NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2434-08T3

TOWNSHIP OF IRVINGTON,
TOWNSHIP OF IRVINGTON FIRE
DEPARTMENT, OFFICERS AND
CREW OF ENGINE 43 OF THE
TOWNSHIP OF IRVINGTON FIRE
DEPARTMENT,

Plaintiffs-Appellants,

v.

COREGIS INSURANCE COMPANY,

Defendant-Respondent.

Argued January 13, 2010 - Decided April 7, 2010

Before Judges Stern and Sabatino.

On appeal from the Superior Court of New Jersey, Chancery Division, Essex County, Docket No. C-238-08.

Steven F. Ritardi argued the cause for appellants (Carmagnola & Ritardi, LLC, attorneys; Mr. Ritardi, of counsel and on the brief; Matthew R. Litt, on the brief).

Joanna L. Crosby argued the cause for respondent (Tressler, Soderstrom, Maloney & Priess, LLP, attorneys; Ms. Crosby, of counsel and on the brief; Gregg H. Aronson, on the brief).

PER CURIAM

Plaintiffs, Township of Irvington, its Fire Department, and the officers and crew of Engine 43 of the Fire Department (collectively, "the Township"), appeal from a judgment of the Chancery Division, entered on December 8, 2008. The judgment confirms an arbitration award in favor of defendant, Coregis Insurance Company ("Coregis"), grants defendant's motion to dismiss the complaint, and denies plaintiffs' cross-motion to vacate the award. The arbitration related to liability coverage for the Township under primary and excess policies issued by Coregis. We affirm.

The parties' coverage dispute arose out of a personal injury that occurred when the Township firefighters responded to a report of a flooded basement. While the firefighters were on the scene, an individual in the basement, Chantel Porras, was exposed to a live electric current and she suffered serious injuries.

At the time of the Porras accident, the Township had a municipal liability insurance policy with Coregis, with a $1,000,000 coverage limit and a $50,000 self-insured retention. At the same time, Coregis also provided the Township with a $5 million commercial umbrella policy, which was excess to the $1 million municipal policy.

After the accident occurred, Porras sued the Township in the Law Division, seeking compensation for her injuries. The Township, without consulting Coregis, assigned an attorney ("the Township's defense counsel") to represent its interests in defending the case.

The record indicates that the Township's defense counsel made what Coregis contends to be various mistakes in handling the Porras litigation. Among other things: he did not retain a defense medical expert or have Porras examined; he failed to take the depositions of Porras and several of the firefighters who were on the scene; and he did not file opposition to Porras's motion for partial summary judgment on liability.

Before trial in the Porras matter, that case went to non-binding arbitration pursuant to Rule 4:21A-1. Porras was awarded $100,000, a sum that was twice the Township's $50,000 self-insured retention.

Porras then filed a de novo demand for a jury trial. At that time the Township's defense counsel recommended that the case was worth $65,000 in settlement value. He consequently obtained a slightly higher sum, $75,000, in settlement authority from Coregis. Porras rejected the $75,000 offer and demanded the $1 million municipal policy limit, a critical fact that was unfortunately not timely conveyed to Coregis.

After the trial court granted Porras partial summary judgment on liability, the matter went to trial. The jury awarded Porras $5 million in damages. Through remittitur, the trial judge reduced the award to $1 million. In an ensuing appeal and cross-appeal, a panel of our court reinstated the $5 million verdict in an unpublished opinion. See Porras v. Twp. of Irvington, Nos. A-0814-06 and A-0855-06 (App. Div. May 28, 2008). Following a petition for certification by the Township, the Supreme Court summarily remanded the matter to us for reconsideration in light of Jastrum v. Kruse, 197 N.J. 216 (2008), a then-recent opinion concerning remittiturs. Porras v. Twp. of Irvington, 197 N.J. 473 (2009). On remand, this court reaffirmed its prior determination to reinstate the $5 million verdict. See Porras v. Twp. of Irvington, Nos. A-0814-06 and A-0855-06 (App. Div. May 7), certif. denied, 200 N.J. 472 (2009).

As a result of these events in the Porras matter, the Township was exposed to the $5 million liability, as Coregis disclaimed coverage because of the Township's alleged lack of cooperation during the course of the litigation. The Township opposed Coregis's declination of coverage, arguing that it and its agents had sufficiently cooperated with Coregis.

Pursuant to a binding arbitration clause in its insurance policy with the Township, Coregis demanded arbitration to

resolve the coverage dispute. The matter was referred to a three-member arbitration panel, consisting of two retired state court judges and a retired federal district court judge. The arbitrators took live testimony and they also considered various exhibits and the arguments of counsel.

