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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0376**

Garlyn, Inc., d/b/a Polzin Glass, Inc. as assignee of Wehling, et al.,
Respondents,

vs.

American Family Mutual Insurance Company, et al.,
Appellants.

**Filed November 20, 2017
Affirmed
Florey, Judge**

Hennepin County District Court
File No. 27-CV-15-15087

Charles J. Lloyd, Brian F. Murn, Livgard & Lloyd, P.L.L.P., Minneapolis, Minnesota (for respondents)

Stephanie L. Chandler, John Bjorkman, Larson • King, L.L.P., St. Paul, Minnesota (for appellants)

Considered and decided by Florey, Presiding Judge; Ross, Judge; and Kirk, Judge.

U N P U B L I S H E D O P I N I O N

FLOREY, Judge

Automobile insurers sought to vacate an arbitration award in favor of an auto-glass-repair contractor on the ground that the award contravened the clear language of the insurers' auto-glass policy. The district court upheld the award, and the insurers appealed to this court, arguing that the arbitrator and the district court misapplied the policy's

definition of competitive prices. We conclude the arbitrator's determinations of competitive prices were factual determinations and unreviewable by law. We affirm the district court.

FACTS

Respondent, Garlyn Inc., d/b/a Polzin Glass Inc. (Garlyn), is an auto-glass repairer with a unique way of repairing windshields. To remove the windshield, Garlyn uses a full cut-out method, in contrast to a close-cut method. And to put the new windshield in place, Garlyn uses a two-man system instead of a direct set. The details of these methods are not important; what is important is that because of its unique methods, Garlyn carved out a special niche in the windshield-repair market. In fact, Garlyn could only name one other auto-glass repairer in Minnesota who repaired windshields the same way.

Garlyn's unique repair methods are more time-consuming and expensive than a traditional windshield installation. Despite the higher cost, Garlyn believes its methods result in a better product. But higher cost means higher prices for insurance companies, such as appellants, American Family Mutual Insurance Company and American Standard Insurance Company of Wisconsin (collectively American Family).

At some point, American Family found itself on the receiving end of Garlyn's higher prices for windshield repairs. American Family disagreed with the amount charged by Garlyn for windshield replacements. To settle the dispute, the parties entered arbitration pursuant to Minn. Stat. § 65B.525 (2016).

During arbitration, American Family presented information and data indicating that Garlyn's prices were unreasonable. The arbitrator singled out three problems with

American Family's calculations: (1) the numbers were based on American Family's own claims but not necessarily on the payments that were actually being made in the area; (2) American Family used the average pricing, not the median pricing in its calculations; and (3) most importantly to the arbitrator, American Family did not account for Garlyn's more complex methods for repairing and replacing windshields. In the end, the arbitrator believed Garlyn's prices were fair, reasonable, and necessary to replace the windshields involved with American Family's claims. The arbitrator awarded Garlyn \$71,308.39, the unpaid balance of invoices Garlyn billed to American Family, based on its unique repair methods and its lack of competition.

American Family filed a motion to vacate the arbitration award in district court, arguing that the arbitrator misinterpreted a part of its insurance policy that explained how to compute competitive prices. The district court upheld the award, concluding that the arbitrator correctly found that Garlyn's unique repair methods placed it in a class of its own. American Family timely appealed.

D E C I S I O N

The underlying issue in this case is whether the arbitrator correctly applied the part of American Family's insurance policy that defines how to calculate competitive prices for auto-glass repairs. American Family asserts that the arbitrator misapplied that definition by siding with Garlyn's prices instead of its own. For its part, Garlyn argues that the arbitrator was well within his right to reject American Family's competitive-price calculations. Further, Garlyn argues that neither this court nor the district court has the legal authority to review the arbitrator's legal or factual determinations in this case.

There are two issues for our consideration: (1) what is the proper standard of review to analyze this arbitration award and (2) did the district court properly uphold the arbitrator's award? We examine both issues below.

I. The arbitrator's legal determinations are reviewed de novo.

Garlyn argues that neither the district court, nor this court, has the authority to review the arbitrator's factual or legal determinations in this case. Although Garlyn admits there is an exception to this rule, it argues that the auto-glass issue in this case does not fall under that exception.

Garlyn is correct that arbitrators are typically the "final judges of both law and fact." *Fernow v. Gould*, 835 N.W.2d 8, 11 (Minn. 2013) (quotation omitted). In fact, as long as the reasoning and judgment are consistent, a court will not vacate an arbitration award even if it believes the arbitrator made a mistake in the law or facts. *Johnson v. Am. Family Mut. Ins. Co.*, 426 N.W.2d 419, 421 (Minn. 1988).

However, there is an exception to this rule: no-fault arbitration. *Weaver v. State Farm Ins. Cos.*, 609 N.W.2d 878, 882 (Minn. 2000); see Minn. Stat. § 65B.525 (mandating binding arbitration for claims of \$10,000 or less in no-fault benefits, or comprehensive, or collision-damage coverage). In these cases, arbitrators decide questions of fact, and courts review any legal determinations de novo. *Weaver*, 609 N.W.2d at 882; see also *State Farm v. Liberty Mut. Ins. Co.*, 678 N.W.2d 719, 721 (Minn. App. 2004) ("An arbitrator's findings of fact are final."), review denied (Minn. June 29, 2004). An arbitrator has authority to find facts and determine the sufficiency of proof. *Liberty Mut. Ins. Co. v. Sankey*, 605 N.W.2d 411, 413 (Minn. App. 2000), review denied (Minn. Apr. 18, 2000). This court

may not review whether the record supports an arbitrator's findings. *Id.* Because this case was arbitrated under section 65B.525 of the Minnesota No-Fault Automobile Insurance Act, Minn. Stat. §§ 65B.41-.71 (2016), we may review the arbitrator's legal determinations de novo.

