

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ROBERT W. BAIRD & CO., INC.,

Plaintiff-Appellee,

v

REMTECH ENVIRONMENTAL SERVICES,

Defendant,

and

JOHN H. MATOUK,

Defendant-Appellant.

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UNPUBLISHED

October 29, 2002

No. 233686

Oakland Circuit Court

LC No. 2000-026365-CK

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Defendant John H. Matouk appeals as of right the trial court's order granting plaintiff's motion to confirm an arbitration award and for entry of judgment on the award. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Matouk and defendant Remtech Environmental Services, of which Matouk is the sole owner, opened an account with plaintiff, a registered securities broker-dealer. Various documents, including the cash account agreement and the option/margin agreement, listed Remtech as the client; however, Matouk signed the documents and included items of personal information, such as his marital status, in the client information sections. The account quickly accumulated a substantial debit balance. Matouk sent several letters to plaintiff indicating that he was aware of and would be responsible for the debt. Subsequently plaintiff's counsel presented a demand to Matouk for payment of the debit balance within ten days. Matouk requested several extensions of time, but did not resolve the issue.

Plaintiff commenced arbitration with the National Association of Securities Dealers (NASD) to recover the debit balance. The claim was made against both Remtech and Matouk in his individual capacity. Matouk, through attorney Walter Baumgardner, filed an answer to the claim in which he denied personal liability for the Remtech account. Matouk did not appear at the arbitration hearing, either in his individual capacity or as a representative of Remtech. The

arbitrators entered an award in favor of plaintiff and against Remtech and Matouk, individually, in the amount of \$211,014.00. Matouk did not move to vacate the award.

Plaintiff filed a petition in circuit court seeking to confirm the award. Matouk, only, answered and claimed that the arbitration panel lacked personal jurisdiction over him because he was not a party to the agreement to arbitrate. He maintained that he signed the cash account agreement and the option/margin agreement in his capacity as an executive of Remtech, and in addition claimed that Baumgardner submitted the answer in the arbitration proceedings without his knowledge or authorization. He submitted an affidavit in which he stated that he never retained Baumgardner. Plaintiff argued the arbitration panel had personal jurisdiction over Matouk because he signed the agreements in both his personal and his representative capacity. In addition, plaintiff argued that Matouk's appearance before the arbitration panel waived any defense of lack of personal jurisdiction. Plaintiff submitted an affidavit from Baumgardner in which Baumgardner stated that Matouk agreed to retain him and to send the retainer fee by mail, and that Matouk also authorized Baumgardner to file an answer. Because Matouk never paid the agreed-upon retainer, Baumgardner withdrew from the case after filing the answer. In addition, plaintiff noted that a second attorney, Michael Troyanovich, represented Matouk in a telephonic pre-hearing conference with the NASD.

The trial court granted plaintiff's motion to confirm the award and for entry of judgment on the award. The trial court noted that the defense of a lack of a valid agreement to arbitrate could be raised for the first time in an action to confirm an arbitration award. *Arrow Overall Supply Co v Peloquin Enterprises*, 414 Mich 95, 101; 323 NW2d 1 (1982). However, the trial court found that Matouk waived any objection based on lack of personal jurisdiction by filing an answer in the arbitration proceedings. The trial court relied on Baumgardner's affidavit in finding that Matouk authorized the filing of the answer. In addition, the trial court noted the evidence showed that Matouk repeatedly acknowledged that he was responsible for the debt.

We review a trial court's findings of fact for clear error. *HJ Tucker & Associates v Allied Chucker & Engineering Co*, 234 Mich App 550, 563; 595 NW2d 176 (1999).

An arbitrator derives his authority from the parties' contract and is bound to act within the terms of that contract. An arbitrator exceeds the scope of his authority when he acts beyond the material terms of the contract or in contravention of controlling principles of law. *Krist v Krist*, 246 Mich App 59, 62; 631 NW2d 53 (2001). Pursuant to MCR 3.602(J), the parties to an arbitration are conclusively bound by a binding arbitrator's decision absent a showing that: the award was procured by duress or fraud, the arbitrator was guilty of corruption or misconduct that prejudiced a party's rights, the arbitrator exceeded his powers, or the arbitrator refused to postpone the hearing on a showing of sufficient cause or refused to hear material evidence. The factual findings of an arbitrator are not subject to judicial review. A reviewing court may confirm the award, vacate the award if obtained through fraud, duress, or other undue means, or modify the award or correct errors that are apparent on the face of the award. *Konal v Forlini*, 235 Mich App 69, 74-75; 596 NW2d 630 (1999).

Matouk argues the trial court erred by granting plaintiff's motion to confirm the arbitration award and for entry of judgment on the award. We disagree and affirm the trial court's order. Matouk signed the documents establishing the account with plaintiff. Remtech is listed as the client; however, Matouk signed his own name, rather than in a representative

capacity, to the documents, and in some instances listed his personal information. By signing the documents in this manner, Matouk can be held personally liable for the debt. See *Sparling Plastic Industries, Inc v Sparling*, 229 Mich App 704, 717; 583 NW2d 232 (1998). Matouk also repeatedly represented that he was responsible for the debt on the account.

Moreover, an answer was filed on Matouk's behalf in the arbitration proceedings. Matouk corresponded with the NASD in the preliminary stages of the arbitration proceedings, and had attorney Troyanovich appear on a conference call with the NASD prior to the arbitration hearing. The trial court's finding that Matouk submitted to the arbitration panel the issue of his personal liability on the debt, and consequently waived objection to the arbitration panel's exercise of personal jurisdiction, is not clearly erroneous in light of all the evidence. The arbitration panel did not exceed its authority by considering the issue of Matouk's personal liability on the debt. The panel's finding that Matouk was personally liable was not subject to judicial review. *Konal, supra*. The trial court correctly affirmed the arbitration award and entered judgment thereon.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Kurtis T. Wilder  
/s/ Brian K. Zahra