

STATE OF MICHIGAN  
COURT OF APPEALS

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BOARD OF COUNTY ROAD COMMISSIONS  
FOR THE COUNTY OF BAY for and on behalf of  
CHARTER TOWNSHIP OF PORTSMOUTH,

UNPUBLISHED  
May 28, 1999

Plaintiff-Appellant,

v

WADE-TRIM, INC. formerly known as WADE-  
TRIP/EDMANDS, INC.,

No. 205945  
Bay Circuit Court  
LC No. 96-003463 CK

Defendant-Appellee.

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Before: Griffin, P.J., and McDonald and White, JJ.

PER CURIAM.

Plaintiff appeals as of right<sup>1</sup> from an order denying plaintiff's motion to vacate an arbitration determination and granting defendant's renewed motion for summary disposition pursuant to MCR 2.116(C)(7). The court determined that the arbitration determination did not contain legal errors requiring vacation. We affirm.

Plaintiff argues the arbitration determination should be vacated because the arbitrator exceeded his powers by committing an error of law in interpreting the parties' contract. This Court's ability to review an arbitration award is limited to cases in which an error of law appears from the face of the award, or the terms of the contract of submission, or such documentation as the parties agree will constitute the record. *Dohanyos v Detrex Corp*, 217 Mich App 171, 176-177; 550 NW2d 608 (1996). Where it clearly appears on the face of the award or in the reasons for the decision, being substantially a part of the award, that the arbitrator through an error of law has 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. *Id.* at 177. The character or seriousness of an error of law that will require a court of law to vacate an arbitration award must be so material or so substantial as to have governed the award, and the error must be one but for which the award would have been substantially otherwise. *Id.*

The arbitrator made several factual findings, including the following: (1) the parties' agreement did not unambiguously provide that additional services were to be billed monthly, the same as agreed-to services, and therefore defendant's negotiation for payment of the additional services through the proposed amendment to the agreement was not prohibited; (2) plaintiff never objected to the procedure employed by defendant; (3) the first evidence of any formal, written challenge to defendant's request for payment by plaintiff came on March 24, 1995; and (4) the final denial came in December 1995. This Court may not review the arbitrator's factual findings or decision on the merits. *Michigan State Employees Ass'n v Dep't of Mental Health*, 178 Mich App 581; 444 NW2d 207 (1989).

Based on his findings, the arbitrator did not find it significant that the parties' contract contained a twelve-month cutoff for filing demands, concluding as a matter of law that this period had been tolled while the parties negotiated regarding payment, and that defendant's cause did not accrue until its claim was finally denied. The arbitrator cited *AFSCME v Highland Park Bd of Ed*, 214 Mich App 182; 542 NW2d 333 (1995), *aff'd* 457 Mich 74 (1998); *Smith v Dep't of Treasury*, 163 Mich App 179, 183; 414 NW2d 374 (1988), and *Hanover Ins Co v Eleven & One-Half Mile Drainage Dist*, 52 Mich App 658; 218 NW2d 109 (1974), in support of this proposition. Plaintiff argues the arbitrator's declaration of law on this point was clearly erroneous and claims the cases the arbitrator cites are distinguishable and not applicable to this case. We believe the arbitrator properly relied on *AFSCME*, *supra*, and *Hanover*, *supra*. While we may disagree with the arbitrator's reliance on *Smith*, *supra*, we still would not vacate the arbitrator's award because there is nothing in the record upon which this Court can conclude that the arbitrator's decision was substantially and materially based on any error of law. *Dohanyos*, *supra* at 176. There was no error but for which the award would have been substantially otherwise. *Id.* Furthermore, the arbitrator's determination was based primarily on his factual findings regarding the language of the parties' agreement and the circumstances surrounding the dispute, which are not reviewable. *Michigan State Employees Ass'n*, *supra* at 583. Specifically, the arbitrator appears to have primarily based his award on his conclusion that defendant's demand for arbitration was timely filed because it was filed within one year of plaintiff's challenge to defendant's request for payment. We also note that the arbitrator did not err by considering equitable and public policy considerations in his determination. The arbitrator did not rely on such considerations, and his statements regarding these matters were not the basis of his decision. Therefore, but for these statements, a substantially different award would not have been made. *Dohanyos*, *supra* at 176.

Affirmed.

/s/ Richard Allen Griffin  
/s/ Gary R. McDonald  
/s/ Helene N. White

<sup>1</sup> Appellee's challenge to this Court's jurisdiction in this case is without merit.