

STATE OF MICHIGAN  
COURT OF APPEALS

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ULTIMATE PRECISION, INC.,

Plaintiff-Appellant,

v

INTERNATIONAL MARKETING  
CONSULTANTS, INC.,

Defendant-Appellee.

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UNPUBLISHED

June 15, 2004

No. 246606

Oakland Circuit Court

LC No. 02-045273-CZ

Before: Smolenski, P.J., and White and Kelly, JJ.

PER CURIAM.

In this case involving a claim under the Sales Representative Commission Act (SRCA), MCL 600.2961, plaintiff appeals as of right the trial court's order denying its motion to vacate or modify the arbitration award and confirming the award. We affirm.

Plaintiff argues that the arbitrator exceeded his authority in awarding defendant attorney fees and costs and administrative fees and costs. The parties' arbitration agreement is controlled by the uniform arbitration act, MCL 600.5001 *et seq.* because the agreement provides that a judgment of any circuit court may be rendered on the arbitrator's award. *DAIIE v Gavin*, 416 Mich 407, 417; 331 NW2d 418 (1982). Once an issue is submitted to arbitration, judicial review is limited by the uniform arbitration act and MCR 3.602. MCR 3.602(J)(1)(c) provides that an arbitration award may be vacated if the arbitrator exceeded his authority. Arbitrators derive their authority from the parties' arbitration agreement. Accordingly, arbitrators exceed their power "“whenever they act beyond the material terms of the contract from which they primarily draw their authority . . . .”" *Gordon Sel-Way v Spence Bros*, 438 Mich 488, 496-497; 475 NW2d 704 (1991), quoting *DAIIE v Gavin*, 416 Mich 407, 434; 331 NW2d 418 (1982). To justify judicial action to vacate an arbitration award, errors must be evident from the face of the award and "“so material or so substantial as to have governed the award, and but for which the award would have been substantially otherwise.”" *Id.*, quoting *Gavin, supra* at 443.

Plaintiff first contends that the arbitrator exceeded his authority in awarding attorney fees and costs because defendant was not a prevailing party under MCL 600.2961(1)(c) of the SRCA because, in arbitration, it raised claims for commissions under five programs, but the arbitrator only awarded partial commissions under three of the programs. We disagree.

Pursuant to MCL 600.2961(1)(c), a prevailing party is one that prevails on all the claims of the *complaint*, not all the arguments submitted to the arbitrator. *Peters v Bunnell, Inc*, 253 Mich App 211, 223; 655 NW2d 582 (2002). Defendant's complaint asserts a claim for commissions due under the contract that plaintiff repudiated. Because defendant prevailed on the claim in its complaint, it is a "prevailing party" under MCL 600.2961(1)(c). As a prevailing party, defendant is entitled to an award of attorney fees and costs pursuant to MCL 600.2961(6).

Plaintiff next argues that the arbitrator exceeded his authority in awarding attorney fees and costs where the parties entered into an interim agreement by which defendant agreed to waive its right to recover "penalty or statutory damages." We disagree.

Under the uniform arbitration act only the arbitrator can interpret the parties' arbitration agreement. *Brucker v McKinlay Transport, Inc*, 454 Mich 8, 15; 557 NW2d 536 (1997). The determination whether contractual language is ambiguous presents a question of law subject to de novo review. *Klapp v United States Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003). A contract is ambiguous when it is subject to differing interpretations. *Id.* at 467. Ascertaining the meaning of an ambiguous contract is a question of fact. *Id.* at 469.

In construing the phrase "statutory damages" in the parties' interim agreement, the arbitrator did not commit error of law apparent on the face of the award. *Donegan v Mich Mutual Ins Co*, 151 Mich App 540, 545-549; 391 NW2d 403 (1986). The meaning of the terms limiting defendant's ability to seek "penalty or statutory damages" is ambiguous. Under one interpretation, "penalty" merely refers to the punitive, treble damages or \$100,000, provision of MCL 600.2961(5)(b), imposed as additional damages, beyond actual damages, where the principle is found to have intentionally withheld commissions, and does not refer to attorney fees and costs. Under another interpretation, "penalty" describes the additional costs or fees that can be imposed in favor of the prevailing party under MCL 600.2961(c). Because the phrase is subject to conflicting interpretations, the arbitrator did not err in determining that it is ambiguous. The arbitrator's determination of the parties' intent involves questions of fact that are not subject to appellate review. *Krist v Krist*, 246 Mich App 59, 67; 631 NW2d 53 (2001).

Plaintiff finally asserts that the arbitrator erred in awarding defendant administrative and arbitration costs and fees where MCL 600.2961 only provides for the award of court costs. We again disagree.

The parties' contract contains an arbitration clause stating that arbitration would be conducted in accordance with the commercial arbitration rules of the American Arbitration Association (AAA), which allow recovery of attorney fees and costs. Both parties requested attorney fees from the arbitrator. As such, the arbitrator awarded costs and fees according to the authority granted by the parties' agreement.

For these reasons, the arbitrator did not exceed his authority in rendering the award of costs and fees. Therefore, the circuit court did not err in denying plaintiff's motion to vacate or modify the arbitration award or in confirming the award.

Affirmed.

/s/ Michael R. Smolenski

/s/ Helene N. White

/s/ Kirsten Frank Kelly