After considering the proofs and the legal authorities, the arbitrators issued a detailed arbitration award on April 24, 2008, concluding that Coregis was not obligated to provide coverage. Among other things, the arbitrators found that the Township had failed to cooperate with the carrier in the defense and settlement of the Porras lawsuit; that the failure to cooperate was a material breach of the insurance policies; that Coregis was "appreciably prejudiced" by the Township's failure to cooperate; that the parties were responsible for their own counsel fees and arbitration costs; and that it was unnecessary to address the parties' additional arguments.

The Township then sought to vacate the arbitration award, by filing a complaint in the Chancery Division. Coregis filed a motion to dismiss the complaint, or, in the alternative, to confirm the award.

Applying the limited standard of review prescribed under the New Jersey Arbitration Act ("the Arbitration Act"), N.J.S.A. 2A:23B-1 to -32, and related case law, the Chancery Division

judge confirmed the arbitrators' award. The judge found that none of the narrow grounds for vacating an arbitration award under the statute, such as fraud or corruption, had been established by the Township.

In particular, the judge underscored the arbitrators' key factual determinations that: (1) Coregis did not learn of the Porras case until about two years after it was filed; (2) Coregis never had control over the lawsuit, but the Township and its hired counsel did; (3) Coregis did not undertake a defense of the Township by releasing settlement authority on the brink of trial or by having sporadic communications with the Township and its counsel at that late juncture; and (4) the Township breached the insurance policy's cooperation clause. The judge further agreed with the arbitrators' assessment that it was inconsequential, given these underlying circumstances, that Coregis did not issue a formal reservation of rights letter to the Township.

The judge determined that the arbitrators' finding of a breach of the cooperation clause was based upon "a reasoned explanation of the factual evidence in the case." At a minimum, the judge ruled, the arbitrators' legal conclusions adverse to the Township were "reasonably debatable," and therefore "may not be disturbed as a matter of law."

The Township asks for a reversal of the confirmed arbitration award, based on what it advocates should be a "higher level of judicial scrutiny" in cases such as this one where the arbitration involves a public entity and where taxpayers will have to bear the brunt of an adverse outcome. No matter what the standard of review is, the Township further argues that the insurer should be estopped from disclaiming coverage because it had been involved in the Porras matter in authorizing a settlement amount and also because it failed to issue a reservation-of-rights letter.

In opposition, Coregis insists that the confirmation of the award was appropriate under well-accepted statutory and case law standards. It further asserts that the Township's novel arguments about judicial scrutiny and the public purse are invalid.

Having considered these arguments and the record as a whole in light of the governing law, we affirm the Chancery Division's judgment, substantially for the cogent reasons expressed in the oral opinion of Presiding Judge Kenneth S. Levy on December 5, 2008. We only add some brief comments.

Judge Levy correctly applied the proper standard of review under the Arbitration Act. See N.J.S.A. 2A:23B-23. The statute "precludes judicial interference with an arbitrator's award

except in extremely limited circumstances." Malik v. Ruttenberg, 398 N.J. Super. 489, 495 (App. Div. 2008); see also Tretina Printing, Inc. v. Fitzpatrick & Assocs., Inc., 135 N.J. 349, 356-57 (1994).

We discern no reason to apply a more heightened standard of review just because one of the participants in the arbitration happens to be a public entity. The arbitration was triggered by a clause in a standard liability policy issued by a private insurance company. The same clause would trigger arbitration, and the normal statutory grounds for confirmation of an award, if the insured had been a commercial enterprise. We are not authorized to treat a public sector insured any differently. If the Township believes that a more stringent review standard should be adopted because of its status as a public entity, the remedy lies with the Legislature. Under the present statute, we are obligated to apply the standard that it enumerates, regardless of the insured's public or private status.

Furthermore, irrespective of how stringently the arbitration award is evaluated in this case, the panel's conclusion that the Township and its chosen defense counsel breached the duty of cooperation to Coregis is virtually unassailable. The record strongly reflects that the insurer was kept in the dark about the existence, and the precarious status,

of the Porras case until much too late in the litigation. There is ample proof that Coregis was appreciably prejudiced by the lack of cooperation, which resulted in a very sizeable verdict. Hager v. Gonsalves, 398 N.J. Super. 529, 538 (App. Div.), certif. denied sub nom., High Point Ins. Co. v. Rutgers Cas. Ins. Co., 195 N.J. 522 (2008). We also concur with the arbitrators and the Chancery Division judge that Coregis's non-issuance of a reservation of rights letter does not vitiate the Township's failure to cooperate with the insurer in a timely and effective defense of the lawsuit.

Affirmed.