

STATE OF MICHIGAN
COURT OF APPEALS

ANTHONY H. STACK

UNPUBLISHED

Plaintiff-Appellant,

v

No. 175096

LC No. 89-375632

AFTER REMAND

K-MART CORPORATION,

Defendant-Appellee.

Before: Michael J. Kelly, P.J., and Hoekstra and E.A. Quinnell,* JJ.

E.A. QUINNELL, C.J. (concurring)

The lead opinion accurately notes that when the defendant's Compensation and Incentive Committee terminated all of defendant's stock options on January 17, 1984, it implicitly found that plaintiff had engaged in "fraud, dishonesty, or similar acts." The Plan left that determination to the unbridled discretion of the Compensation and Incentives Committee; there is no provision in the Plan for any hearing, participation by the employee in the determination, factual findings, or the like.

Because the defendant reserved that sole discretion to its Compensation and Incentives Committee, the law implies a provision that such discretion be exercised honestly and in good faith. *Eastway v Citizens's Insurance Co*, 206 Mich App 299; 520 NW2d 640 (1994); *Burkhardt v City National Bank*, 57 Mich App 649; 226 NW2d 678 (1975).

The proper question is not whether plaintiff actually engaged in misconduct, but whether there is a good faith basis for determining that plaintiff had done so.

The verdict of the Federal Court jury provides a good faith basis to support the Committee's denial of plaintiff's stock option claim, as well as plaintiff's even less meritorious bonus claim. The trial court granted summary disposition pursuant to MCR 2.116(C)(10). Since there is no factual dispute regarding the existence of that verdict, the trial court must be affirmed.

* Circuit judge, sitting on the Court of Appeals by assignment.

/s/ Edward A. Quinnell