

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

IN RE:) Chapter 11
)
LOEWEN GROUP INTERNATIONAL,) Case No. 99-1244-PJW
INC., et al.,)
) Jointly Administered
Debtors.)
_____)
)
LOEWEN GROUP INTERNATIONAL,)
INC., et al.,)
)
Appellants,)
)
v.) Civil Action No. 01-304-SLR
) (Appeal No. 01-223)
CHARLES W. WEBSTER and)
MARY WEBSTER LEHMAN,)
)
Appellees.)

MEMORANDUM ORDER

At Wilmington this 3rd day of April, 2002;

IT IS ORDERED that the September 6, 2000 arbitration award in favor of appellees and against debtors for an unsecured claim with priority status in the aggregate amount of \$60,000 is affirmed for the reasons that follow:

1. This court has jurisdiction to hear an appeal of an arbitration award arising out of Chapter 11 proceedings pursuant to 28 U.S.C. § 158(a) and section 10(a)(4) of the Federal Arbitration Act, 9 U.S.C. §§ 1, et seq.¹ The court may vacate an

¹Appellees' motions to dismiss (D.I. 12, 15) are denied. As "persons aggrieved" by a decision that affects the disposition of their estates, debtors have standing to appeal the arbitration award. See In re PWS Holding Corp., 228 F.3d 224, 248-49 (3d Cir. 2000). Jurisdiction is proper in the District of Delaware

arbitration award where the arbitrator, in reaching his decision, has exceeded his authority. See 9 U.S.C. § 10(a). The "court's function in confirming or vacating a commercial [arbitration] award is severely limited." Mutual Fire, Marine & Inland v. Norad Reinsurance, 868 F.2d 52, 56 (3d Cir. 1989). The court must "examine both the form of relief awarded by the arbitrator as well as the terms of that relief." Id. The court must also "determine if the form of the arbitrator['s] award can be rationally derived either from the agreement between the parties or from the parties' submissions to the arbitrators." Id. "[T]he terms of the arbitral award will not be subject to judicial revision unless they are completely irrational." Id. (quotations omitted).

2. The arbitration award at issue stems from certain Alternate Dispute Resolution Procedures (the "ADR Procedures") approved by the United States Bankruptcy Court for the District of Delaware on February 28, 2000. The ADR Procedures provide, in pertinent part:

A Class B Arbitration Award for a Class B Claim is presumed to be classified as a general unsecured Claim unless otherwise designated by the arbitrator in the Class B Arbitration Award.

(D.I. 3, Ex. 2 at 17)

pursuant to the Alternate Dispute Resolution Procedures approved by the bankruptcy court.

3. Appellees filed a proof of claim in debtors' Chapter 11 case as a general unsecured claim arising out of tort and contract law in the amount of \$1,250,000, which qualifies as a "Class B Claim" under the ADR Procedures. (D.I. 2, Ex. 1) Appellees consented to binding arbitration pursuant to the ADR Procedures and, after a hearing, an arbitrator awarded them monetary and injunctive damages. The arbitrator held that

[t]he [monetary] damages . . . are hereby designated to be classified as a Priority Claim in [debtors'] Bankruptcy proceeding in a class immediately superior to all unsecured claims.

(D.I. 2, Ex. 27)

4. The plain language of the ADR Procedures, proposed by debtors and approved by the bankruptcy court, provides that an arbitration award may be elevated to priority status if so designated by the arbitrator. In this case, the arbitrator exercised this discretion and classified appellees' claim as a priority claim, although such a claim would not otherwise be given priority status under § 507 of the bankruptcy code. The court finds that the arbitration award was "rationally derived from the agreement between the parties" and that the arbitrator did not exceed his authority by designating it a priority claim.

Sue L. Robinson
United States District Judge