

Appellate Division Upholds Dismissal Of Case For Failure To File Trial De Novo Due To Clerical Error

June 19, 2019 | by Thomas F. Dorn, Jr

On May 21, 2019, the Appellate Division in *Cuomo v. TSI Ridgewood, LLC*(A-4898-17T4), the Appellate Division, in an unpublished opinion, affirmed the Law Division's Orders (1) enforcing the arbitration award and entering judgement against the defendant TSI Ridgewood, LLC and (2) denying defendant's motion for leave to file a demand for a trial de novo.

This Bergen County Superior Court case involves the mandatory electronic filing requirements in Superior Court. An arbitration in this civil case was held on January 31, 2018, awarding plaintiff Helena Cuomo \$200,000. Pursuant to Rule 4:21A-6(b)(1), in order to reject an arbitration award and proceed to trial, a trial de novo demand must be filed and served within 30 days along with payment of \$200. The purpose behind the 30-day time period was to ensure that the courts promptly schedule trials when cases cannot be resolved by arbitration. Prior to the arbitration a Notice to the Bar had been issued that beginning on October 16, 2017, Bergen County would be implementing electronic filing of all documents through eCourts. An earlier Notice to the Bar in May 2017 required attorneys to have a Judiciary Account Charge System (JACS) account to electronically file documents that require a fee.

Defense counsel instructed his secretary on February 1, 2018 to reject the arbitration award. Although his office did have a JACS account he did not understand how the \$200 was supposed to be paid so he told his secretary to find out how. Although his secretary was confused as to how to file the trial de novo electronically and pay the \$200 she never contacted the court to find out how. Instead she sent the demand for a trial de novo and a check for \$200 to Bergen County on February 13, 2018 via Federal Express and sent a copy to plaintiff's counsel. Ten days before the 30-day deadline defense counsel's secretary received a notice from the clerk that the trial de novo was rejected because it was not done electronically. The notice gave defense counsel ten days to file the trial de novo electronically. The secretary claimed that he she was confused by the court notice. Also, she did not

tell defense counsel about the notice and again never contacted the court for assistance. Instead she tried to file the de novo through eCourts but incorrectly submitted the documents as an “Arbitration Award” rather than a trial de novo demand. On February 23, 2018 the clerk sent all counsel and the secretary a deficiency notice stating “Payment Missing”. Defense counsel spoke to his secretary about the deficiency notice and she advised him that the \$200 had already been submitted to the court. However, neither the secretary nor the attorney contacted the court about the deficiency notice or the check and did not log into eCourts to review the case jacket to see if the trial de novo demand had been filed.

After the 30-day time period expired on March 2, 2018, plaintiff’s counsel moved to confirm the arbitration award. Defense counsel cross moved for leave to file a trial de novo demand. The trial court denied defendant’s motion and upheld the arbitration award of \$200,000.

The Appellate Division affirmed the trial court decision because there were no extraordinary circumstances shown. The court rejected defendant’s substantial compliance argument. The “clerical error” did not amount to extraordinary circumstances.

This decision demonstrates the importance of knowing and following the rules and paying attention to all court updates and Notices to the Bar. In this case, a clerical error led to defendant not receiving a jury trial and led to the entry of \$200,000 award which the defendant’s insurance company will have to pay. Given the significant consequences of this decision, I anticipate that defendant will seek to have the Supreme Court review this decision and argue that even though they did not comply with the electronic filing rules they did technically reject the award within 30 days and timely notified plaintiff’s counsel. In the early 1990s I was involved in a case when an attorney left the firm and a trial de novo was never filed. I was assigned the case after the 30-day time period had run. I filed an appeal and argued that: (1) the client never received a jury trial, (2) the client did nothing wrong and had no knowledge that the trial de novo was not filed within the 30 days and (3) upholding the dismissal would lead to a legal malpractice case.

The appellate courts upheld the no cause at the arbitration because they found that no extraordinary circumstances had been shown. In that case, however, a de novo was never filed within the 30 days

and the defense attorney was not notified within the 30-day time period. Keeping in mind that justice is the overall goal in every case, should an innocent litigant be denied a trial because of the fault of their attorney or the attorney's staff? The Supreme Court needs to address this issue.