufficient to communicate the payment to the arbitrator. The rules require payment by a certain date, and Walia

failed to comply with those rules. Under these circumstances, we cannot conclude that the arbitrator engaged in misconduct.<sup>3</sup>

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

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<sup>3</sup> The unresolved question remains as to what happens next. The record reflects that subsequent to the arbitration, AAA acknowledged that it received Walia's payment on July 28 and the check was cashed. AAA suggested that Walia re-file his claim for arbitration on his counterclaim and that these fees could be applied toward that. Walia asserts that this is the incorrect procedure, that this case should be resolved with one judgment, rather than two. Unfortunately, Walia prevented that from occurring by delaying payment and failing to conform with the rules. With our affirmance of the judgment, it appears that Walia has two choices: (1) re-file his counterclaim as AAA suggested; or (2) seek a refund of the filing fee.



