

Storm v. The Standard Fire Insurance Co. (2DCA/4)

Policy language that each party will pay expenses it incurs in arbitration and bear expenses of arbitrator equally did not preclude recovery under Code of Civil Procedure Section 998

FACTS/PROCEDURE

Helene Storm filed an underinsured motorist claim with her insurer, Standard Fire Insurance Company (Standard Fire), after receiving a payout below her policy limit following an accident. Standard Fire disputed the amount of Storm's damages. The parties arbitrated the claim based on their insurance agreement. The arbitration provision required an arbitrator's binding decision on the legal entitlement and amount of damages and stated that each party "will pay the expenses it incurs" and bear the expenses of the arbitrator equally. Standard Fire did not accept Storm's Code of Civil Procedure Section 998 offer. Storm was ultimately granted an award in excess of her 998 offer. Storm's award was confirmed in the superior court without costs.

Storm then filed a memorandum of costs and a motion to augment the judgment. Standard Fire opposed that motion asserting that Storm was precluded from recouping any costs because the insurance agreement provided that each party "will pay the expenses it incurs." The court struck Storm's memorandum of costs. On appeal, Storm argued that the policy language providing for the division of arbitration costs did not preclude her from recovering under Section 998.

HOLDING/DISCUSSION

Reversed and remanded. Applying section 1284.2 to underinsured motorist arbitrations is not inconsistent with the cost shifting provisions of Section 998 for recovery of costs incurred during arbitration. Courts shall award costs upon any judicial proceeding to confirm, correct, or vacate arbitration awards.

Here, the plain meaning of the terms "pay and bear" made it clear that the parties agreed, in the first instance, to pay their own arbitration expenses and to be equally accountable for the arbitrator's fee. But these terms said nothing about limiting the statutory right to recover those expenses under Section 998's cost shifting structure. Moreover, both parties had agreed that the provisions were designed to mirror Section 1284.2's default rule for payment of arbitration costs. Section 1294.2 provides only for the equal payment of arbitration costs and not as a limitation to recover pursuant to Section 998. Therefore, the agreement did not forbid Storm from recovering the costs of arbitration under Section 998.