STATE OF MICHIGAN

COURT OF APPEALS

CRYSTAL A. WILLIAMS,

Plaintiff-Appellant,

v

HOWELL RECREATION, INC., JOHN H. HOWELL, SR., and EVA H. HOWELL,

Defendants-Appellees.

UNPUBLISHED
September 16, 1997

No. 188792
Wayne Circuit Court
LC No. 92-227171-CB

Before: Holbrook, Jr., P.J., and Fitzgerald and Smolenski, JJ.

PER CURIAM.

This case arises from a stockholder derivative suit that was submitted to arbitration by agreement of the parties. Plaintiff appeals as of right from the trial court's denial of her motion to vacate the arbitration award and its granting of defendants' motion to enforce it. We affirm.

Where, as here, the arbitration agreement provides that a judgment may be entered upon the arbitration award, the case involves "statutory arbitration" and is governed by MCL 600.5001 *et seq.*; MSA 27A.5001 *et seq*. *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 495; 475 NW2d 704 (1991); *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 174; 550 NW2d 608 (1996). Under the court rules, a statutory arbitration award may be vacated or modified in limited circumstances, such as where an arbitrator evidences partiality, refuses to hear evidence material to the controversy, or exceeds his or her powers. MCR 3.602(J)(1). *Gordon Sel-Way, supra*, 495; *Dohanyos, supra*, 174-175. To invite judicial action to vacate an arbitration award, the error of law must be apparent on its face and be so substantial that but for the error the award would have been substantially different. *Detroit Automobile Inter-Insurance Exchange v Gavin*, 416 Mich 407, 443; 331 NW2d 418 (1982); *Gordon Sel-Way, supra*, 497. Arbitrators exceed the scope of their authority "whenever they act beyond the material terms of the contract from which they primarily draw their authority, or in contravention of controlling principles of law." *Gavin, supra* at 434; see also *Gordon Sel-Way, supra* at 496.

Plaintiff first argues that the arbitration panel exceeded the scope of its authority by failing to determine the stock equities of the parties and, instead, canceling plaintiff's stock ownership. MCR 3.602(J)(1(c). We find no merit to this argument. The panel did not void plaintiff's stock, it merely denied her claim for damages. Further, while the panel certainly had the authority under the circuit court order to determine the parties' stock equities, it was not required to do so.

Next, plaintiff argues that the panel exceeded its authority and committed an error of law by considering defendants' motion to dismiss on statute of limitation grounds. Even assuming that the panel erred in considering defendants' motion based on the running of the statute of limitation, it is not apparent from the face of the panel's award that this issue was dispositive. Indeed, the award does not offer any explanation as to its decision to deny plaintiff's claim; however, neither the arbitration statute nor the circuit court order authorizing arbitration in this case mandated that the panel explain its decision. See *Donegan v Mich Mutual Ins Co,* 151 Mich App 540, 549; 391 NW2d 403 (1986). See also *Bernhardt v Polygraphic Co*, 350 US 198, 203; 76 S Ct 273; 100 L Ed 199 (1956); *United Steelworkers v Enterprise Wheel & Car Corp*, 363 US 593, 598; 80 S Ct 1358; 4 L Ed 2d 1424 (1960) ("Arbitrators have no obligation to the court to give their reasons for an award."). Here, because no error of law is apparent on the face of the award, the circuit court did not err in refusing to vacate it.

Plaintiff next argues that the arbitration panel exceeded its powers by implicitly voiding a prior default judgment against defendant Eva Howell. We disagree. The circuit court's order for arbitration provided, in pertinent part:

> IT IS FURTHER ORDERED that the arbitration shall proceed without Defendant Eva Howell; but, upon rendition of the award and submission to the Court under MCR 3.602, any of the parties may seek judgment or other remedies as he, she or it deem appropriate as it relates to said Eva Howell.

