

ARBITRATION AWARDS CAN INCLUDE DAMAGES UNDER G.L. c. 93A

By Thomas C. Federico, Partner, Morrison, Mahoney & Miller, LLP

In Drywall Systems, Inc. v. ZVI Construction Co., the Supreme Judicial Court affirmed an Appeals Court decision that upheld an arbitration award of multiple damages and attorney's fees under G.L. c. 93A, §11. The subcontract agreement and the general conditions contained a standard arbitration provision requiring the parties to submit to arbitration any controversy or claim arising out of or related to the subcontract. Disputes arose and the subcontractor demanded arbitration, seeking unpaid balances due under the contracts, together with delay and business liquidation damages. The subcontractor also sought "treble damages and legal fees for violation of [G.L.] c. 93A." The arbitration panel ruled in favor of the subcontractor and its award included multiple damages and attorney's fees under G.L. c. 93A, §11. The arbitration panel determined that the general contractor had committed unfair and deceptive acts and practices under G.L. c. 93A, 2 and 11 and that its conduct was wilful or knowing.

The Supreme Judicial Court noted that the parties had agreed to submit to arbitration "[a]ny controversy or claim" arising out of or relative to the subcontracts, and the agreement placed no limits on arbitrable claims. Moreover, the contracts also provided that the parties agreed to be bound by the Construction Industry Arbitration Rules of the AAA. Section 43 of those rules permits an arbitrator to "grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties." Where the contract contains an arbitration clause, there is a presumption in favor of arbitration and any doubts are resolved in favor of arbitration. Moreover, the Court found that any remedies available under G.L. c. 93A, 11 were inherent in the parties' agreement to submit statutory claims to arbitration.

The Court also rejected the argument that arbitration awards of multiple damages violated public policy because they constituted punitive damages that are avoid only if imposed by a court, in a public forum, to vindicate the public interest. Because the case was a purely private dispute between two construction businesses, there is a "strong public policy in favor of arbitration." Furthermore, allowing arbitrators to award the full range of relief under G.L. c. 93A, 11, encourages arbitration as an alternative means of efficient commercial dispute resolution without the "delay and obstruction in the courts." Requiring the parties to undergo a separate action in court on the merits of their G.L. c. 93A claims would defeat "the arbitral objectives of speedy and economic resolution of commercial disputes." Consequently, parties might reject arbitration as an alternative to forgo having to pursue multiple damages in a separate trial court proceeding, in which the parties would need to revisit the merits of the underlying dispute, in some cases in their entirety.

Finally, the Court determined that the subcontractor was entitled to attorney's fees under G.L. c. 93A, §11. The Court acknowledged, however, that attorney's fees for claims pursued in arbitration in conjunction with G.L. c. 93A claims are not recoverable under G.L. c. 251, §10 (the Massachusetts Uniform Arbitration Act), if they can be apportioned accordingly. Nonetheless, where the claims in this case "represent[ed] various elements of damage arising from a single chain of events," the attorney's fees need not be, and were not, limited to G.L. c. 93A claims.

Because there are limited grounds for an appeal of an arbitration decision (e.g., fraud, corruption, evident partiality), the broad scope of remedies and damages available as part of an arbitration award may cause some contractors to pause before including an arbitration clause that requires arbitration on all claims. It may be advantageous to insert language into contracts that excludes certain claims from arbitration or that require arbitration at the election of one of the parties.