

STATE OF MICHIGAN  
COURT OF APPEALS

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JAIMES INDUSTRIES, INC.,

Plaintiff-Appellee,

v

ELGIN BUILDERS, INC.,

Defendant-Appellant.

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UNPUBLISHED

February 6, 1998

No. 201338

Oakland Circuit Court

LC No. 94-471915-CK

Before: Michael J. Kelly, P.J., and Hood and Gribbs, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's judgment which denied its motion to vacate an arbitration award. We affirm.

Statutory arbitration is to be directed in accordance with the rules established by the Michigan Supreme Court. MCL 600.5021; MSA 27A.5021. An arbitration award may be confirmed, modified, corrected, or vacated. However, the court's power to modify, correct, or vacate an arbitration award is limited by court rule. "An arbitration award may be vacated if (1) the award was procured by corruption, fraud, or other undue means; (2) there was evident partiality by an arbitrator, corruption by an arbitrator, or misconduct prejudicing a party's rights; (3) the arbitrator exceeded granted powers; or (4) the arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights." *Dohanyos v Detrex Corp*, 217 Mich App 171, 174-175; 550 NW2d 608 (1996) (citing MCR 3.602(J)(1)).

Defendant argues that the arbitration award should be vacated due to the arbitrator's evident partiality. The party who attacks the impartiality of an arbitrator carries the burden of proof. *Emmons v Lake States Ins Co*, 193 Mich App 460, 466; 484 NW2d 712 (1992). "[T]o overturn the arbitration award, the partiality or bias must be certain and direct, not remote, uncertain or speculative." *Park v American Casualty Ins Co*, 219 Mich App 62, 71-72; 555 NW2d 720 (1996); *Kauffman v Has*, 113 Mich App 816, 819; 318 NW2d 572 (1982). The standard of review for this issue is de novo. See *Belen v Allstate Ins Co*, 173 Mich App 641, 645; 434 NW2d 203 (1988).

While it has been held that an arbitrator's failure to disclose certain facts which might reasonably lead to an impression of bias constitutes grounds for vacating the award, the failure to disclose does not per se require that the award be vacated. *Gordon Sel-Way Inc, supra* at 120. Arbitrators must disclose to the parties any dealings that might create an impression of possible bias; however, the impression must be a reasonable one. *North American Steel Corp v Siderius, Inc*, 75 Mich App 391, 404; 254 NW2d 899 (1977). An impression of bias, sufficient to vacate an arbitration award, cannot be based on the existence of an undisclosed relationship alone, without regard for the peripheral, superficial or insignificant nature of the relationship. *Id.*

In the case at bar, defendant asserts that because the arbitrator served as the president and as a consultant at his son's construction company, which defendant alleges is in direct competition with its company, sufficient evidence of the arbitrator's bias in favor of plaintiff was established. Further, defendant argues that the amount of the award when examined in light of the fact that a written contract between the parties never existed, clearly supports the contention of partiality by the arbitrator. However, the arbitrator was chosen by the parties based on his experience in the construction industry. It would follow that an individual with experience in the construction industry would have contact with numerous individuals and companies including competitors. There has been no evidence presented which would suggest that defendant was ever placed in direct competition with the arbitrator's company. Defendant has not offered any proof that the company bid on the same construction jobs as it had. There has been no proof that the arbitrator's company had any prior dealings with plaintiff. Apart from the mere speculation that the arbitrator decided in favor of plaintiff because he perceived defendant to be a threat to his construction company, no evidence existed to suggest partiality on the part of the arbitrator. Because defendant failed to offer sufficient evidence, beyond mere speculation, to establish evident partiality by the arbitrator, the trial court did not err in refusing to vacate the arbitrator's award.

Affirmed.

/s/ Michael J. Kelly  
/s/ Harold Hood  
/s/ Romans S. Gribbs