STATE OF MICHIGAN

COURT OF APPEALS

CHRISTOPHER STAEHELI and ANITA STAEHELI,

Petitioners-Appellants,

v

JEAN-PAUL PILOT,

Respondent-Appellee.

UNPUBLISHED

No. 187358
LC No. 94-2103 CZ

Before: Michael J. Kelly, P.J., and O'Connell and K.W. Schmidt,* JJ.

O'CONNELL, J. (dissenting).

I respectfully dissent.

An arbitration award may be vacated where the arbitrator has exceeded his or her powers. MCR 3.602(J)(1)(C). As set forth in *DAIIE v Gavin*, 416 Mich 407, 434; 331 NW2d 418 (1982), "by ignoring express and unambiguous contract terms, arbitrators run an especially high risk of being found to have 'exceeded their powers.'"

In the present case, petitioners expressly agreed that "the total liability of the inspector/inspection company for mistakes, errors, or omissions in this inspection/survey shall be limited to the amount of the fee paid for the inspection."[1] This is an express and unambiguous contract term.

Nevertheless, as evident by the size of the arbitration award, the arbitrator did not enforce this provision. A careful review of the "Award of Arbitration" and the remainder of the record yields not a scintilla of evidence concerning the arbitrator's rationale for failing to enforce the limitation of damages provision. While I am mindful that an arbitrator is under no obligation to explain the reasons underlying an award, I believe, in accordance with the similar case of *Farkar Co v R A Hanson Disc, Ltd*, 604 F2d 1, 2 (CA 2, 1979), that, given the clarity of the provision in issue, the arbitrator should "be bound

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

by the limitation of damages provision unless in a separate determination expressed in the award [he or she] find[s] the provision to be" unenforceable for some reason.

Accordingly, I would vacate the arbitration award and remand the matter to the arbitrator pursuant to MCR 3.602(J)(3) to allow the arbitrator the opportunity to explain or modify the award.

/s/ Peter D. O'Connell

[1] In fact, on the same form, petitioners expressly rejected the contractual option of obtaining an inspection "without a limit on liability to the amount of the fee of the standard inspection/survey." Presumably, petitioners consciously chose a "limited-liability inspection" rather than an "unlimited-liability inspection" to save money.