Here, the question is whether the arbitrator's conclusions concerning Garlyn's prices were factual determinations in the exclusive province of the arbitrator or whether they were interpretations of the insurance contract language, which we review de novo. *See Garlyn, Inc. v. Auto-Owners Ins. Co.*, 814 N.W.2d 709, 712 (Minn. App. 2012) (providing that interpretations of insurance-contract language are questions of law). Although we ultimately conclude that the arbitrator's determination of the "prevailing competitive price" as understood in the policy was a factual determination, we pause to acknowledge that, generally speaking, interpretations of auto-glass policies present legal questions.

II. The arbitrator's determination of the prevailing competitive price was a factual determination, and the district court was correct to deny the motion to vacate.

American Family argues that the arbitrator misinterpreted the policy language and incorrectly deferred to Garlyn's prices instead of its price determinations. In the way American Family frames the case, it presented the arbitrator with a definition of a "competitive price" in its policy, and the arbitrator ignored that definition, presenting us with a legal question to resolve.

Garlyn argues that the arbitrator's determination of a "competitive price" was inherently a factual determination, which we may not review. *See State Farm*, 678 N.W.2d

at 721 (“An arbitrator’s findings of fact are final.”). Garlyn argues that the arbitrator did not ignore American Family’s policy language. To the contrary, Garlyn counters, the arbitrator applied the facts to the language in the policy, an intrinsically fact-based process.

In its policy, American Family defines the “prevailing competitive price” as “the prices charged by a statistically significant number of repair facilities in the area where your insured car is to be repaired, as determined by us.” This definition may be broken down as: (1) prices; (2) charged by a statistically significant number of repair facilities; (3) in the area where the vehicle is going to be repaired; (4) as determined by American Family.¹ After reviewing the record, it does not appear that the arbitrator misapplied any of these pieces of the policy. Instead, the arbitrator stuck closely to the letter of the policy and examined what prices the competitors in the same area as Garlyn were charging.

For instance, the arbitrator took a painstaking look at Garlyn’s full cut-out and two-man set methods and why they were superior to cheaper, more traditional methods. The arbitrator also took great care to examine what other glass repairers in the area charged and what kinds of methods they used. After sifting through these facts, the arbitrator found that, despite Garlyn’s higher prices, it was “more likely than not that the prices charged by [Garlyn] were fair and reasonable and necessary to replace the windshields involved in

¹ During oral argument, American Family claimed it was not arguing that the “as determined by us” language meant its price calculations reigned supreme, despite what its briefing may have implied. Instead, American Family argued that the “as determined by us” language was just one piece of a larger error made by the arbitrator in analyzing what a competitive price was under the policy. Accordingly, we are not solely focusing on the “as determined by us” language in this case; instead, we are examining whether the arbitrator misapplied the entire policy’s definition of “prevailing competitive prices.”

these claims.” While this result did not comport with American Family’s argument, the policy itself was strictly followed.

And despite its argument to the contrary, the arbitrator did pay attention to American Family’s competitive-price calculations and found three problems with the math: (1) the numbers were based on American Family’s own claims but not necessarily on the payments that were actually being made in the area; (2) American Family used average pricing and not median pricing in its calculations; and (3) most importantly to the arbitrator, American Family did not account for Garlyn’s more complex methods for repairing and replacing windshields. Again, the arbitrator did not misapply American Family’s policy, but instead conducted a fact-based analysis that compared American Family’s data against his own review of the facts.

While American Family argues that the arbitrator and the district court ignored its clear policy language, we do not believe that is the case. The arbitrator correctly applied the policy, finding a price based on the number of repair facilities in the area where the cars were repaired. Because Garlyn’s unique repair methods limit the number of its competitors to a smaller number than American Family would have preferred does not mean there was friction with the policy itself. And the arbitrator’s finding that Garlyn’s prices were fair, reasonable, and necessary is a direct product of the factual determinations the policy required. Far from ignoring the policy, it appears that the arbitrator went to great lengths to apply it.

Our decision finds support in the reasoning of the unpublished case of *Glass Serv. Co. v. Ill. Farmers Ins. Co.*, No. A06-1074, 2007 WL 1815781 (Minn. App. June 26,

2007).² There, this court was presented with similar policy language to American Family's, which read, "[f]or glass losses, the maximum amount that we will pay for repair or replacement is the prevailing competitive price. Prevailing competitive price means prices charged by the majority of glass repairers in the local area as determined by a survey conducted by us." *Id.* at *8 (emphasis omitted). We concluded that the arbitrator's determination of the "prevailing competitive price" was within the arbitrator's authority, and because it was a factual determination, the arbitration award was "unreviewable by this court." *Id.*

American Family's policy required the arbitrator to examine the facts on the ground and determine whether Garlyn was charging a competitive price. The arbitrator weighed the evidence presented, considered the argument of the parties, and decided that Garlyn's prices fell under the policy's definition of "prevailing competitive prices." The fact that he rejected American Family's calculations speaks to the innately fact-based nature of this process, and this court will not review an arbitrator's factual findings. *State Farm*, 678 N.W.2d at 721. The arbitrator applied the clear terms of the policy and determined that Garlyn's prices were competitive. This was a factual finding, and by law, we leave that finding intact. The district court correctly denied American Family's motion to vacate the award.

Affirmed.

² We recognize that unpublished opinions are of persuasive value at best, and are not precedential. *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993). Our use of an unpublished opinion is to draw a persuasive comparison.