

STATE OF MICHIGAN
COURT OF APPEALS

LAWRENCE P. LILLY, a/k/a LARRY LILLY,

Petitioner-Appellant,

v

SNYDER CORPORATION,

Respondent-Appellee.

UNPUBLISHED
December 1, 2000

No. 214065
Macomb Circuit Court
LC No. 98-003316-CZ

LAWRENCE P. LILLY, a/k/a LARRY LILLY,

Plaintiff-Appellant,

v

SNYDER CORPORATION,

Defendant-Appellee.

No. 217477
Macomb Circuit Court
LC No. 98-003315-CK

Before: Jansen, P.J., Doctoroff and O'Connell, JJ.

PER CURIAM.

In Docket No. 214065, Lilly appeals as of right a trial court's entry of judgment confirming an arbitration award. In Docket No. 217477, Lilly appeals as of right a trial court's order denying his motion to consolidate and dismissing his complaint to vacate or modify an arbitration award. We affirm.

Both these cases arise out of Snyder Corporation's termination of Lilly in August 1995. In 1994, Snyder and Lilly entered into an employment agreement (Agreement) in which Snyder would employ Lilly as a plant manager. The Agreement contained an arbitration clause that required that "[a]ny dispute hereunder" would be subject to binding arbitration. In connection with the Agreement, Lilly provided Snyder a resume and completed an application for employment. Lilly's resume indicated that he had been previously employed by the F. Joseph Lamb Company (Lamb) in Warren, Michigan as a plant manager. In signing the application for employment, Lilly certified that all the information he had provided was correct and he

understood that if any misrepresentations were made, his employment could be terminated at any time. Lilly worked for Snyder from September 6, 1994, until August 7, 1995, when he was terminated for breach of the Agreement.

Lilly filed a claim with the American Arbitration Association alleging that Snyder terminated him without just cause. Snyder responded that Lilly was terminated for providing false information on his resume and for unsatisfactory job performance. In two employment applications submitted to employers prior to Snyder, Lilly indicated that he was a “general foreman” for Lamb. In addition, on an application and resume submitted to an employer after being terminated by Snyder, Lilly again indicated that he was a “general foreman” for Lamb.

The arbitrators found that Snyder did not wrongfully terminate Lilly because he misrepresented his past experience as a plant manager. The arbitrators also found that if they had made a ruling on the matter of just cause, they would have found that there was no just cause for discharge. The arbitrators awarded Lilly \$8,708.33 for his unpaid prorated annual ten-percent bonus and \$15,833.33 for unpaid salary. Snyder filed an application in the trial court for entry of a judgment confirming the arbitration award, and Lilly filed a complaint to vacate or modify the award. The trial court entered a judgment confirming the arbitration award and separately dismissed Lilly’s complaint.

Lilly argues on appeal that the trial court erred in entering a judgment certifying the arbitration award because the arbitrators exceeded their authority under the Agreement. Review of an arbitration award is very limited and this Court may not review the findings of facts or conclusions of the arbitrators on the merits of the case. *Port Huron Area School Dist v Port Huron Ed Ass’n*, 426 Mich 143, 150; 393 NW2d 811 (1986). The reviewing court may vacate the award if the arbitrators exceeded their authority. MCR 3.602(J)(1)(c); *Rembert v Ryan’s Family Steak Houses, Inc*, 235 Mich App 118, 163; 596 NW2d 208 (1999). Arbitrators exceed 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. *Dohanyos v Detrex Corp*, 217 Mich App 171,175-176; 550 NW2d 608 (1996).

Lilly asserts that the issue of the misrepresentation on his employment application was outside the scope of the parties’ arbitration agreement and the arbitrators exceeded their authority by ruling on that issue. The existence of an arbitration contract and the enforceability of its terms are judicial questions that cannot be decided by the arbitrator. *Huntington Woods v Ajax Paving Industries Inc (After Remand)*, 196 Mich App 71, 74; 492 NW2d 463 (1992). To determine whether an issue is subject to arbitration, the court must consider whether (1) there is an arbitration provision in the parties contract, (2) the disputed issue is arguably within the arbitration clause, and (3) the disputed issue is expressly exempt from arbitration by the terms of the contract. *Id.* at 74-75. Any doubts about the arbitrability of an issue should be resolved in favor of arbitration. *Id.*

Applying the above criteria to this case, it is apparent that the issue of Lilly’s misrepresentation was subject to arbitration. The Agreement included a clause stating that any dispute that could not be resolved by the parties would be submitted to binding arbitration. Lilly argues that his termination for alleged misrepresentations on his resume did not fall within the scope of the arbitration clause. However, the Agreement included a provision that the

“[e]mployee further agrees to abide by all reasonable Company policies and decisions now and hereinafter existing.” Lilly also signed an employment application in which he certified “that all the information submitted . . . on this application is true and complete, and . . . that if any false information, omissions, or misrepresentations are discovered . . . my employment may be terminated at any time.” We conclude that the Agreement incorporated Snyder’s policy for terminating employees who have made misrepresentations in applying for employment and this issue was subject to arbitration.

In addition, Lilly’s argument that the trial court erred by refusing to vacate the arbitration award or by entering the judgment confirming the award is without merit. The trial court’s review of the award was limited to whether the arbitrators exceeded their authority by acting beyond the scope of the arbitration agreement or in contravention of the law. *Dohanyos, supra* at 175-176. Here, we have already determined that the arbitrators acted within the scope of the agreement. Lilly does not argue that the arbitration award was founded on legal errors and we find no such errors in the record. Further, the trial court properly refrained from disturbing the arbitration panel’s findings on the issue of misrepresentation. *Port Huron Area School Dist, supra* at 150. The trial court did not err when it entered a judgment confirming the arbitration award and dismissed Lilly’s complaint.

Lilly’s final argument is that the trial court erred by not modifying the arbitration award and recalculating the amount of damages. We disagree. Lilly’s arguments rely on the proposition that the arbitrators exceeded their authority, which we have already rejected. Moreover, a recalculation of damages would involve review of the arbitrator’s findings of fact that would clearly be beyond the very limited review of the trial court. Because the arbitrators did not exceed their authority and the trial court properly entered the judgment confirming the award, this argument is also without merit.

Affirmed.

/s/ Kathleen Jansen
/s/ Martin M. Doctoroff
/s/ Peter D. O’Connell