Chapter 9 UNIFORM ARBITRATION ACT

Sec.

§ 7-901. Validity of arbitration agreement.

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy

thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. This act does not apply to arbitration agreements between employers and employees or between their respective representatives (unless otherwise provided in the agreement).

History.

I.C.,*§ 7-901*, as added by 1975, ch. 117, § 2, p. 240.

STATUTORY NOTES

Prior Laws.

Former chapter 9 which comprised C.C.P. 1881,*§§ 875-884*; R.S., R.C., & C.L.,*§§ 5260-5269*; C.S.,*§§ 7428-7437*; I.C.A.,*§§ 13-901* — 13-910, was repealed by S.L. 1975, ch. 117, § 1.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

The words "this act" refer to S.L. 1975, ch. 117, § 2, compiled as*§§ 7-901* to 7-922.

CASE NOTES

Agreement Enforced.

Because a dispute over the amount an insurer was obliged to pay fell within the scope of an arbitration clause in an insurance policy which called for an arbitrator to decide whether medical expenses were reasonable and necessary, the parties had agreed to arbitrate, and the insurer's motion to

compel arbitration should have been granted. Mason v. State Farm Mut. Auto. Ins. Co., 145 Idaho 197, 177 P.3d 944 (2007).

Application of Chapter.

Where the record contained no showing that the arbitration was intended to, or did in fact, involve spiritual matters rather than secular disputes concerning the farm lease and other commercial arrangements, the mere fact that the arbitrators were members of the designated church did not, without more, place the arbitration proceedings beyond the broad subject matter scope of this chapter; thus, the arbitrators' decision was entitled to court confirmation under*§ 7-911*. Orr v. Orr, 108 Idaho 874, 702 P.2d 912 (Ct. App. 1985). •Title 7»«Ch. 9»•§ 7-901»

§ 7-901. Validity of arbitration agreement.

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. This act does not apply to arbitration agreements between employers and employees or between their respective representatives (unless otherwise provided in the agreement).

History.

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STATUTORY NOTES

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Because a dispute over the amount an insurer was obliged to pay fell within the scope of an arbitration clause in an insurance policy which called for an arbitrator to decide whether medical expenses were reasonable and necessary, the parties had agreed to arbitrate, and the insurer’s motion to compel arbitration should have been granted. Mason v. State Farm Mut. Auto. Ins. Co., 145 Idaho 197, 177 P.3d 944 (2007).

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Arbitration agreement in insured’s short-term health insurance policy was not unenforceable as unconscionable because there was no showing that the insured had limited ability to investigate other health insurance contracts in order to avoid those with arbitration clauses; the insured had purchased a similar contract in the past and, therefore, could not claim lack of notice of the policy’s arbitration provision; the cost of arbitrating was not unreasonable given the insured’s potential recovery because by right she could have recovered much of her costs if she prevailed in arbitration. Lovey v. Regence Blueshield of Idaho, 139 Idaho 37, 72 P.3d 877 (2003).

An agreement to arbitrate was unenforceable where large arbitration costs precluded the insured from effectively vindicating his federal statutory rights in the arbitral forum; the arbitration provision, which required each party to bear the cost of the arbitrator, plus the costs of witnesses and attorney fees, was unconscionable based upon the relatively small amount claimed under the policy by the insured. Murphy v. Mid-West Nat'l Life Ins. Co., 139 Idaho 330, 78 P.3d 766 (2003).

Review by a district court of an arbitration award is restricted to a determination of whether any grounds for relief stated in this chapter exists. Reece v. U. S. Bancorp Piper Jaffray, Inc., 139 Idaho 487, 80 P.3d 1088 (2003).

Idaho Uniform Arbitration Act,*§ 7-901* et seq., rather than the Federal Arbitration Act (FAA), 9 U.S.C.S. § 1 et seq., governed the parties' asset purchase agreement and employment agreements in arbitration proceedings pursuant to the clear language in the agreements stating that the agreement shall be construed in accordance with and governed for all purposes by the laws of the state of Idaho applicable to contracts executed and wholly-performed within the state. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005).

Arbitration panel did not have authority to award attorney fees pursuant to American Arbitration Association (AAA) rules incorporated into an asset purchase agreement and Idaho statutory law because the agreement clearly stated that AAA rules governed procedural rather than substantive issues. Idaho law, which included the Idaho Uniform Arbitration Act,*§ 7-901* et seq., applied to interpretation of the parties' contract terms under the agreement and the parties contracted for a zero dollar amount or claim with respect to an award of attorney's fees. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005).

Although time limitations are imposed for vacating, modifying, or correcting an award, no limitations exist in the Idaho Uniform Arbitration Act,*§ 7-901* et seq., which restrict the time as to when an application for confirmation of an arbitration award may be filed. Once a court enters an order confirming, modifying or correcting an award, a judgment or decree shall be entered and enforced as any other judgment. S.D. Sanders, Inc. v. Hazard (In re Hazard), 543 B.R. 650 (Bankr. D. Idaho 2015).

Attorney Fees.

Claims Against Counties.

Attorney fees were not awarded where the party did little more than ask the appellate court to re-evaluate the well-reasoned opinion of the district court, arguing that the Idaho Uniform Arbitration Act (UAA),*§ 7-901* et seq., did not apply to his employment agreement. That argument ignored the language of*§ 7-901* that the UAA applied to employment contracts where the parties had so agreed and the parties had not so agreed in the case at bar. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005). Claims Against Counties.

The legislature, in passing the Uniform Arbitration Act, did not exempt governmental entities from its operation; thus, it appears that in Idaho there exists no statutory prohibition against a county's submission of a claim to arbitration but, rather, a strong public policy favors arbitration of disputes. Bingham County Comm'n v. Interstate Elec. Co., 105 Idaho 36, 665 P.2d 1046 (1983).

The arbitration power of a county does not conflict with the right of a taxpayer to appeal claims paid by a county, because a taxpayer has that right only if a claim is allowed. Bingham County Comm'n v. Interstate Elec. Co., 105 Idaho 36, 665 P.2d 1046 (1983).

A board of commissioners is forbidden to pay a claim asserted against it until certain procedures are followed; these procedures merely require a claim to be submitted to the commission before an aggrieved party can take further action and there is no reason why an aggrieved party cannot then submit his claim to arbitration rather than commencing a district court action. Bingham County Comm'n v. Interstate Elec. Co., 105 Idaho 36, 665 P.2d 1046 (1983).

Jurisdiction.

In action to enforce an arbitration agreement, district court's decision to decline jurisdiction on the ground that another action was pending in California was reasonable where none of the parties resided in Idaho and having a hand in the application of Idaho laws applicable to the arbitration was a negligible consideration for the court. Diet Ctr., Inc. v. Basford, 124 Idaho 20, 855 P.2d 481 (Ct. App. 1993).

Parties.

Compelling a nonparty to a contract containing an arbitration clause to submit to arbitration because the nonparty is an agent of one of the parties to the contract would be inconsistent with this section. Clearwater REI, LLC v. Boling, 155 Idaho 954, 318 P.3d 944 (2014).

Cited

Loomis, Inc. v. Cudahy, 104 Idaho 106, 656 P.2d 1359 (1982); Wells v. Gootrad, 112 Idaho 912, 736 P.2d 1366 (Ct. App. 1987); Hughes v. Hughes, 123 Idaho 711, 851 P.2d 1007 (Ct. App. 1993); Western Indus. & Envtl. Servs., Inc. v. Kaldveer Assocs., 126 Idaho 541, 887 P.2d 1048 (1994); Chicoine v. Bignall, 127 Idaho 225, 899 P.2d 438 (1995); Gumprecht v. Doyle, 128 Idaho 242, 912 P.2d 610 (1995).

RESEARCH REFERENCES

Am. Jur. 2d.

C.J.S.

ALR.

Appealability of judgment confirming or setting aside arbitration award. 7 A.L.R.3d 608.

