

NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3055-09T3

VICTORYA SIDING, INC.,

Plaintiff-Respondent,

v.

PRECISION BUILDERS,

Defendant-Appellant.

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Submitted February 14, 2011 – Decided March 3, 2011

Before Judges Rodríguez and Grall.

On appeal from the Superior Court of New  
Jersey, Law Division, Monmouth County,  
Docket No. L-4736-08.

Gregory R. Singleton, attorney for  
appellant.

James M. Siciliano, attorney for respondent.

PER CURIAM

Precision Builders (Precision) appeals from the January 22,  
2010 order denying its motion opposing confirmation of a \$11,905  
commercial arbitration award in favor of Victorya Siding, Inc.  
(Victorya). We affirm.

Victorya, a subcontractor, sued Precision, a general contractor, who refused to pay \$11,905 on a bank account for goods and services. Precision answered and counterclaimed for \$10,593.60 alleging that Victorya: failed to complete the work in a workmanlike manner; used inferior materials; and deviated from the plans and specifications of the project. Precision alleged receiving complaints from several of its customers about the quality of Victorya's work. Precision had to: remedy the problems and replace materials at its own expense; repair damages caused by Victorya; and hire new subcontractors to complete the work.

The parties were noticed to participate in nonbinding arbitration pursuant to Rule 4:21A. After an adjournment, the arbitration hearing was set for September 23, 2009. Precision did not appear for the arbitration. Precision's trial counsel, who also represents it on appeal, asserts that the Monmouth Vicinage Arbitration Coordinator advised him that he did not have to appear. Kathleen R. Wall, the appointed arbitrator, entered an award in favor of Victorya for \$11,905.

Victorya moved for confirmation of the arbitration award and entry of judgment pursuant to Rule 4:21A-6. Precision opposed the motion and "challenged the arbitration award." In opposition Precision's counsel certified that he sought his

adversary James M. Siciliano's consent to adjourn the September 23, 2009 arbitration date. However, there was no response to his request. He further certified that:

14. On September 23, 2009, I spoke with Millicent Garland (Millie) in the court arbitration section and advised her of my inability to get a response from Mr. Siciliano.

15. I also faxed her a copy of a letter I faxed to Mr. Siciliano's office concerning the same (Exhibit C).

16. At that time Millie informed me that Judge Bauman would be hearing the matter and that I did not have to come.

17. I relied on Millie's statement and did not appear.

18. Later that day, I called the court back to find out what happened and was informed that Mr. Siciliano had in fact appeared and was given an award by the arbitrator.

Judge David F. Bauman denied vacation of the arbitration award; and instead, entered an order confirming it. On appeal, Precision contends that: Precision's counsel's reason for not appearing constitutes good cause and Precision has a meritorious defense, therefore Victorya's motion to confirm the arbitration award must be denied. Precision also contends that it is entitled to a trial de novo pursuant to Rule 4:21A-4(f). We disagree.

Rule 4:21A-6 provides in pertinent part that after entry of an award:

(a) . . .

(b) Dismissal. An order shall be entered dismissing the action following the filing of the arbitrator's award unless:

(1) within 30 days after filing of the arbitration award, a party thereto files with the civil division manager and serves on all other parties a notice of rejection of the award and demand for a trial de novo and pays a trial de novo fee as set forth in paragraph (c) of this rule; or

(2) within 50 days after the filing of the arbitration award, the parties submit a consent order to the court detailing the terms of settlement and providing for dismissal of the action or for entry of judgment; or

(3) within 50 days after the filing of the arbitration award, any party moves for confirmation of the arbitration award and entry of judgment thereon. The judgment of confirmation shall include prejudgment interest pursuant to R. 4:42-11(b).

Precision concedes that it did not comply with paragraph 6b(1).

Despite the fact that its counsel learned on the day of arbitration that an award had been entered, Precision did not move for a trial de novo. In fact, Precision did nothing until Victorya sought confirmation of the award.

Rule 4:21A-4(f) does not support Precision's contention. The only explanation given by Precision's counsel is that he needed to discuss a strategy with its client. This excuse is

not good cause pursuant to Rule 4:21A-4(f). Precision is bound  
by its inaction and Rule 4:21-6.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION