

STATE OF MICHIGAN
COURT OF APPEALS

LEON RUBENFAER, M.D.,

Plaintiff-Appellee,

v

PHC OF MICHIGAN, INC.,

Defendant-Appellant.

UNPUBLISHED

April 20, 2010

No. 289044

Macomb Circuit Court

LC No. 2004-000627-CL

Before: JANSEN, P.J., and CAVANAGH and K. F. KELLY, JJ.

PER CURIAM.

In this employment arbitration case, defendant PHC of Michigan, Inc. (PHC) appeals by right the trial court's order confirming the arbitration award of \$408,205 for plaintiff. PHC argues that the arbitrator exceeded her powers when she considered a wholly separate employment agreement with another company, Pioneer Pharmaceutical Research (PPR), when awarding damages for breach of the employment agreement between PHC and plaintiff. We disagree and affirm. This appeal has been decided without oral argument. MCR 7.214(E).

A trial court's decision whether to modify or vacate an arbitration award is reviewed de novo. *Washington v Washington*, 283 Mich App 667, 671; 770 NW2d 908 (2009). Judicial review of arbitration awards is generally extremely limited. *Id.* at 671-672. One of the circumstances wherein an arbitration award can be vacated, which PHC argues is relevant in this case, occurs when the arbitrator exceeds her powers. *Id.*; see also MCL 600.5081(2)(c). An arbitrator exceeds her powers when she acts beyond the material terms of the arbitration agreement or acts contrary to controlling law. *Washington*, 283 Mich App at 672. Not just any error of law will be a sufficient ground to vacate or modify an arbitration award; the error of law must be "so substantial that, but for the error, the award would have been substantially different." *Collins v Blue Cross & Blue Shield of Michigan*, 228 Mich App 560, 567; 579 NW2d 435 (1998); see also *DAIIE v Gavin*, 416 Mich 407, 443; 331 NW2d 418 (1982).

While we review de novo whether an arbitrator exceeded her authority, the arbitrator's findings of fact are not reviewable by this Court. *Washington*, 283 Mich App at 672; see also *Gavin*, 416 Mich at 429. "Thus, as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of [her] authority, a court may not overturn the decision even if convinced that the arbitrator committed serious error." *Ann Arbor v AFSCME Local 369*, 284 Mich App 126, 144; 771 NW2d 843 (2009) (quotation marks and citations omitted).

Here, the arbitrator found that PHC breached the employment agreement with plaintiff, and consequently had to calculate what damages to award. “Damages recoverable for breach of contract are those that arise naturally from the breach or those that were in the contemplation of the parties at the time the contract was made.” *Farm Credit Services of Michigan’s Heartland, PCA v Weldon*, 232 Mich App 662, 678; 591 NW2d 438 (1998). The determination of damages involves a finding of fact—not of law. See *Lawrence v Will Darrah & Associates, Inc*, 445 Mich 1, 15-16; 516 NW2d 43 (1994). The arbitrator found that PHC’s breach of its agreement with plaintiff “forced [plaintiff] to give up the full term of the [PPR] Employment Agreement and forced [plaintiff] to enter into the Addendum in an attempt to mitigate his damages.” Irrespective of whether we agree that this was a natural consequence arising from PHC’s breach of the agreement with plaintiff, such a finding of fact by the arbitrator is immune from review. *Washington*, 283 Mich App at 672; see also *Ann Arbor*, 284 Mich App at 144.

PHC argues that, in any event, it was legal error to calculate damages based on the original PPR contract, when plaintiff and PPR voluntarily replaced that contract with an amended version. Specifically, PHC argues that the only way for the arbitrator to have used the salary figures from the original PPR agreement would have been to find that the amended PPR agreement was successfully avoided because of a legal justification, such as duress. This argument, however, has no bearing on the issue at hand. As noted earlier, the arbitrator found that plaintiff lost the full benefit of the PPR contract *as a result of* PHC’s breach of the agreement with plaintiff. A party is responsible for *all* damages “that arise naturally from the breach,” *Farm Credit Services*, 232 Mich App at 678. Accordingly, it was not erroneous for the arbitrator to include plaintiff’s losses under the PPR agreement in her calculation of the total damages flowing from PHC’s breach. Contrary to PHC’s assertion, the arbitrator was not required to make an initial finding of legal avoidance of the amended PPR contract in order to properly include these damages in her award. We perceive no error in this regard.

Affirmed.

/s/ Kathleen Jansen
/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly