STATE OF MICHIGAN

COURT OF APPEALS

TIMOTHY R. ASH,

Plaintiff-Appellee,

v

CHAPMAN AND ASSOCIATES,

Defendant-Appellant,

and

RONALD W. CHAPMAN,

Defendant.[1]

UNPUBLISHED
February 27, 1998

No. 201016
Oakland Circuit Court
LC No. 95-498475 CK

Before: O'Connell, P.J., and Gribbs and Smolenski, JJ.

PER CURIAM.

Defendant Chapman and Associates appeals as of right a circuit court order confirming an arbitration award in favor of plaintiff and awarding plaintiff prejudgment interest pursuant to MCL 600.6013; MSA 27A.6013 [§ 6013] from the date that the order for binding arbitration was entered. We affirm in part, reverse in part and remand.

Defendant is a law firm. Plaintiff is an attorney formerly employed by defendant. The matter arbitrated was a fee splitting dispute.

On appeal, defendant argues that the circuit court erred in failing to modify the arbitration award because the award contained a miscalculation of figures. We disagree.

As explained in *Dohanyos v Detrex Corp (After Remand)*, 217 Mich App 171, 175; 550 NW2d 608 (1996):

> An arbitration award may be modified or corrected if (1) there is evident miscalculation of figures or an evident mistake in the description of a person, a thing, or

> property referred to in the award; (2) the arbitrator has made an award with regard to a matter not submitted for arbitration and the award may be corrected without affecting the merits of the decision regarding the issues submitted; or (3) the award is imperfect in a matter of form, but the imperfection does not affect the merits of the controversy. MCR 3.602(K)(1).

The court is limited to the correction of obvious mistakes of figures in the award. "By narrowing the grounds upon which an arbitration award may be invaded, the court rules preserve the efficiency and reliability of arbitration as an expedited, efficient, and informal means of private dispute resolution." *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 495; 475 NW2d 704 (1991). Error must be evident from the face of the award. *Id*. at 497.

Defendant argues that the arbitrator misinterpreted one of its exhibits that listed plaintiff's share of all money received on or before October 5, 1994, as $10,442.08. The figure represented the gross amount of all fees, excluding costs and expenses. According to defendant, plaintiff was only entitled to sixty-five percent of the net amount of fees after $5,693.19 of costs advanced to plaintiff had been deducted. Defendant asserts that plaintiff is only entitled to $3,086.78 as his share of all monies received by defendant from various clients on or before October 5, 1994.

In the instant case, we find that there was no evident miscalculation of figures apparent on the face of the arbitration award. Exhibit "D," which was presented by defendant to the arbitrator for review, was a bill given to plaintiff by defendant to account for all fees and sever their business relationship. Specifically, defendant gave plaintiff a bill for $17,279.16 with a credit of $10,442.08 for all monies received by the firm on or before October 5, 1994. There was no reason for the arbitrator to anticipate that the amount given as a credit on defendant's bill was inaccurate. The remaining calculations on the bill accounted for the fee splitting percentages and the advanced costs through October 5, 1994. Furthermore, defendant expected plaintiff to pay its bill in October, 1994, based on the same figures that it now claims are inaccurate. Because the arbitrator used the exhibits to arrive at a figure which represented the amount of money defendant owed plaintiff and reduced that amount by the fees and expenses to which defendant was entitled, there is no evident miscalculation of figures referred to in the arbitration award.

Next, defendant asserts that the circuit court erred by granting plaintiff prejudgment interest from the date that this matter was ordered to arbitration. We agree, albeit on grounds different than that urged by defendant.

As explained in *Holloway Construction Co v Oakland Co Bd of Rd Comm'rs*, 450 Mich 608, 618; 543 NW2d 923 (1996):

> The decision whether to award preaward, prejudgment interest as an element of damages is reserved as a matter of the arbitrator's discretion. Because preaward damage claims including interest are deemed, in the absence of a contrary agreement, to have been submitted to arbitration, and the arbitrators here did not award interest, we will not step in and mandate interest for the preaward period. However, consistent with

> *Old Orchard* [*by the Bay Associates v Hamilton Mut Ins Co*, 434 Mich 244; 454 NW2d 73 (1990), overruled in part by *Holloway, supra* at 616], postaward, prejudgment interest and postjudgment interest under § 6013 are statutorily required.

Because preaward interest claims are presumed to have been submitted to arbitration, the failure of an arbitrator to award preaward interest is deemed to be a decision not to award interest. *Holloway, supra* at 617. The decision whether to award preaward interest is a determination to be made solely by the arbitrator. *Id*. at 618.

In the instant case, the parties' agreement to arbitrate fee disputes was silent on the issue of interest. Further, the parties' stipulation and order compelling arbitration contains no provision concerning the award of interest. Significantly, the arbitration award is silent regarding preaward interest. *Id*. at 615-616. Because the arbitrator failed to grant plaintiff preaward interest, this Court will assume that the arbitrator denied such recovery. *Id*. at 617. Therefore, it was improper for the circuit court to mandate interest for the preaward period. Such a judgment violates the essence of arbitration as a contract remedy. *Id*. at 618. However, "postaward, prejudgment interest and postjudgment interest under § 6013 are statutorily required." *Id*.

Accordingly, we affirm in part, reverse in part and remand for a modification of the interest award consistent with this opinion. We do not retain jurisdiction. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Peter D. O'Connell
/s/ Roman S. Gribbs
/s/ Michael R. Smolenski

[1] In a January, 1997, order, the trial court dismissed with prejudice the complaint against Ronald W. Chapman, individually.