Availability and scope of declaratory judgment actions in determining rights of parties, or powers and exercise thereof by arbitrators, under arbitration agreements. 12 A.L.R.3d 854. Validity and effect, and remedy in respect, of contractual stipulation to submit disputes to arbitration in another jurisdiction. 12 A.L.R.3d 892.

Validity and construction of provisions for arbitration of disputes as to alimony or support payments, or child visitation or custody matters. 38 A.L.R.5th 69.

Municipal corporation’s power to submit to arbitration. 20 A.L.R.3d 569.

Validity and enforceability of provision for binding arbitration, and waiver thereof. 24 A.L.R.3d 1325.

Delay in asserting contractual right to arbitration as precluding enforcement thereof. 25 A.L.R.3d 1171.

Waiver, or estoppel to assert, substantive right or right to arbitrate as question for court or arbitrator. 26 A.L.R.3d 604.

Breach or repudiation of contract as affecting right to enforce arbitration clause therein. 32 A.L.R.3d 377.

Participation in arbitration proceedings as waiver of objections to arbitrability. 33 A.L.R.3d 1242.

Comment note on determination or validity of arbitration award under requirement that arbitrators shall pass on all matters submitted. 36 A.L.R.3d 649.

Power of arbitrator to correct, or power of court to correct or resubmit, nonlabor award because of incompleteness or failure to pass on all matters submitted. 36 A.L.R.3d 939.

Comment note on power of court to resubmit matter to arbitrators for correction or clarification, because of ambiguity or error in, or omission from, arbitration award. 37 A.L.R.3d 200.

Setting aside arbitration award on ground of interest or bias of arbitrators. 56 A.L.R.3d 697.

Construction and defect of contractual or statutory provisions fixing time within which arbitration award must be made. 56 A.L.R.3d 815.

Liability of parties to arbitration for costs, fees, and expenses. 57 A.L.R.3d 633.

State’s court’s power to consolidate arbitration proceedings. 64 A.L.R.3d 528.

Filing of mechanics’ lien or proceeding for its enforcement as affecting right to arbitration. 73 A.L.R.3d 1066.

Refusal of arbitrators to receive evidence, or to permit briefs or arguments, on particular issues as grounds for relief from award. 75 A.L.R.3d 132.

Admissibility of affidavit or testimony of arbitrator to impeach or explain award. 80 A.L.R.3d 155.

Modern status of rules respecting concurrence of all arbitrators as condition of binding award under private agreement not specifying unanimity. 83 A.L.R.3d 996.

Arbitrator’s power to award putative damages. 83 A.L.R.3d 1037.

Laches or statute of limitations as bar to arbitration under agreement. 94 A.L.R.3d 533.

Appealability of state court’s order or decree compelling or refusing to compel

arbitration. 6 A.L.R.4th 652.

Claim of fraud in inducement of contract as subject to compulsory arbitration clause contain in contract. 11 A.L.R.4th 774.

Arbitration of medical malpractice claims. 24 A.L.R.5th 1.

Validity and effect under state law of arbitration agreement provision for alternative method of appointment of arbitrator where one party fails or refuses to follow appointment procedure specified in agreement. 75 A.L.R.5th 595. Enforcement of arbitration agreement contained in construction contract by or against nonsignatory. 100 A.L.R.5th 481.

Validity and effect under Federal Arbitration Act (9 U.S.C.A. §§ 1 et seq.) of arbitration agreement provision for alternative method of appointment of arbitrator where one party fails or refuses to follow appointment procedure specified in agreement. 159 A.L.R. Fed. 1.

§ 7-902. Proceedings to compel or stay arbitration.

a. On application of a party showing an agreement described in section 7-901, Idaho Code, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue so raised and shall order arbitration if found for the moving party, otherwise, the application shall be denied.
b. On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. Such an issue, when in substantial and bona fide dispute, shall be forthwith and summarily tried and the stay ordered if found for the moving party. If found for the opposing party, the court shall order the parties to proceed to arbitration.
c. If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under subdivision (a) of this section, the application shall be made therein. Otherwise and subject to section 7-918, Idaho Code, the application may be made in any court of competent jurisdiction.
d. Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay.

e. An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown.

History.

I.C.,*§ 7-902*, as added by 1975, ch. 117, § 2, p. 240.

CASE NOTES

Access to Courts.

Application of the Uniform Arbitration Act did not violate plaintiff's right of access to the courts by precluding a meaningful review of the arbitrators' decision, as the plaintiff challenged the validity of the clause in her insurance contract that permitted the insurer to require binding arbitration by opposing its motion in district court to compel arbitration, but failed to preserve this option. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Arbitrability.

The question of arbitrability is a question of law properly for determination by the court. A court reviewing an arbitration clause will order arbitration unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts are to be resolved in favor of coverage. Storey Constr., Inc. v. Hanks, 148 Idaho 401, 224 P.3d 468 (2009).

Due Process.

Lack of a record and the arbitrators' failure to prepare written findings of fact and conclusions of law in arbitration under insurance contract did not deny plaintiff due process. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Judicial Review.

Where an examination of the record of the district court's hearing, at which the court found that a valid arbitration agreement existed, did not show that the court unduly restricted the appellant's right to present contrary evidence, nor that the court's finding of a valid agreement to arbitrate was clearly erroneous, the supreme court would not disturb the district court's finding. Loomis, Inc. v. Cudahy, 104 Idaho 106, 656 P.2d 1359 (1982).

An order granting a motion to stay arbitration is appealable, as a matter of right, under Idaho App. R. 11(a)(8). Clearwater REI, LLC v. Boling, 155 Idaho 954, 318 P.3d 944 (2014).

Limitation of Court's Inquiry.

When a district court entertains cross-motions to compel or stay arbitration under this section, the court's inquiry must be limited in scope to whether there is a valid agreement to arbitrate or not; it would be inappropriate for the court to review the merits of the dispute as such would in many instances emasculate the benefits of arbitration. Loomis, Inc. v. Cudahy, 104 Idaho 106, 656 P.2d 1359 (1982).

Cited

Idaho First Bank v. Bridges, 164 Idaho 178, 426 P.3d 1278 (2018).

RESEARCH REFERENCES

ALR.

Application of equitable estoppel against nonsignatory to compel arbitration under federal law. 43 A.L.R. Fed. 2d 275.

§ 7-903. Appointment of arbitrators by court.

If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and his successor has not been duly appointed, the court on application of a party shall appoint one or more arbitrators. An

arbitrator so appointed has all the powers of one specifically named in the agreement.

History.

I.C.,*§ 7-903*, as added by 1975, ch. 117, § 2, p. 240.

CASE NOTES

Appointment Appropriate.

In an insured's suit against an insurer for payment for medical treatment, a trial court erred in concluding that, based on a change in the American Arbitration Association's policy regarding appointment of an arbitrator, the entire arbitration agreement between the parties failed. There was no reason why the arbitration could not proceed with a different arbitrator, and the case was remanded for the appointment of an arbitrator pursuant to this section. Deeds v. Regence Blueshield of Idaho, 143 Idaho 210, 141 P.3d 1079 (2006).

§ 7-904. Majority action by arbitrators.

The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by this act.

History.

I.C.,*§ 7-904*, as added by 1975, ch. 117, § 2, p. 240.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1975, ch. 117, § 2, compiled as*§§ 7-901* to 7-922.

§ 7-905. Hearing.

Unless otherwise provided by the agreement:

a. The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five (5) days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The court on application may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.
b. The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.
c. The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

History.

I.C.,*§ 7-905*, as added by 1975, ch. 117, § 2, p. 240.

CASE NOTES

Attendance.
Due process.

Attendance.

To vacate an award under*§ 7-912*(a)(4), a party must demonstrate that the arbitrator was shown “sufficient cause” for postponement, and, it is not “sufficient cause” to merely be unable to attend a hearing when given adequate notice. Loomis, Inc. v. Cudahy, 104 Idaho 106, 656 P.2d 1359 (1982).

Where a party waited until the day before a scheduled arbitration hearing to formally notify the arbitrator that she would be unable to attend the hearing due to alleged personal problems, even though she had been aware of the problems for at least three weeks, the arbitrator was not shown “sufficient cause” for postponement under*§ 7-912*(a)(4) and the arbitrator’s findings

would not be vacated. Loomis, Inc. v. Cudahy, 104 Idaho 106, 656 P.2d 1359 (1982).

Due Process.

Due process does not necessarily require judicial action, but may be satisfied by fair arbitration proceedings. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

RESEARCH REFERENCES

ALR. — Consolidation by state court of arbitration proceedings brought under state law. 31 A.L.R.6th 433. •Title 7»«Ch. 9»«§ 7-905»

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History.

I.C.,*§ 7-905*, as added by 1975, ch. 117, § 2, p. 240.

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RESEARCH REFERENCES

ALR.

§ 7-906. Representation by attorney.

A party has the right to be represented by an attorney at any proceeding or hearing under this act. A waiver thereof prior to the proceeding or hearing is ineffective.

History.

I.C.,*§ 7-906*, as added by 1975, ch. 117, § 2, p. 240.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1975, ch. 117, § 2, compiled as*§§ 7-901* to 7-922.

CASE NOTES

Cited

Orr v. Orr, 108 Idaho 874, 702 P.2d 912 (Ct. App. 1985).

§ 7-907. Witnesses — Subpoenas — Depositions.

a. The arbitrators may issue subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party or the arbitrators, enforced, in the manner provided by law for the service and enforcement of subpoenas in a civil action.
b. On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.
c. All provisions of law compelling a person under subpoena to testify are applicable.
d. Fees for attendance as a witness shall be the same as for a witness in the district court.

History.

I.C.,*§ 7-907*, as added by 1975, ch. 117, § 2, p. 240.

CASE NOTES

Cited

Loomis, Inc. v. Cudahy, 104 Idaho 106, 656 P.2d 1359 (1982).

RESEARCH REFERENCES

ALR.

ALR. — Discovery in federal arbitration proceedings under discovery provision of Federal Arbitration Act (FAA), 9 USC § 7, and Federal Rules of Civil Procedure, as permitted by Fed. R. Civ. P. 81(a)(6)(B). 45 A.L.R. Fed. 2d 51.

§ 7-908. Award.

a. The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.
b. An award shall be made within the time fixed therefor by the agreement or, if not so fixed, within such time as the court orders on application of a party. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless he notifies the arbitrators of his objection prior to the delivery of the award to him.

History.

I.C.,*§ 7-908*, as added by 1975, ch. 117, § 2, p. 240.

CASE NOTES

No interest on award.
Written findings and conclusions.

No Interest on Award.

An arbitrator's award is not self-enforcing; such an award requires the imprimatur of a court to be enforced. The award becomes enforceable when a court enters judgment on the award; thus, the arbitrator's award is not a judgment of a tribunal for the purpose of applying the interest rate applicable to judgments under*§ 28-22-*104. Bingham County Comm'n v. Interstate Elec. Co., 108 Idaho 181, 697 P.2d 1195 (Ct. App. 1985).

Written Findings and Conclusions.

This section does not require written findings of fact or conclusions of law. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Decisions Under Prior Law

Time for Making, Extension.

As a general rule, an award not made within time limited in agreement invalidates it, yet where one of the parties participates in proceedings without objection it will constitute waiver and have the effect of extending the time in which award can be made for at least a reasonable time after hearings began. Rexburg Inv. Co. v. Dahle & Eccles Constr. Co., 36 Idaho 552, 211 P. 552 (1922).

§ 7-909. Change of award by arbitrators.

On application of a party or, if an application to the court is pending under sections 7-911, 7-912 or 7-913, Idaho Code, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in paragraphs (1) and (3) of subdivision (a) of section 7-913, Idaho Code, or for the purpose of clarifying the award. The application shall be made within twenty (20) days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating he must serve his objections thereto, if any, within ten (10) days from the notice. The award so modified or corrected is subject to the provisions of sections 7-911, 7-912 and 7-913, Idaho Code.

History.

I.C.,*§ 7-909*, as added by 1975, ch. 117, § 2, p. 240.

CASE NOTES

Cited

Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987); Schilling v. Allstate Ins. Co., 132 Idaho 927, 980 P.2d 1014 (1999).

§ 7-910. Fees and expenses of arbitration.

Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award.

History.

I.C.,*§ 7-910*, as added by 1975, ch. 117, § 2, p. 240.

CASE NOTES

Attorney Fees.

District court properly vacated arbitration panel's award of attorney fees on an earnings holdback claim in an asset purchase agreement because the agreement required that the parties were to bear their own costs and fees of arbitration, including specifically attorney fees. The panel's award of attorney fees on the holdback claim contravened that express language and was, therefore, beyond the scope of the arbitrators' authority. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005).

District court sufficiently referenced the key language of this section and its supporting case law to make application of the statute an issue properly before the appellate court on appeal when it held that an award of attorney fees was not within the arbitration panel's power to award absent a contractual provision and that there was a contractual provision and it provided just the opposite. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005).

Federal Arbitration Act (FAA), 9 U.S.C.S. § 1 et seq., is not intended to prevent enforcement of agreements to arbitrate under terms different than those specified in the FAA; thus, the FAA did not trump application of this section regarding the award of attorney fees. Even if the FAA was applicable, it required enforcement of the parties' contract terms and the parties had expressly agreed that attorney fees would not be awarded. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005).

Attorney fees can be awarded in an arbitration proceeding only if provided for in the parties' agreement to arbitrate. Barbee v. WMA Securities, Inc., 143 Idaho 391, 146 P.3d 657 (2006).

Authority of Arbitrator.

This section on its face militates against the power of an arbitrator to award attorney fees to one of the parties absent a contractual agreement to do so; accordingly, where no such agreement existed in the contract of the parties, it was beyond the power of the arbitrator to award such fees. Bingham County Comm'n v. Interstate Elec. Co., 105 Idaho 36, 665 P.2d 1046 (1983). •Title 7»«Ch. 9»«§ 7-910»

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District court properly vacated arbitration panel's award of attorney fees on an earnings holdback claim in an asset purchase agreement because the agreement required that the parties were to bear their own costs and fees of arbitration, including specifically attorney fees. The panel's award of attorney fees on the holdback claim contravened that express language and was,

therefore, beyond the scope of the arbitrators' authority. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005).

District court sufficiently referenced the key language of this section and its supporting case law to make application of the statute an issue properly before the appellate court on appeal when it held that an award of attorney fees was not within the arbitration panel's power to award absent a contractual provision and that there was a contractual provision and it provided just the opposite. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005).

Federal Arbitration Act (FAA), 9 U.S.C.S. § 1 et seq., is not intended to prevent enforcement of agreements to arbitrate under terms different than those specified in the FAA; thus, the FAA did not trump application of this section regarding the award of attorney fees. Even if the FAA was applicable, it required enforcement of the parties' contract terms and the parties had expressly agreed that attorney fees would not be awarded. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005).

Attorney fees can be awarded in an arbitration proceeding only if provided for in the parties' agreement to arbitrate. Barbee v. WMA Securities, Inc., 143 Idaho 391, 146 P.3d 657 (2006).

Authority of Arbitrator.

This section on its face militates against the power of an arbitrator to award attorney fees to one of the parties absent a contractual agreement to do so; accordingly, where no such agreement existed in the contract of the parties, it was beyond the power of the arbitrator to award such fees. Bingham County Comm'n v. Interstate Elec. Co., 105 Idaho 36, 665 P.2d 1046 (1983). Absent agreement to the contrary, an arbitrator has authority and jurisdiction to award prejudgment interest. Schilling v. Allstate Ins. Co., 132 Idaho 927, 980 P.2d 1014 (1999), overruled on other grounds, Greenough v. Farm Bureau Mut. Ins. Co., 142 Idaho 589, 130 P.3d 1127 (2006) and Cranney v. Mutual of Enumclaw Ins. Co., 145 Idaho 6, 175 P.3d 168 (2007).

Arbitrator had authority under this section to award prejudgment interest since, in his first award, the arbitrator recognized that he had the authority and jurisdiction to award prejudgment interest and he recognized the insurer's argument that the compensatory damages award may be subject to subrogation for workers' compensation benefits, and the arbitrator properly calculated the maximum allowed by the contract without taking into

consideration the workers' compensation claim or rights to subrogation. Am. Foreign Ins. Co. v. Reichert, 140 Idaho 394, 94 P.3d 699 (2004).

Due Process.

If a party wishes to take the precaution of preparing a record, it is not unreasonable to require the party to temporarily bear the cost. As in the judicial system, these costs may ultimately be awarded to the prevailing party; thus, the initial imposition of this cost upon one party is not sufficient to constitute a denial of due process. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Prejudgment Interest.

Wolfe v. Farm Bureau Insurance Co. , 128 Idaho 398, 913 P.2d 1168 (1996), and its progeny, are overruled insofar as they hold that this section either authorizes arbitrators to award prejudgment interest or requires prejudgment interest to be submitted to arbitrators along with other issues. This section has absolutely nothing to do with prejudgment interest. Jackson Hop, LLC v. Farm Bureau Mut. Ins. Co., 158 Idaho 894, 354 P.3d 456 (2015).

Recovery of Costs.

Insured could not recover costs and prejudgment interest incurred during arbitration in his motion for confirmation of the arbitration award or in his breach of insurance contract action. Wolfe v. Farm Bureau Ins. Co., 128 Idaho 398, 913 P.2d 1168 (1996), overruled on other grounds, Jackson Hop, LLC v. Farm Bureau Mut. Ins. Co., 158 Idaho 894, 354 P.3d 456 (2015).

Limitation set forth in this section did not limit a district court's authority to award attorney fees in proceedings to confirm an arbitration award given the very limited scope of challenges to an arbitration award. Driver v. SI Corp., 139 Idaho 423, 80 P.3d 1024 (2003).

§ 7-911. Confirmation of an award.

Upon application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in sections 7-912 and 7-913, Idaho Code.

History.

I.C.,*§ 7-911*, as added by 1975, ch. 117, § 2, p. 240.

CASE NOTES

Appeal.

Because motion to confirm an arbitrator's award was filed, and granted, under this section, it was appealable as a matter of right under Idaho App. R. 11(a)(8) and subsection (a)(3) of*§ 7-919*. Harrison v. Certain Underwriters at Lloyd's, 149 Idaho 201, 233 P.3d 132 (2010).

Application of Section.

Where the record contained no showing that the arbitration was intended to, or did in fact, involve spiritual matters rather than secular disputes concerning the farm lease and other commercial arrangements, the mere fact that the arbitrators were members of a designated church did not, without more, place the arbitration proceedings beyond the broad subject matter scope of this chapter; thus, the arbitrators, decision was entitled to court confirmation under this section. Orr v. Orr, 108 Idaho 874, 702 P.2d 912 (Ct. App. 1985).

Insurer's payment in full of the arbitration award did not preclude insured from seeking confirmation of the award; confirmation request after payment of award did not create a moot question between insured and insurer and did not divest jurisdiction from court to confirm award. Wolfe v. Farm Bureau Ins. Co., 128 Idaho 398, 913 P.2d 1168 (1996), overruled on other grounds, Jackson Hop, LLC v. Farm Bureau Mut. Ins. Co., 158 Idaho 894, 354 P.3d 456 (2015).

Although time limitations are imposed for vacating, modifying, or correcting an award, no limitations exist in the Idaho Uniform Arbitration Act,*§ 7-901* et seq., which restrict the time as to when an application for confirmation of an arbitration award may be filed, and district court had jurisdiction to confirm insured's arbitration award. Wolfe v. Farm Bureau Ins. Co., 128 Idaho 398,

913 P.2d 1168 (1996), overruled on other grounds, Jackson Hop, LLC v. Farm Bureau Mut. Ins. Co., 158 Idaho 894, 354 P.3d 456 (2015).

An application seeking the confirmation of an arbitration award is not an action in court to recover attorney fees pursuant to*§ 41-1839*. Wolfe v. Farm Bureau Ins. Co., 128 Idaho 398, 913 P.2d 1168 (1996), overruled on other grounds, Jackson Hop, LLC v. Farm Bureau Mut. Ins. Co., 158 Idaho 894, 354 P.3d 456 (2015). •Title 7»«Ch. 9»«§ 7-911»

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History.

I.C.,*§ 7-911*, as added by 1975, ch. 117, § 2, p. 240.

CASE NOTES

Appeal.
Application of section.
Arbitration.
No interest on award.

Appeal.

Because motion to confirm an arbitrator's award was filed, and granted, under this section, it was appealable as a matter of right under Idaho App. R. 11(a)(8) and subsection (a)(3) of*§ 7-919*. Harrison v. Certain Underwriters at Lloyd's, 149 Idaho 201, 233 P.3d 132 (2010).

Application of Section.

Where the record contained no showing that the arbitration was intended to, or did in fact, involve spiritual matters rather than secular disputes concerning the farm lease and other commercial arrangements, the mere fact that the arbitrators were members of a designated church did not, without more, place the arbitration proceedings beyond the broad subject matter scope of this

chapter; thus, the arbitrators, decision was entitled to court confirmation under this section. Orr v. Orr, 108 Idaho 874, 702 P.2d 912 (Ct. App. 1985).

Insurer's payment in full of the arbitration award did not preclude insured from seeking confirmation of the award; confirmation request after payment of award did not create a moot question between insured and insurer and did not divest jurisdiction from court to confirm award. Wolfe v. Farm Bureau Ins. Co., 128 Idaho 398, 913 P.2d 1168 (1996), overruled on other grounds, Jackson Hop, LLC v. Farm Bureau Mut. Ins. Co., 158 Idaho 894, 354 P.3d 456 (2015).

Although time limitations are imposed for vacating, modifying, or correcting an award, no limitations exist in the Idaho Uniform Arbitration Act,*§ 7-901* et seq., which restrict the time as to when an application for confirmation of an arbitration award may be filed, and district court had jurisdiction to confirm insured's arbitration award. Wolfe v. Farm Bureau Ins. Co., 128 Idaho 398, 913 P.2d 1168 (1996), overruled on other grounds, Jackson Hop, LLC v. Farm Bureau Mut. Ins. Co., 158 Idaho 894, 354 P.3d 456 (2015).

An application seeking the confirmation of an arbitration award is not an action in court to recover attorney fees pursuant to*§ 41-1839*. Wolfe v. Farm Bureau Ins. Co., 128 Idaho 398, 913 P.2d 1168 (1996), overruled on other grounds, Jackson Hop, LLC v. Farm Bureau Mut. Ins. Co., 158 Idaho 894, 354 P.3d 456 (2015). Because no timely proceedings had been brought to vacate, modify, or correct the arbitration award, the district court was required to enter an order confirming it, even though all sums owing under the award had been paid. Storey Constr., Inc. v. Hanks, 148 Idaho 401, 224 P.3d 468 (2009).

Although time limitations are imposed for vacating, modifying, or correcting an award, no limitations exist in the Idaho Uniform Arbitration Act,*§ 7-901* et seq., which restrict the time as to when an application for confirmation of an arbitration award may be filed. Once a court enters an order confirming, modifying or correcting an award, a judgment or decree shall be entered and enforced as any other judgment. S.D. Sanders, Inc. v. Hazard (In re Hazard), 543 B.R. 650 (Bankr. D. Idaho 2015).

Arbitration.

Once a judgment is entered by the court after an arbitration proceeding, that judgment is entitled to be treated in all respects as any other judgment; therefore, where adjudicatory procedures were present in the arbitration proceeding, the parties were given notice, they were able to formulate the issues of law and fact in their memos to the arbitrator, they had the right to present evidence and legal arguments, and most importantly, the arbitration

matter was deemed to be a final resolution between the parties, and where the record indicated the nature of the claims made by the parties, as well as the findings and conclusions, the judgment entered reflected the ultimate award entered by the arbitrator after the respective awards to parties were offset, and there had been a final judgment entered from which the courts could determine the applicability of the bar of collateral estoppel. Western Indus. & Envtl. Servs., Inc. v. Kaldveer Assocs., 126 Idaho 541, 887 P.2d 1048 (1994).

Judgment entered against plaintiff based on the arbitration award was a final judgment on the merits for the purposes of a collateral estoppel analysis, and the elements of collateral estoppel had been met. Thus, the district court was correct in granting summary judgment on the basis of issue preclusion. Western Indus. & Envtl. Servs., Inc. v. Kaldveer Assocs., 126 Idaho 541, 887 P.2d 1048 (1994).

Architect's decision in favor of the homeowner in a dispute with the contractor did not constitute an arbitration award for purposes of this section because the architect was not an arbitrator under the Idaho Uniform Arbitration Act; however, because the contractor failed to substantially comply with the demand for arbitration provision of the contract, the judgment was properly affirmed by the trial court because the architect's award became final and binding for failure to timely pursue arbitration. Martel v. Bulotti, 138 Idaho 451, 65 P.3d 192 (2003).

No Interest on Award.

An arbitrator's award is not self-enforcing; such an award requires the imprimatur of a court to be enforced. The award becomes enforceable when a court enters judgment on the award; thus, the arbitrator's award is not a judgment of a tribunal for the purpose of applying the interest rate applicable to judgments under*§ 28-22*-104(2). Bingham County Comm'n v. Interstate Elec. Co., 108 Idaho 181, 697 P.2d 1195 (Ct. App. 1985).

Cited

Pac. Alaska Seafoods, Inc. v. Vic Hoskins Trucking, Inc., 139 Idaho 472, 80 P.3d 1073 (2003); Deelstra v. Hagler, 145 Idaho 922, 188 P.3d 864 (2008).

§ 7-912. Vacating an award.

a. Upon application of a party, the court shall vacate an award where;[:]

1. The award was procured by corruption, fraud or other undue means;
2. There was evident partiality by an arbitrator appointed as a neutral, or corruption in any of the arbitrators, or misconduct prejudicing the rights of any party;
3. The arbitrators exceeded their powers;
4. The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of section 7-905, Idaho Code, as to prejudice substantially the rights of a party; or
5. There was no arbitration agreement and the issue was not adversely determined in proceedings under section 7-902, Idaho Code, and the party did not participate in the arbitration hearing without raising the objection.

b. An application under this section shall be made within ninety (90) days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within ninety (90) days after such grounds are known or should have been known.
c. In vacating the award on grounds other than stated in clause (5) of subsection (a) the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with section 7-903, Idaho Code, or, if the award is vacated on grounds set forth in clauses (3) and (4) of subsection (a) the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with section 7-903, Idaho Code. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.
d. If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

The fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

History.

I.C.,*§ 7-912*, as added by 1975, ch. 117, § 2, p. 240; am. 1990, ch. 65, § 1, p. 144.

STATUTORY NOTES

Compiler's Notes.

The bracketed colon in the introductory paragraph in subsection (a) was inserted by the compiler.

CASE NOTES

Access to courts.

Arbitrator exceeding powers. Attorney's fees.

Due process.
Estoppel.
Grounds.
Insufficient cause.
Prejudgment interest.
Scope of review.
Sufficient cause.
Time limitation.
Waiver.

Access to Courts.

Application of the Uniform Arbitration Act,*§ 7-901* et seq., did not violate the plaintiff's right of access to the courts by precluding a meaningful review of the arbitrator's decision, as the plaintiff challenged the validity of the clause in her insurance contract that permitted the insurer to require binding arbitration by opposing its motion in district court to compel arbitration, but failed to preserve this option. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Arbitrator Exceeding Powers.

Normally, courts construe the phrase "exceeded his [their] powers" in subdivision (a)(3) of this section to mean that the arbitrator considered an issue not submitted to him by the parties, or exceeded the bounds of the contract between the parties. Bingham County Comm'n v. Interstate Elec. Co., 105 Idaho 36, 665 P.2d 1046 (1983).

Where the arbitrator, in a dispute between a county and an electrical contractor, made an award within the submission of the dispute of the parties, under a reasonable construction of the parties' contract, he did not exceed his powers; thus, the award of the arbitrator must be confirmed. Bingham County Comm'n v. Interstate Elec. Co., 105 Idaho 36, 665 P.2d 1046 (1983).

Because the arbitrator considered an issue that was clearly submitted to him and did not exceed any limitations contained in the parties' agreement, he did not exceed his powers in concluding that the element of causation was missing and entering an award granting judgment to attorney in a professional malpractice claim. Chicoine v. Bignall, 127 Idaho 225, 899 P.2d 438 (1995).

Arbitrator's first award, in which he simply awarded the maximum prejudgment interest amount, was reinstated since by modifying his award, the arbitrator took into consideration that the insurer may be entitled to subrogation rights from the workers' compensation claim and, thus, exceeded the bounds of the contract between the parties. Am. Foreign Ins. Co. v. Reichert, 140 Idaho 394, 94 P.3d 699 (2004).

Attorney's fees.

The mere fact that an arbitrator's interpretation of a prior case is unsatisfactory to a party is not, of itself, a valid basis for appeal; thus, where the nonprevailing party presented no cogent argument as to why settled law did not apply, the appeal was pursued frivolously and without foundation and attorney, prevailing in professional malpractice case, was entitled to attorney fees. Chicoine v. Bignall, 127 Idaho 225, 899 P.2d 438 (1995). District court properly vacated arbitration panel's award of attorney fees on an earnings holdback claim in an asset purchase agreement because the agreement required that the parties were to bear their own costs and fees of arbitration, including specifically attorney fees. The panel's award of attorney fees on the holdback claim contravened that express language and was, therefore, beyond the scope of the arbitrators' authority. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005).

Denial of the claimant's request for an award of attorney fees was affirmed because, where the parties clearly submitted the issue of attorney fees for decision and the arbitrator determined the issue, the arbitrator did not exceed his powers; the appellate court would not review the propriety of the arbitrator's factual determinations or the correctness of his determinations regarding applicable Idaho law. Mumford v. Miller, 143 Idaho 99, 137 P.3d 1021 (2006).

Due Process.

Lack of a record and the arbitrators' failure to prepare written findings of fact and conclusions of law in arbitration under insurance contract did not deny plaintiff due process. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Estoppel.

Even where no arbitration agreement exists, a party belatedly objecting to binding arbitration is estopped. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Grounds.

An application filed under this section and 7-913 must identify the specific grounds upon which the court should vacate or modify the arbitration award within the 90-day time limit. Driver v. SI Corp., 139 Idaho 423, 80 P.3d 1024 (2003).

Insufficient Cause.

Magistrate did not err as a matter of law in entering a divorce decree containing property division provisions from an arbitration award without making specific findings of fact as to the character and value of the property divided and as to the fairness of the property division. Hughes v. Hughes, 123 Idaho 711, 851 P.2d 1007 (Ct. App. 1993).

Purchaser of a company had not filed a proper motion to vacate or modify an arbitration award on claims against an escrow account arising from the sale of a company within the 90-day time limit set forth in this section where it had not identified any specific ground listed in this section for vacating the award before the 90-day deadline had passed, but had identified the specific ground in its brief filed after the 90-day time period had ended. Driver v. SI Corp., 139 Idaho 423, 80 P.3d 1024 (2003).

Prejudgment Interest.