The arbitration award, among other things, denied plaintiff's claim against all defendants, including Eva Howell, and awarded attorney fees and costs to defendants Howell Recreation and John Howell against Eva Howell only. Contrary to plaintiff's argument, we do not find that the award implicitly (or otherwise) voided the default judgment entered against Eva Howell in the federal court. Rather, the award as it related to defendant Eva Howell was consistent with the instructions of the circuit court in ordering arbitration. Plaintiff is not precluded from seeking to enforce the default judgment entered in federal court.

Plaintiff next argues that the arbitrators evidenced partiality against her. MCR 3.602(J)(1)(b). We disagree. Repeated rulings against a party, even if erroneous, are not evidence of bias. See *Wayne Co Prosecutor v Parole Bd*, 210 Mich App 148, 155; 532 NW2d 899 (1995); *Ferrell v Vic Tanny International, Inc*, 137 Mich App 238, 248; 357 NW2d 669 (1984). Plaintiff has failed to establish certain or direct evidence of partiality to warrant vacating the award. See *Belan v Allstate Ins Co,* 173 Mich App 641, 642; 434 NW2d 203 (1988).

Additionally, plaintiff argues that the award should be vacated because it is in conflict with this State's public policy of imposing fiduciary duties on corporate officers such as defendants for the benefit of stockholders such as plaintiff. We find the gist of plaintiff's argument as one for review of the merits of the arbitrators' award. However, in *Gordon Sel-Way, supra* at 497, our Supreme Court explained:

> [A]n allegation that the arbitrators have exceeded their powers must be carefully evaluated in order to assure that this claim is not used as a ruse to induce the court to review the merits of the arbitrators' decision. Stated otherwise, courts may not substitute their judgment for that of the arbitrators and hence are reluctant to vacate or modify an award when the arbitration agreement does not expressly limit the arbitrators' power in some way.

Accordingly, given the limited scope of our review, we decline plaintiff's invitation to review the merits of the arbitrators' decision.

Plaintiff further argues that the award should be set aside under MCR 3.602(J)(1)(d) because the arbitrators refused to hear evidence material to the controversy. We disagree. During cross-examination of defendant John Howell by plaintiff's attorney, a short break was taken when the witness became visibly upset. After the break, the lead arbitrator stated:

> MR. BAUER: During our short recess, the panel conferred among itself, and we're becoming a little concerned that this hearing is either getting a little bit far afield of the issues or it will not conclude in a timely manner.
>
> We understand that both parties, at least the parties that are before us, understanding that Eva Howell is not before us and she is a party, Mr. Howell, Howell Recreation, and Crystal Williams, those parties and their counsel are concerned about the cost of these proceedings, and we are certainly mindful of it.
>
> Instead of going through each and every exhibit that has been given to this panel, where we're going to finally tell you or tell you for a final time, that all of the exhibits have been admitted into evidence. They all speak for themselves. We will not entertain any more questions from these documents seeking to elicit responses from Mr. Howell or from any other witness. All the documents speak for themselves.
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> Mr. Howell has again steadfastly testified that he does not recall with any specificity and has no independent recollection what's in these documents, and there is nothing being served other than the expiration of time. And time is money. The panel costs money. The arbitration facilities cost money. And in the spirit of Judge Lombard's order to us, this is to be an efficient, expedient process. And we intend to stick to Judge Lombard's words.

Plaintiff's counsel did not object on the record to the panel's decision to cut short his cross-examination of defendant Howell. Thereafter, during further examination of Mr. Howell and another witness,

members of the arbitrator panel interjected further concerns with the manner in which plaintiff's counsel conducted his examination, including asking incomprehensible questions and asking the same questions repeatedly. At the close of the hearing, the parties' counsel agreed to submit written closing arguments to the panel so as to expedite the matter and to reduce costs to the parties. Under the circumstances, we find that the arbitrators' decision to expedite the hearing was within its discretion and that plaintiff was not denied a fair and impartial hearing.

Lastly, plaintiff argues that the award should be set aside because defense counsel engaged in prejudicial misconduct. We disagree. Although civility was lacking at times during the proceedings below, defense counsel's conduct did not rise to the levels required by MCR 3.602(J)(1)(a) and (b).

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ E. Thomas Fitzgerald
/s/ Michael R. Smolenski