

Notice

11-15 ✓

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

NOTICE SENT

11-15-07

H. A. 93

C. H. M. C.

B. L. ASSOC.

i. B. S.

M. G. A.

SUPERIOR COURT

CIVIL ACTION

NO. SUCV2007-1936

(LIT)

KEENE SYSTEMS, INC.

vs.

IRACING.COM MOTORSPORT SIMULATIONS,
f/k/a FIRST RACING, LLC

MEMORANDUM OF DECISION AND ORDER
ON
PLAINTIFF'S APPLICATION TO MODIFY IN PART
AND VACATE IN PART ARBITRATOR'S AWARD

INTRODUCTION

Keene Systems, Inc. ("KSI") entered into a consulting contract ("Consulting Agreement") with the defendant, iRacing.com Motorsport Simulations ("iRacing") whereby KSI would provide software design and engineering services on a project to develop a web site for the on-line use of a game created by iRacing. A dispute arose between the parties. iRacing terminated the contract. Pursuant to the Consulting Agreement, the matter was referred to binding arbitration under the rules of the American Arbitration Association. After several hearing days in November, 2006, and March, 2007, the Arbitrator issued his Award of Arbitrator on April 5, 2007 ("Award").

KSI has now moved to modify, in part, and to vacate, in part, the Award. For the reasons set forth below, KSI's motion is **DENIED** and the Award will be confirmed.

APPLICABLE LAW

It is well settled Massachusetts law that the scope of judicial review of a matter submitted by arbitration is narrow. Plymouth-Carver Regional Sch. Distr. v. J. Farmer & Co., 407 Mass. 1006, 1007 (1990); Trustees of Boston & Maine Corp. v. Mass Bay Transp. Auth., 363 Mass 386, 390 (1973); Barnstead v. Ridder, 39 Mass. App. Ct. 934, 936-937 (1996); The Uniform Arbitration Act for Commercial Disputes ("U.A.A."), set forth at G.L. c. 251, §§ 1-19, provides the statutory source of law governing the parties' dispute in the instant case and limits the circumstances under which this court may vacate or modify an arbitration award. General Laws c. 251, § 12(a), provides five grounds for vacating an award. A court may not upset the arbitrator's decision unless the party seeking to impeach the award demonstrates that: (1) corruption, fraud, or other undue means were present in the procurement of the award; (2) the arbitrator exhibited partiality, corruption or misconduct during the proceedings that prejudiced a party's rights; (3) the arbitrator exceeded the scope of his powers; (4) the arbitrator refused to postpone the arbitration hearing upon a showing of sufficient cause to do so, refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of section five, so as to substantially prejudice a party's rights; or (5) there is no arbitration agreement. G.L. c. 251, § 12(a). "Absent fraud, errors of law or fact are not sufficient grounds to set aside an award." Plymouth-Carver Regional Sch. Dist. v. J. Farmer & Co., 407 Mass, 1006, 1007 (1990). Even a grossly erroneous (arbitration) decision is binding in the absence of fraud. See, Wynn

v. Thompson. 335 Mass. 54, 61-62 (2001). Where both parties enter into a contract with an arbitration clause, they must accept the wheat with the chaff.

DISCUSSION

A. Failure to Award Interest

KSI argues that the Consulting Agreement required iRacing to pay 1.5 percent interest per month on any unpaid invoices and although the Arbitrator awarded KSI \$137,337.50 for the unpaid invoices, he miscalculated his figures by failing to include an award of interest. After a careful review of the Award, the court does not find a miscalculation by the Arbitrator which would permit a modification of the Award. See, Dadak v. Commerce Insurance Co., 53 Mass. App. Ct. 302, 304-305 (2001). KSI had made known to the Arbitrator its contention that it was entitled to interest on the past due invoices. Perhaps because of the offset of damages which he determined, the Arbitrator chose not to award interest. The interpretation of the contract by an arbitrator is not reviewable, even if it appears to be erroneous or unwarranted. See, Plymouth-Carver Regional Sch. Dist. v. J. Farmer & Co., supra, 407 Mass. at 1007.

B. Failure of iRacing to Give Thirty Days' Termination Notice

KSI argues that iRacing breached the Consulting Agreement because it failed to give the required thirty days termination notice. Given this alleged breach, KSI contends that the Arbitrator exceeded his authority in allowing iRacing's counterclaim to go forward. KSI raised this contention to the Arbitrator in its requested findings of fact and rulings of law.

In its Award, the Arbitrator found that cure by SKI was not possible, that iRacing could not have discovered the state of the overall project until the demonstration of

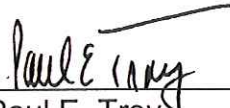
integration, and that KSI suffered no damages as a result of the immediate notice of termination. In light of these findings, and the relevant case law as set forth above, the Arbitrator did not exceed his authority when he failed to preclude iRacing's counterclaim.

C. iRacing's Request for Attorney's Fees and Costs

After consideration, the court declines to award attorney's fees and costs pursuant to Mass. Gen. Laws, ch. 251, § 14. See, Glenn Acres, Inc. vs. Cliffwood Corp., 353 Mass. 150, 155 (1967).

ORDER

For the reasons stated above, KSI's application to modify and vacate the arbitration Award is **DENIED**. The Arbitration Award is confirmed pursuant to Mass. Gen. Laws, ch. 251, §§ 12-13. Judgment shall enter for iRacing in the amount of \$165,741.00.



Paul E. Troy
Justice of the Superior Court

Dated: November 13, 2007