Arbitration panel properly awarded prejudgment interest but not costs on an earnings holdback claim because the asset purchase agreement required the

parties to bear their own fees and costs of arbitration but, the agreement did not preclude the arbitration panel from making an award of prejudgment interest on any claim arising out of the contract. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005).

Scope of Review.

Judicial review of arbitrators' decisions is much more limited than review of a trial and an inquiry by a district court is limited to an examination of the award to discern if any of the grounds for relief stated in this section exist. Bingham County Comm'n v. Interstate Elec. Co., 105 Idaho 36, 665 P.2d 1046 (1983).

Judicial review of arbitrators' decisions is much more limited than review of a trial. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Review of the arbitrators' decision is governed and limited by this section. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Where the plaintiff, in district court, failed to present sufficient grounds to vacate the award against the uninsured motorist insurer under this section, the district judge properly confirmed the award. To grant de novo review of the arbitrators' decision would annul the purpose of arbitration and accomplish indirectly what plaintiff was estopped to do directly. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Although a reviewing court might believe that some of the arbitrator's rulings are erroneous, the decision is nevertheless binding unless one of the grounds for relief set forth in this section is present. Chicoine v. Bignall, 127 Idaho 225, 899 P.2d 438 (1995); Carroll v. MBNA Am. Bank, — Idaho —, 220 P.2d 1080 (2009).

Sufficient Cause.

To vacate an award under subdivision (a)(4) of this section, a party must demonstrate that the arbitrator was shown "sufficient cause" for postponement, and, it is not "sufficient cause" to merely be unable to attend a hearing when given adequate notice. Loomis, Inc. v. Cudahy, 104 Idaho 106, 656 P.2d 1359 (1982).

Where a party waited until the day before a scheduled arbitration hearing to formally notify the arbitrator that she would be unable to attend the hearing due to alleged personal problems, even though she had been aware of the problems for at least three weeks, the arbitrator was not shown "sufficient

cause" for postponement under subdivision (a)(4) of this section and the arbitrator's findings would not be vacated. Loomis, Inc. v. Cudahy, 104 Idaho 106, 656 P.2d 1359 (1982).

Time Limitation.

The time limitation of subsection (b) of this section is strictly construed and must be complied with before a court can vacate any award, even if the party seeking to vacate the award asserts a valid ground under the act; a court cannot extend this 90-day period. Bingham County Comm'n v. Interstate Elec. Co., 105 Idaho 36, 665 P.2d 1046 (1983).

Because the time limit under subsection (b) of this section is strictly construed, failure to comply with that time limit raises an absolute bar to a motion to vacate. Bingham County Comm'n v. Interstate Elec. Co., 105 Idaho 36, 665 P.2d 1046 (1983).

Where county did not raise the ground asserted for vacation of arbitration award until nearly 11 months after the arbitrator's decision, the motion was untimely and should have been denied by the trial court. Bingham County Comm'n v. Interstate Elec. Co., 105 Idaho 36, 665 P.2d 1046 (1983).

A timely motion must be made, even if the party seeking to set aside the arbitrators' decision asserts a valid ground for doing so under this chapter; failure to comply with the 90-day time limit set forth in subsection (b) of this section raises an absolute bar to a motion to vacate under this section. Orr v. Orr, 108 Idaho 874, 702 P.2d 912 (Ct. App. 1985).

Judicial review of arbitrators' decisions is much more limited than review of a trial and an inquiry by a district court is limited to an examination of the award to discern if any of the grounds for relief stated in this section exist. Bingham County Comm'n v. Interstate Elec. Co., 105 Idaho 36, 665 P.2d 1046 (1983).

Judicial review of arbitrators' decisions is much more limited than review of a trial. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Review of the arbitrators' decision is governed and limited by this section. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Where the plaintiff, in district court, failed to present sufficient grounds to vacate the award against the uninsured motorist insurer under this section, the district judge properly confirmed the award. To grant de novo review of the arbitrators' decision would annul the purpose of arbitration and accomplish

indirectly what plaintiff was estopped to do directly. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Although a reviewing court might believe that some of the arbitrator's rulings are erroneous, the decision is nevertheless binding unless one of the grounds for relief set forth in this section is present. Chicoine v. Bignall, 127 Idaho 225, 899 P.2d 438 (1995); Carroll v. MBNA Am. Bank, — Idaho —, 220 P.2d 1080 (2009).

Sufficient Cause.

To vacate an award under subdivision (a)(4) of this section, a party must demonstrate that the arbitrator was shown "sufficient cause" for postponement, and, it is not "sufficient cause" to merely be unable to attend a hearing when given adequate notice. Loomis, Inc. v. Cudahy, 104 Idaho 106, 656 P.2d 1359 (1982).

Where a party waited until the day before a scheduled arbitration hearing to formally notify the arbitrator that she would be unable to attend the hearing due to alleged personal problems, even though she had been aware of the problems for at least three weeks, the arbitrator was not shown "sufficient cause" for postponement under subdivision (a)(4) of this section and the arbitrator's findings would not be vacated. Loomis, Inc. v. Cudahy, 104 Idaho 106, 656 P.2d 1359 (1982).

Time Limitation.

The time limitation of subsection (b) of this section is strictly construed and must be complied with before a court can vacate any award, even if the party seeking to vacate the award asserts a valid ground under the act; a court cannot extend this 90-day period. Bingham County Comm'n v. Interstate Elec. Co., 105 Idaho 36, 665 P.2d 1046 (1983).

Because the time limit under subsection (b) of this section is strictly construed, failure to comply with that time limit raises an absolute bar to a motion to vacate. Bingham County Comm'n v. Interstate Elec. Co., 105 Idaho 36, 665 P.2d 1046 (1983).

Where county did not raise the ground asserted for vacation of arbitration award until nearly 11 months after the arbitrator's decision, the motion was untimely and should have been denied by the trial court. Bingham County Comm'n v. Interstate Elec. Co., 105 Idaho 36, 665 P.2d 1046 (1983).

A timely motion must be made, even if the party seeking to set aside the arbitrators' decision asserts a valid ground for doing so under this chapter; failure to comply with the 90-day time limit set forth in subsection (b) of this section raises an absolute bar to a motion to vacate under this section. Orr v. Orr, 108 Idaho 874, 702 P.2d 912 (Ct. App. 1985). No timely motion was ever made by the trucking company requesting relief from the arbitration award as subsection (b) of this section required a party seeking to vacate an arbitration award to file a motion in the district court within 90 days after delivery of a copy of the award; as a result, the trucking company did not preserve the issue for appeal. Pac. Alaska Seafoods, Inc. v. Vic Hoskins Trucking, Inc., 139 Idaho 472, 80 P.3d 1073 (2003).

Waiver.

The general rule is that participation in an arbitration hearing on the merits is a waiver of the right to raise the issue of arbitrability, unless preserved by a timely objection before a hearing on the merits. Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987).

Cited

Hecla Mining Co. v. Bunker Hill Co., 101 Idaho 557, 617 P.2d 861 (1980).

§ 7-913. Modification or correction of award.

a. Upon application made within ninety (90) days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:
    1. There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;
    2. The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
    3. The award is imperfect in a matter of form, not affecting the merits of the controversy.
b. If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.
c. An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

History.

I.C.,*§ 7-913*, as added by 1975, ch. 117, § 2, p. 240.

CASE NOTES

Attorney Fees.

Attorney fees can be awarded in an arbitration proceeding only if provided for in the parties' agreement to arbitrate. Barbee v. WMA Securities, Inc., 143 Idaho 391, 146 P.3d 657 (2006).

Exceeding Scope of Agreement.

District court properly modified arbitration award where arbitrator exceeded the scope of the arbitration agreement by determining an insurance guarantee association's liability. Modification preserved the issues of causation and damages which were properly considered under the arbitration agreement. Norton v. California Ins. Guar. Ass'n, 143 Idaho 922, 155 P.3d 1161 (2007).

Grounds.

