

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

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THOMAS B. IRELAND,

Plaintiff/Counter-Defendant-Appellant,

v

BARBARA LYNN GARRARD,

Defendant/Counter-Plaintiff-Appellee.

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UNPUBLISHED

December 3, 1996

No. 180926

LC No. 94-77717-CK

Before: Smolenski, P.J., and Holbrook, Jr., and F.D. Brouillette,\* JJ.

PER CURIAM.

Defendant Barbara Lynn Garrard had brought suit against plaintiff Thomas B. Ireland in federal district court to resolve a dispute regarding investment services provided by plaintiff to defendant. The district court ordered that the dispute be arbitrated in accordance with the parties' contract. An arbitration panel unanimously awarded defendant Garrard \$50,000. Thereafter, plaintiff Ireland brought this action in Ingham Circuit Court seeking to vacate the arbitrators' decision. Defendant brought a counter-claim for confirmation of the award. The court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(9) and (10), and entered judgment in favor of defendant in the amount of \$51,950 plus interest and costs. Plaintiff appeals as of right and we affirm.

Paragraph 11 of the parties' brokerage account contract provided, in pertinent part:

The undersigned agrees, and by carrying an account for the undersigned you agree, that all controversies which may arise between us concerning any transactions . . . shall be determined by arbitration before the New York Exchange, Inc., . . . and in accordance with its rules then obtaining.

\* \* \*

The award of the arbitrators or of the majority of them shall be final and judgement [sic] upon the award rendered may be entered in any court, state or federal, having jurisdiction.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

Rule 627 of Article XI of the New York Stock Exchange Constitution and Rules provided, in pertinent part:

Rule 627. Awards

(a) All awards shall be in writing and signed by a majority of the arbitrators or in such manner as is required by law. Such awards may be entered as a judgment in any court of competent jurisdiction.

(b) Unless the law directs otherwise, all awards rendered pursuant to this Code shall be deemed final and not subject to review or appeal.

Because plaintiff's claim to vacate the arbitrators' award, and defendant's counterclaim to confirm, were brought in Ingham Circuit Court, judicial review is governed by the provisions of the statutory arbitration statute, MCL 600.5001 *et seq.*; MSA 27A.5001 *et seq.*, and the rules of the Michigan Supreme Court. *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488; 475 NW2d 704 (1991); *DAIIE v Gavin*, 416 Mich 407, 417; 331 NW2d 418 (1982). See also MCL 600.5021; MSA 27A.5021. According to MCR 3.602(J)(1)(d), a reviewing court shall vacate an arbitration award if, among other reasons, the arbitrator refused to hear material evidence or conducted the hearing to prejudice substantially a party's rights. *Gordon Sel-Way, Inc v Spence Bros, Inc*, *supra* at 495; *Dick v Dick* 210 Mich App 576, 589; 534 NW2d 185 (1995).

Here, according to the parties' contract, the arbitration hearing was to be conducted in accordance with the rules of the New York Stock Exchange. The arbitrators found that plaintiff had failed to file an answer to defendant's claim and also failed to file exhibits in a timely manner before the hearing. The circuit court granted defendant's motion for summary disposition because it was patently clear that plaintiff had failed to follow the NYSE arbitration rules and it was within the discretion of the arbitrators to refuse to consider plaintiff's untimely evidence. On appeal, plaintiff reiterates his argument that the arbitrators abused their discretion in refusing to consider his statements and exhibits at the hearing. We find no merit to plaintiff's argument. When "the parties are obligated to submit the subject matter of a dispute to arbitration, 'procedural' questions which grow out of the dispute and bear on its final disposition should be left to the arbitrator." *John Wyley & Sons, Inc v Livingston*, 376 US 556, 557-558; 84 S Ct 909; 11 L Ed 2d 898 (1964), cited in *Brown v Holton Public Schools*, 397 Mich 71, 73; 243 NW2d 255 (1976) (holding that arbitrator rather than circuit court should consider whether a grievance was timely filed). See also *Huntington Woods v Ajax Paving Industries, Inc*, 177 Mich App 351, 356; 441 NW2d 99 (1989) (a circuit court exceeds its proper scope of review when it goes behind the award and rules on the question of timeliness). Given these well established legal principles, as well as our limited scope of review in this matter, we conclude that the issue whether plaintiff complied with the applicable arbitration rules was within the sole discretion of the arbitrators, and that no basis exists to overturn the award. Accordingly, summary disposition of plaintiff's claim was properly granted.

Affirmed.

/s/ Michael R. Smolenski

/s/ Donald E. Holbrook, Jr.

/s/ Frances D. Brouillette