STATE OF MICHIGAN

COURT OF APPEALS

W. HENRIETTE MARBERGER and LOUISE J. STINER,

Plaintiffs–Appellees,

v

PRUDENTIAL SECURITIES INC. f/k/a PRUDENTIAL BACHE SECURITIES, INC.,

Defendant–Appellant.

UNPUBLISHED
July 12, 1996

No. 180784
LC No. 94-470087-CK

Before: Murphy, P.J., and O'Connell and M.J. Matuzak,* JJ.

PER CURIAM.

In this investment case, plaintiffs brought a motion for summary disposition pursuant to MCR 2.116(C)(10), seeking affirmance of an arbitration award in their favor. Defendant appeals as of right the lower court's granting of plaintiffs' motion for summary disposition. The arbitration award stemmed from plaintiffs' claim that an employee of defendant defrauded them of money entrusted to him for investment. Defendant claims that the arbitration award should have been set aside, and plaintiffs' motion for summary disposition denied because one of the arbitrators had a potential conflict of interest. We affirm.

Defendant argues that the failure of an arbitrator to disclose facts that might reasonably lead to an impression or appearance of bias constitutes grounds for vacating an arbitration award. MCR 3.602 sets out the appropriate standard. Under that standard, an arbitration award will be overturned upon application of one of the parties if "there was evident partiality by an arbitrator, appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights . . .." This Court has clarified that "to overturn the arbitration award, the partiality or bias must be certain and direct, not remote, uncertain or speculative." *Gordon Sel-Way v Spence Bros, Inc*, 177 Mich App 116, 120-121; 440 NW2d 907 (1989), modified 438 Mich 488; 475 NW2d 704 (1991). The arbitrator in this case testified that at the time the arbitration panel made its determination, he knew that he had no clients with claims against defendant. Further, although he signed a corrected draft of the arbitration award three days

after he erroneously disclosed that he had a client with a possible claim against defendant, this does not demonstrate a definite and evident bias on his part. Thus, the trial court did not err in upholding the arbitration award where defendant argued that the award should be vacated on the mere potential for an appearance of bias.

Defendant also argues that the lower court erred in modifying the arbitration award to explicitly state that defendant and Vincent Shy were jointly and severally liable to plaintiffs for the award amount. We disagree. MCR 3.602(K)(1)(a) provides that the court shall modify or correct an award if there is an "evident mistake in the description of a person, a thing, or property referred to in the award . . . ." We agree with the lower court that the award's failure to explicitly state that defendant and Shy were jointly and severally liable was an evident mistake. Pursuant to MCL 451.810(b); MSA 19.776(41)(b) defendant failed to demonstrate that it was not jointly and severally liable with Shy.

Finally, plaintiffs move for attorney fees and damages asserting that defendant's appeal is vexatious because no authority supported its arguments. We disagree. While we conclude that defendant's argument was unpersuasive, it cannot be said that there was no authority that supported defendant's position. As a result, defendant's appeal was apparently not made without any reasonable basis for belief that there was a meritorious issue to be decided on appeal. MCR 7.216(C).

Affirmed.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Michael J. Matuzak