STATE OF MICHIGAN

COURT OF APPEALS

SCOTT LUSADER,

Plaintiff/Counterdefendant-Appellee,

v

AMERICA GROUP EMPLOYER SERVICES, INC.,

Defendant,

and

ANDREW DUTKA,

Defendant/Counterplaintiff-Appellant.

UNPUBLISHED
November 5, 1999

No. 210434
Macomb Circuit Court
LC No. 95-000692 CB

Before: Doctoroff, P.J., and Holbrook, Jr. and Kelly, JJ.

PER CURIAM.

Defendant Andrew Dutka appeals as of right from a judgment of the circuit court confirming an arbitration award finding him jointly and severally liable with defendant America Group Employer Services, Inc. (hereafter referred to as "AGES")[1] to pay plaintiff $54,780, and dismissing his counterclaim. We affirm.

In 1992, plaintiff and defendant, who were each licensed to sell insurance products in Michigan, formed AGES. Plaintiff's amended complaint alleged that the corporation, which was owned fifty percent each by plaintiff and defendant, was formed for the purpose of offering health insurance plans to employers and companies; plaintiff further alleged that defendant had committed fraud and breach of contract by usurping corporate opportunities, diverting corporate funds, and refusing to pay plaintiff insurance policy commissions owed to him. Plaintiff also claimed that he was entitled to $18,300 pursuant to a promissory note executed by the parties.

Defendant filed a counterclaim alleging that AGES had been formed for the intended purpose of conducting insurance trend and marketing research; that the corporation was funded through deposits of

commissions earned from insurance sales by the parties in their individual capacities; and that, because he and plaintiff had never agreed to deposit all of their earnings from these sales into the corporate account, he was only required to deposit an amount equal to that deposited by plaintiff, who had fewer clients. Defendant brought claims against plaintiff for tortious interference with contractual relations; tortious interference with business relationships or expectancies; and violations of the Uniform Trade Practices Act[2] and of the Michigan Business Corporation Act.[3]

The parties agreed to submit their claims to binding arbitration. The three-person arbitration panel issued the following award:

> America Group Employer Services, Inc. and Andrew Dutka, jointly and severally (hereinafter referred to as RESPONDENTS) shall pay to Scott Lusader (hereinafter referred to as CLAIMANT) the sum of Forty Two Thousand Eight Hundred Forty Seven Dollars ($42,847.00), Five Thousand Dollars ($5,000.00) of which is for attorney fees.
>
> The primary award is founded in fraud.
>
> The arbitrators [sic] compensation totaling Five Thousand Four Hundred Dollars ($5,400.00) shall be borne equally between the parties. This amount has already been collected from both parties.
>
> The fees and expenses of the American Arbitration Association totaling One Thousand Five Hundred Dollars ($1,500.00) shall be borne by RESPONDENTS. Therefore, RESPONDENTS shall pay to CLAIMANT the sum of One Thousand Two Hundred Fifty Dollars ($1,250.00) for fees previously advanced to the Association.
>
> This Award is in full settlement of all claims (and counterclaims) submitted by either party against the other in this arbitration.

The trial court entered a judgment confirming the arbitration award.

Defendant argues that the arbitration panel made a substantial error of law and, therefore, the trial court erred in confirming the arbitration award. We disagree.

Defendant appears to argue that the arbitration was a statutory arbitration controlled by the uniform arbitration act, MCL 600.5001 *et seq*; MSA 27A.5001 *et seq*. However, because there is no written agreement between the parties stating that "a judgment of any circuit court shall be rendered upon the [arbitration] award," this case involves common-law arbitration, and the procedures regarding "statutory arbitration" are not applicable. See MCL 600.5001(1); MSA 27A.5001(1); *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 495; 475 NW2d 704 (1991); *DAIIE v Gavin*, 416 Mich 407, 417; 331 NW2d 418 (1982); *Beattie v Autostyle Plastics, Inc*, 217 Mich App 572, 578; 552 NW2d 181 (1996). Judicial review of a common-law arbitration award is limited to instances of bad faith, fraud, misconduct or manifest mistake. *Gavin*, supra at 441; *Emmons v Lake States Ins Co*, 193 Mich App 460, 466; 484 NW2d 712 (1992). Regardless of whether the arbitration was a

statutory or a common law arbitration, where, as here, a party alleges that an arbitration award is premised upon an error of law, the following standard applies:

> '[W]here it clearly appears on the face of the award or the reasons for the decision as stated, being substantially a part of the award, that the arbitrators through an error in law have been led to a wrong conclusion, and that, but for such error, a substantially different award must have been made, the award and decision will be set aside.' [*Gavin*, *supra* at 443, quoting *Howe v Patrons' Mutual Fire Ins Co of Michigan*, 216 Mich 560, 570; 185 NW 864 (1921).]

Defendant contends that, because AGES was not licensed to act as an insurance agent and did not hold an insurance appointment, it was not entitled to commissions and fees earned from the parties' individual insurance sales. Therefore, defendant argues, the arbitrators committed an error of law when they determined that he was liable for fraud.

Plaintiff alleged in his complaint that defendant had committed fraud in breach of his fiduciary duty as one in control of a corporation under MCL 450.1489; MSA 21.200(489) of the Michigan Business Corporation Act. There is no factual dispute between the parties regarding their joint ownership and control of AGES, or their agreement to capitalize the corporation using commissions from their individual insurance sales. The arbitration panel could have found that defendant committed fraud by "usurping corporation opportunities," "diverting corporate funds," "solicit[ing] corporate clients away from the company," or "converting corporate funds for his own individual benefit and use," as alleged by plaintiff, and that plaintiff was therefore entitled to an award of damages pursuant to MCL 450.1489(1)(f); MSA 21.200(489)(1)(f). The panel's decision need not have involved the parties' dispute regarding whether their individual commissions earned while acting on behalf of AGES were to be shared equally, as plaintiff claims, or simply deposited on an "as-necessary" basis, as defendant claims. Defendant has not demonstrated an error of law with respect to the arbitration panel's finding of fraud.

Moreover, even if the panel's decision were based on a finding that the parties agreed to deposit all of their individual commission earnings into the corporate account, defendant has failed to establish any legal error with respect to an award of damages pursuant to such a finding. Defendant points to the following provision of the insurance code in support of his argument that AGES was prohibited from "receiving" or acting as the "assignee" of the individual commission earnings of the parties:

> (1) Except as [otherwise] provided . . . a person shall not solicit insurance, bind coverage, or in any other manner act as an insurance agent unless the person meets all of the following requirements:
>
> * * *
>
> (b) The person is licensed to act as an insurance agent in accordance with this chapter. [MCL 500.1201(1); MSA 24.11201(1).]

However, it is undisputed that both parties were licensed insurance agents and were therefore able to act as insurance agents in their individual capacities. Defendant cites no authority for his proposition that AGES was required to be licensed to sell health insurance products in order for its licensed shareholders to deposit their sales commissions into its account to pay its expenses and the salaries of its employees. A party may not leave it to this Court to search for authority to sustain or reject its position, *City of Troy v Papadelis (On Remand)*, 226 Mich App 90, 95; 572 NW2d 246 (1997), and where a party fails to cite any supporting legal authority for its position, the issue is effectively abandoned. *Schellenberg v Rochester Lodge No 2225*, 228 Mich App 20, 49; 577 NW2d 163 (1998).

The remaining arguments raised by defendant on appeal concern plaintiff's claims for breach of contract and for payment of a promissory note. Because this Court's review is limited to the face of the arbitration award, *DAIIE*, *supra* at 443, and we find no error on the face of the award, we decline to further address these arguments.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Donald E. Holbrook, Jr.
/s/ Michael J. Kelly

[1] Because AGES is not a party to this appeal, we will refer only to Andrew Dutka as defendant.

[2] MCL 500.2001 *et seq.*; MSA 24.12001 *et seq*.

[3] MCL 450.1101 *et seq.*; MSA 21.200(101) *et seq*.