

STATE OF MAINE

KENNEBEC, ss.

SOUTHWEST HARBOR
SCHOOL COMMITTEE,

Plaintiff

v.

PERRY & MORRILL, INC.,

Defendant

SUPERIOR COURT

CIVIL ACTION

DOCKET NO. CV-03-196

SKS - KEN - 12/3/2003

DONALD L. GARDNER
LAW LIBRARY

FEB 18 2004

CONFIRMATION OF
ARBITRATION AWARD

This matter comes before the court on the motion of the plaintiff to confirm an arbitration award and motion of the defendant to vacate that same award. Ordinarily, the court would confirm an arbitration award unless there are grounds to vacate that award. 14 M.R.S.A. § 5937. Among those circumstances when an award might be vacated are where, "There was evident partiality by an arbitrator appointed as a neutral." 14 M.R.S.A. § 5938(1). The burden of proving the "evident partiality" of the arbitrator rests on the moving party.

The plaintiff points out that in order to preserve an issue of partiality to attack an arbitrator's award, the moving party must have brought the question to the attention of the arbitrator to allow an opportunity to address the concerns at that level. *Concord General Mut. Ins. Co. v. Northern Assurance Co.*, 603 A.2d 470 (Me. 1992). In the present case, the defendant did not raise any question of the arbitrator's impartiality under the motion to vacate the award. Therefore, this issue has been waived.

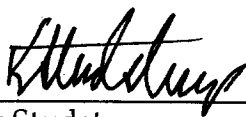
The court has also reviewed the competing affidavits and has concluded that even if the partiality/impartiality issue had not been waived by the defendants, they

have still failed to adequately demonstrate any partiality on behalf of the arbitrator in question.

For the reasons stated, the entry will be:

- (1) Defendant's motion to vacate award is DENIED.
- (2) Plaintiff's motion to confirm arbitration award is GRANTED and this court hereby CONFIRMS the June 5, 2003 arbitration award in favor of Southwest Harbor School Committee against Perry & Morrill in the amount of \$91,176 pursuant to 14 M.R.S.A. § 5937 *et seq.* It is further ORDERED that the balance of the retainage in the amount of \$30,000 held by the plaintiff may be applied against the judgment awarded above.

Dated: December 3, 2003



S. Kirk Studstrup
Justice, Superior Court

SOUTHWEST HARBOR SCHOOL COMMITTEE - PLAINTIFF

SUPERIOR COURT

KENNEBEC, ss.

Docket No AUGSC-CV-2003-00196

Attorney for: SOUTHWEST HARBOR SCHOOL COMMITTEE
BRIAN D WILLING
DRUMMOND WOODSUM & MACMAHON
245 COMMERCIAL ST.
PO BOX 9781
PORTLAND ME 04104-5081

DOCKET RECORD

vs

PERRY & MORRILL INC - DEFENDANT

Attorney for: PERRY & MORRILL INC
BRETT D BABER
LAW OFFICE OF BRETT D. BABER PA
304 HANCOCK ST, SUITE 2E
BANGOR ME 04401

Filing Document: FILING MOTION
Filing Date: 07/31/2003

Minor Case Type: ARBITRATION AWARDS

Docket Events:

07/31/2003 FILING DOCUMENT - FILING MOTION FILED ON 07/31/2003

07/31/2003 Party(s): SOUTHWEST HARBOR SCHOOL COMMITTEE
MOTION - MOTION TO CONFIRM ARBITRATION FILED ON 07/31/2003
Plaintiff's Attorney: BRIAN D WILLING
PROPOSED ORDER.

07/31/2003 Party(s): SOUTHWEST HARBOR SCHOOL COMMITTEE
ATTORNEY - RETAINED ENTERED ON 07/31/2003
Plaintiff's Attorney: BRIAN D WILLING

07/31/2003 CERTIFY/NOTIFICATION - CASE FILE NOTICE SENT ON 07/31/2003
Plaintiff's Attorney: BRIAN D WILLING
MAILED TO ATTY. OF RECORD.

08/11/2003 Party(s): PERRY & MORRILL INC
OTHER FILING - OPPOSING MEMORANDUM FILED ON 08/11/2003
Defendant's Attorney: BRETT D BABER
DEFENDANT'S MEMORANDUM IN SUPPORT OF APPLICATION TO VACATE AND IN OPPOSITION TO MOTION TO
CONFIRM ARBITRATION AWARD, FILED.

08/11/2003 Party(s): PERRY & MORRILL INC
MOTION - MOTION TO VACATE FILED ON 08/11/2003
Defendant's Attorney: BRETT D BABER
DEFENDANT'S APPLICATION TO VACATE ARBITRATION AWARD WITH ATTACHMENTS AND PROPOSED ORDER,
FILED.

08/15/2003 Party(s): SOUTHWEST HARBOR SCHOOL COMMITTEE
OTHER FILING - OPPOSING MEMORANDUM FILED ON 08/14/2003
Plaintiff's Attorney: DEIRDRE SMITH
PLAINTIFF'S OBJECTION TO DEFENDANT'S APPLICATION TO VACATE ARBITRATION AWARD AND REPLY
BRIEF IN SUPPORT OF PLAINTIFF'S APPLICATION TO CONFIRM AWARD.