An application filed under*§ 7-912* and this section must identify the specific grounds upon which the court should vacate or modify the arbitration award within the 90-day time limit. Driver v. SI Corp., 139 Idaho 423, 80 P.3d 1024 (2003). •Title 7»«Ch. 9»«§ 7-913»

§ 7-913. Modification or correction of award.

a. Upon application made within ninety (90) days after delivery of a copy of the award to the applicant, the court shall modify or correct the award

where:

1. There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;
2. The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
3. The award is imperfect in a matter of form, not affecting the merits of the controversy.

b. If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.
c. An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

History.

I.C.,*§ 7-913*, as added by 1975, ch. 117, § 2, p. 240.

CASE NOTES

Attorney Fees.

Attorney fees can be awarded in an arbitration proceeding only if provided for in the parties' agreement to arbitrate. Barbee v. WMA Securities, Inc., 143 Idaho 391, 146 P.3d 657 (2006).

Exceeding Scope of Agreement.

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damages which were properly considered under the arbitration agreement. Norton v. California Ins. Guar. Ass'n, 143 Idaho 922, 155 P.3d 1161 (2007).

Grounds.

Interest Calculation.

An application filed under*§ 7-912* and this section must identify the specific grounds upon which the court should vacate or modify the arbitration award within the 90-day time limit. Driver v. SI Corp., 139 Idaho 423, 80 P.3d 1024 (2003). Interest Calculation.

Award of prejudgment interest in an arbitration award of benefits under an underinsured motorist policy, although arguably erroneous, could not be modified by a reviewing court because it was not a mathematical error. Cranney v. Mut. of Enumclaw Ins. Co., 145 Idaho 6, 175 P.3d 168 (2007).

Merits of the Controversy.

Where the relief claimed by employee was reconsideration of the factual conclusions of the arbitrator as to the extent of employer's liability, such relief could not be considered a correction of the form of the award "not affecting the merits of the controversy" as required by subdivision (a)(3) of this section. Landmark v. Mader Agency, Inc., 126 Idaho 74, 878 P.2d 773 (1994).

No Evident Miscalculation.

Arbitrator's February 16, 2001 award contained no evident miscalculation or misdescription pursuant to subdivision (a)(1) of this section where there was no mathematical error and the arbitrator was not to concern himself with the potential worker's compensation claim and/or the subrogation issues, and the parties agreed to allow the arbitrator to calculate this type of award. Am. Foreign Ins. Co. v. Reichert, 140 Idaho 394, 94 P.3d 699 (2004).

Remand to Arbitrator.

The provision for modification of a procedurally imperfect award contained in subdivision (a)(3) of this section fails to provide an appropriate basis for

remanding the award to the arbitrator for reconsideration. Landmark v. Mader Agency, Inc., 126 Idaho 74, 878 P.2d 773 (1994).

Time Limitations.

Record was devoid of any motion by the trucking company to modify the arbitrator's decision within the 90 day statutory period of subsection (1) of this section; therefore, the issue was not preserved for appeal. Pac. Alaska Seafoods, Inc. v. Vic Hoskins Trucking, Inc., 139 Idaho 472, 80 P.3d 1073 (2003).

Cited

Hecla Mining Co. v. Bunker Hill Co., 101 Idaho 557, 617 P.2d 861 (1980); Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987); Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005); Deelstra v. Hagler, 145 Idaho 922, 188 P.3d 864 (2008).

§ 7-914. Judgment or decrees of award.

Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court.

History.

I.C.,*§ 7-914*, as added by 1975, ch. 117, § 2, p. 240.

CASE NOTES

Arbitration.
Attorney fees.
Award not in error.
In general.
No interest on award.

Arbitration.

Once a judgment is entered by the court after an arbitration proceeding, that judgment is entitled to be treated in all respects as any other judgment; therefore, where adjudicatory procedures were present in the arbitration proceeding, the parties were given notice, they were able to formulate the issues of law and fact in their memos to the arbitrator, they had the right to present evidence and legal arguments, and most importantly, the arbitration matter was deemed to be a final resolution between the parties, and where the record indicated the nature of the claims made by the parties, as well as the findings and conclusions, the judgment entered reflected the ultimate award entered by the arbitrator after the respective awards to parties were offset, and there had been a final judgment entered from which the courts could determine the applicability of the bar of collateral estoppel. Western Indus. & Envtl. Servs., Inc. v. Kaldveer Assocs., 126 Idaho 541, 887 P.2d 1048 (1994).

Judgment entered against plaintiff based on the arbitration award was a final judgment on the merits for the purposes of a collateral estoppel analysis, and the elements of collateral estoppel had been met. Thus, the district court was correct in granting summary judgment on the basis of issue preclusion. Western Indus. & Envtl. Servs., Inc. v. Kaldveer Assocs., 126 Idaho 541, 887 P.2d 1048 (1994).

Attorney Fees.

District court was allowed to consider an award of attorney fees under this section because interpreting “disbursements” to include attorney fees was consistent with the purposes of the Uniform Arbitration Act,*§ 7-901* et seq. and arbitration in general. Driver v. SI Corp., 139 Idaho 423, 80 P.3d 1024 (2003).

Owners of a company were granted attorney fees on a purchaser’s appeal of an arbitration award on claims against an escrow account involving the sale of the company, where the purchaser appealed the award on grounds beyond the scope permitted by the Uniform Arbitration Act,*§ 7-901* et seq. Driver v. SI Corp., 139 Idaho 423, 80 P.3d 1024 (2003). •Title 7»«Ch. 9»«§ 7-914»

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Owners of a company were granted attorney fees on a purchaser’s appeal of an arbitration award on claims against an escrow account involving the sale of the company, where the purchaser appealed the award on grounds beyond the scope permitted by the Uniform Arbitration Act,*§ 7-901* et seq. Driver v. SI Corp., 139 Idaho 423, 80 P.3d 1024 (2003). Insured appealing district court’s modification of arbitration agreement was denied the award of attorney fees, since he was not the prevailing party below or on appeal. Norton v. California Ins. Guar. Ass’n, 143 Idaho 922, 155 P.3d 1161 (2007).

Where plaintiff filed a breach of contract action against defendants and defendants moved to compel arbitration, where discovery was conducted before the trial court ordered the matter to proceed to arbitration, and where defendants prevailed in arbitration, defendants were entitled to recover costs incurred in defending the litigation against them and in compelling arbitration. However, defendants were not entitled to recover attorney fees for the actual arbitration proceeding because such an award was prohibited by*§ 7-910*; the district court did not err in declining to award attorney fees for proceedings for the confirmation of the arbitration award because such an award was discretionary under this section. The Grease Spot, Inc. v. Harnes, 148 Idaho 582, 226 P.3d 524 (2010).

Insurers could recover a discretionary award of attorney fees incurred responding to an untimely appeal. Harrison v. Certain Underwriters at Lloyd’s, 149 Idaho 201, 233 P.3d 132 (2010).

Award Not In Error.

Magistrate did not err as a matter of law in entering a divorce decree containing property division provisions from an arbitration award without making specific findings of fact as to the character and value of the property divided and as to the fairness of the property division. Hughes v. Hughes, 123 Idaho 711, 851 P.2d 1007 (Ct. App. 1993).

In General.

An application seeking the confirmation of an arbitration award is not an action in court to recover attorney fees pursuant to*§ 41-1839*. Wolfe v. Farm Bureau

Ins. Co., 128 Idaho 398, 913 P.2d 1168 (1996), overruled on other grounds, Jackson Hop, LLC v. Farm Bureau Mut. Ins. Co., 158 Idaho 894, 354 P.3d 456 (2015).

Although time limitations are imposed for vacating, modifying, or correcting an award, no limitations exist in the Idaho Uniform Arbitration Act,*§ 7-901* et seq., which restrict the time as to when an application for confirmation of an arbitration award may be filed. Once a court enters an order confirming, modifying or correcting an award, a judgment or decree shall be entered and enforced as any other judgment. S.D. Sanders, Inc. v. Hazard (In re Hazard), 543 B.R. 650 (Bankr. D. Idaho 2015).

