PRE-JUDGEMENT INTEREST AND FEES ARE INCLUDED WHEN CALCULATING WHETHER A JUDGEMENT IS MORE FAVORABLE THAN ARBITRATION AWARD

March 23, 2010 | Law Alerts, News

Aqua Management Inc. v. Abdeen
Ct. Appeals, Div. One, March 23, 2010

Authored by the JSH Appellate Team

Aqua Management sued the Abdeens for breach of contract. The case was referred to mandatory arbitration. The arbitrator found that Aqua was entitled to $7,650.00 in damages, $826.90 in taxable costs, and $1,903.50 in attorney's fees. The Abdeens appealed. After a bench trial, Aqua was awarded $7,076.09 in damages plus prejudgment interest.

Aqua moved for attorney's fees under Rule 77(f), which requires the appealing party to pay the other side's attorneys' fees if the judgment received is not more than 23% greater than the arbitration award. The trial court concluded that neither attorney's fees nor pre-judgment interest should be considered in the Rule 77(f) analysis. Accordingly, it found the judgment was at least 23% more favorable to the Abdeens and attorney's fees were not mandated by Rule 77(f).

The court of appeals reversed. Attorney's fees are included in the Rule 77(f) analysis, because they are similar to taxable costs, which are counted in the Rule 77(f) analysis. Additionally, because Aqua's judgment on its face included pre-judgment interest, that amount should have been included in the analysis. After adding in the attorney's fees and pre-judgment interest, Abdeens' judgment was not 23% more favorable, and thus they had to pay Aqua's attorney's fees under Rule 77(f). The court also held that post-judgment interest is not considered in the analysis because it is generally collateral to the underlying judgment. Allowing post-judgment interest to be included in the analysis would give the opposing party an incentive to delay the resolution of a case so as to inflate the total arbitration award.