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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

THE VANDENBURG ORGANIZATION, INC.)
d/b/a TXO REALTY PARTNERS, a Texas)
corporation; and WAYNE VANDENBURG,)
an individual.)

Plaintiffs,

vs.

No. 01 L-006366

S. THOMAS MITCHELL, an individual; and)
MARYANNE MITCHELL, an individual.)
Defendants.)

ORDER AND MEMORANDUM OPINION

This matter came before the Court on the Mitchell's motion to confirm arbitration award and Counter-Plaintiffs' and Third Party Defendants' motion to vacate the arbitration award. The Court having considered all the written submissions and oral argument hereby finds as follows:

ANALYSIS

S. Thomas Mitchell and Maryanne Mitchell move for an order confirming an arbitration award made on June 26, 2003. Counter-Plaintiffs and Third Party Defendants argue that the arbitration order should not be confirmed and submit a memorandum in support of a motion to vacate the award. Counter-Plaintiffs and Third Party Defendants argue that the Arbitrator exceeded his authority and pursuant to 9 U.S.C. 10(a)(4) the award should be vacated. Specifically, these parties argue that the Arbitrator disregarded the Arbitration Agreement by entering a joint and several award and adding an acceleration clause along with an award of attorneys' fees. The Mitchell's argue that the Arbitrator's award is based upon his interpretation of the Agreement and the arguments presented at the arbitration. The Mitchell's argue that this Court should not vacate the award because there has not been a showing that the Arbitrator exceeded his authority with the entry of the award.

This Court finds that the Arbitrator's award should be confirmed because the plain language of the "Confidential Final Award" states that he relied on "the terms of the Arbitration Agreement and the powers vested in the Arbitrator under the JAMS Streamlined Arbitration Rules." (Final Award at 4.) The decision to enter a joint and several award, include an acceleration clause and award attorneys' fees was within the power granted to the Arbitrator and in fact requests for joint and several liability as well as an acceleration clause were included in the papers filed before the Arbitrator. The Order states that the Arbitrator reviewed the Parties

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briefs, documents admitted at the June 12, 2003 Arbitration in Dallas, Texas, heard the testimony of the Mitchell's and oral argument from Counsel for each side." (Final Award at 1). The Court finds that Counter-Plaintiffs and Third-Party Plaintiffs have not demonstrated that the award should be vacated. The Arbitrator analyzed the Agreement and the circumstances surrounding the Arbitration and came to a decision based on this analysis. Whether or not the award for joint and several liability, attorneys fees and the addition of the acceleration clause was permitted under applicable law is "irrelevant" to the outcome of these motions. Eljer Manufacturing Inc. v. Kowin Development Corp. 14 F.3d 1250 (7th Cir. 1994), see also, Flender Corp. v. Techna-Qump Co. 953 F.2d 273 (7th Cir. 1992) (stating: "Because the arbitrator's award reflects the interpretation of the contract, our review is at an end."), and Hill v. Norfolk and Western Railway Co., 7th Cir. 1987). Rather, the question is whether the Arbitrator exceeded his authority. As stated, this Court does not believe he did so in this case. Accordingly, the motion to affirm the arbitration award will be granted and the motion to vacate the award will be denied.

ORDER

WHEREFORE, for all the reasons stated,

- (1) Mitchell's motion to confirm the arbitration award is hereby granted;
- (2) Counter-Plaintiffs' and Third Party Defendants' motion to vacate the arbitration award is hereby denied.

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Allen S. Goldberg
 Hon. Allen S. Goldberg

ENTERED

OCT 24 2003

JUDGE A. GOLDBERG-1595



O'Hagen, Smith & Amundsen
 150 N. Michigan Ave.
 Chicago, IL 60601

Clerk's Office