No Interest on Award.

An arbitrator's award is not self-enforcing; such an award requires the imprimatur of a court to be enforced. The award becomes enforceable when a court enters judgment on the award; thus, the arbitrator's award is not a judgment of a tribunal for the purpose of applying the interest rate applicable to judgments under*§ 28-22-*104. Bingham County Comm'n v. Interstate Elec. Co., 108 Idaho 181, 697 P.2d 1195 (Ct. App. 1985).

Cited

Deelstra v. Hagler, 145 Idaho 922, 188 P.3d 864 (2008); Storey Constr., Inc. v. Hanks, 148 Idaho 401, 224 P.3d 468 (2009).

§ 7-915. Judgment roll — Docketing.

a. On entry of judgment or decree, the clerk shall prepare the judgment roll consisting, to the extent filed, of the following:
    1. The agreement and each written extension of the time within which to make the award;
    2. The award;
    3. A copy of the order confirming, modifying or correcting the award; and
    4. A copy of the judgment or decree.
b. The judgment or decree may be docketed as if rendered in an action.

History.

I.C.,*§ 7-915*, as added by 1975, ch. 117, § 2, p. 240.

CASE NOTES

Cited

Hughes v. Hughes, 123 Idaho 711, 851 P.2d 1007 (Ct. App. 1993).

§ 7-916. Applications to court.

Except as otherwise provided, an application to the court under this act shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

History.

I.C.,*§ 7-916*, as added by 1975, ch. 117, § 2, p. 240.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1975, ch. 117, § 2, compiled as*§§ 7-901* to 7-922.

§ 7-917. Court — Jurisdiction.

The term "court" means any court of competent jurisdiction of this state. The making of an agreement described in section 7-901, Idaho Code, providing for arbitration in this state confers jurisdiction on the court to enforce the agreement under this act and to enter judgment on an award thereunder.

History.

I.C.,*§ 7-917*, as added by 1975, ch. 117, § 2, p. 240.

STATUTORY NOTES

Compiler's Notes.

The words “this act” refer to S.L. 1975, ch. 117, § 2, compiled as*§§ 7-901* to 7-922.

CASE NOTES

Confirmation.

Insurer’s payment in full of the arbitration award did not preclude insured from seeking confirmation of the award; confirmation request after payment of award did not create a moot question between insured and insurer and did not divest jurisdiction from court to confirm award. Wolfe v. Farm Bureau Ins. Co., 128 Idaho 398, 913 P.2d 1168 (1996), overruled on other grounds, Jackson Hop, LLC v. Farm Bureau Mut. Ins. Co., 158 Idaho 894, 354 P.3d 456 (2015).

Although time limitations are imposed for vacating, modifying, or correcting an award, no limitations exist in the Idaho Uniform Arbitration Act,*§ 7-901* et seq., which restrict the time as to when an application for confirmation of an arbitration award may be filed, and district court had jurisdiction to confirm insured’s arbitration award. Wolfe v. Farm Bureau Ins. Co., 128 Idaho 398, 913 P.2d 1168 (1996), overruled on other grounds, Jackson Hop, LLC v. Farm Bureau Mut. Ins. Co., 158 Idaho 894, 354 P.3d 456 (2015).

District court erred when it held that insured’s second motion for confirmation of arbitration award, attorney fees, costs and prejudgment interest was barred by res judicata. Although parties agreed that district court lacked personal jurisdiction in insured’s first motion for confirmation, since court lacked personal jurisdiction it did not have authority to rule on any substantive issues, such as subject matter jurisdiction, and insured’s second confirmation motion was not barred. Wolfe v. Farm Bureau Ins. Co., 128 Idaho 398, 913 P.2d 1168 (1996), overruled on other grounds, Jackson Hop, LLC v. Farm Bureau Mut. Ins. Co., 158 Idaho 894, 354 P.3d 456 (2015).

No Interest on Award.

An arbitrator’s award is not self-enforcing; such an award requires the imprimatur of a court to be enforced. The award becomes enforceable when a court enters judgment on the award; thus, the arbitrator’s award is not a judgment of a tribunal for the purpose of applying the interest rate applicable

to judgments under§ *28*-22-104. Bingham County Comm'n v. Interstate Elec. Co., 108 Idaho 181, 697 P.2d 1195 (Ct. App. 1985).

Cited

S.D. Sanders, Inc. v. Hazard (In re Hazard), 543 B.R. 650 (Bankr. D. Idaho 2015).

§ 7-918. Venue.

An initial application shall be made to the court of the county in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county in which it was held. Otherwise the application shall be made in the county where the adverse party resides or has a place of business or, if he has no residence or place of business in this state, to the court of any county. All subsequent applications shall be made to the court hearing the initial application unless the court otherwise directs.

History.

I.C.,*§ 7-918*, as added by 1975, ch. 117, § 2, p. 240.

§ 7-919. Appeals.

a. An appeal may be taken from:
    1. An order denying an application to compel arbitration made under section 7-912, Idaho Code;
    2. An order granting an application to stay arbitration made under section 7-902(b), Idaho Code;
    3. An order confirming or denying confirmation of an award;
    4. An order modifying or correcting an award;
    5. An order vacating an award without directing a rehearing; or
    6. A judgment or decree entered pursuant to the provisions of this act.

b. The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

History.

I.C.,*§ 7-919*, as added by 1975, ch. 117, § 2, p. 240.

STATUTORY NOTES

Cross References.

New trial in civil actions, Idaho Civil Procedure Rules 59(a) to 59(d).

Compiler's Notes.

The words "this act" refer to S.L. 1975, ch. 117, § 2, compiled as*§§ 7-901* to 7-922.

CASE NOTES

Applicability.

Supreme court had jurisdiction to hear an appeal from an order dismissing a case alleging violations of the Idaho Consumer Protection Act,*§ 48-601* et seq., on the grounds that the parties had entered into a contract that included a provision requiring them to arbitrate disputes between them; although the order dismissed the case, it had the effect of compelling arbitration. Dan Wiebold Ford, Inc. v. Universal Computer Consulting Holding, Inc., 142 Idaho 235, 127 P.3d 138 (2005).

Because motion to confirm an arbitrator's award was filed, and granted, under*§ 7-911*, it was appealable as a matter of right under Idaho App. R. 11(a)(8) and subsection (a)(3) of this section. Harrison v. Certain Underwriters at Lloyd's, 149 Idaho 201, 233 P.3d 132 (2010).

An order granting a motion to stay arbitration is appealable, as a matter of right, under Idaho App. R. 11(a)(8). Clearwater REI, LLC v. Boling, 155 Idaho 954, 318 P.3d 944 (2014).

Final Appealable Order.

An order denying a motion to compel arbitration or an order vacating an earlier order to arbitrate is final and is, therefore, appealable as a matter of right. Deeds v. Regence Blueshield of Idaho, 143 Idaho 210, 141 P.3d 1079 (2006).

RESEARCH REFERENCES

ALR.

ALR. — Adoption of manifest disregard of law standard as nonstatutory ground to review arbitration awards governed by Uniform Arbitration Act (UAA). 14 A.L.R.6th 491.

§ 7-920. Act not retroactive.

This act applies only to agreements made subsequent to the taking effect of this act.

History.

I.C.,*§ 7-920*, as added by 1975, ch. 117, § 2, p. 240.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1975, ch. 117, § 2, compiled as*§§ 7-901* to 7-922.

§ 7-921. Uniformity of interpretation.

This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History.

I.C.,*§ 7-921*, as added by 1975, ch. 117, § 2, p. 240.

STATUTORY NOTES

Compiler's Notes.

The words "this act" refer to S.L. 1975, ch. 117, § 2, compiled as*§§ 7-901* to 7-922.

§ 7-922. Short title.

This act may be cited as the “Uniform Arbitration Act.”

History.

I.C.,*§ 7-922*, as added by 1975, ch. 117, § 2, p. 240.