

STATE OF MICHIGAN
COURT OF APPEALS

IBF INSURANCE GROUP, INC.,

Plaintiff,

and

ROBERT WEBBER, a/k/a BOB WEBBER,

Plaintiff-Appellant,

v

TRAVELERS INDEMNITY COMPANY,

Defendant-Appellee.

UNPUBLISHED

November 29, 2005

No. 261668

Oakland Circuit Court

LC No. 2004-061012-CZ

Before: Fort Hood, P.J., and White and O'Connell, JJ.

PER CURIAM.

Individual plaintiff Robert Webber appeals as of right from the trial court's order affirming the arbitration award of monetary damages in favor of defendant. We affirm.

"Generally, issues regarding an order to enforce, vacate, or modify an arbitration award are reviewed de novo." *Saveski v Tiseo Architects, Inc*, 261 Mich App 553, 554; 682 NW2d 542 (2004). To prevail, it must be established from the face of the award that the arbitrator was led to a wrong conclusion through an error of law. *Id.* at 555. It must also be established that, but for the error at law, a substantially different award would have been rendered, requiring that the award and decision be set aside. *Id.*

Plaintiff contends that the arbitrator erred when he found plaintiff individually liable for the failure of IBF Insurance Group, Inc., (IBF) to remit two premiums to defendant. We disagree. In *Capitol Indemnity Corp v Interstate Agency, Inc*, 760 F2d 121 (CA 6, 1985), the Sixth Circuit Court of Appeals analyzed Michigan law to determine whether a corporate officer could be held individually liable for failure to remit insurance premiums owed to the plaintiff. It noted that MCL 500.1207(1) clearly establishes that an insurance agency relationship is an express trust fiduciary relationship:

An agent shall be a fiduciary for all money received or held by the agent in his or her capacity as an agent. Failure by an agent in a timely manner to turn over the money which he or she holds in a fiduciary capacity to the persons to whom they

are owed is prima facie evidence of violation of the agent's fiduciary responsibility. [MCL 500.1207(1).]

Further, "Michigan case law has uniformly held that premium payments received by an insurance agency have the status of trust funds for the benefit of the insurance principal." *Id.* at 124, citing *Citizens Mutual Auto Ins Co v Gardner*, 315 Mich 689; 24 NW2d 410 (1946); *Travelers Ins Co v Bishop*, 298 Mich 600; 299 NW 731 (1941); *Glerum v Spencer*, 251 Mich 163; 231 NW 38 (1930).

The *Capitol* Court determined that the corporate officer could be held individually liable for breach of the fiduciary relationship. "It is clear, however, that a corporate officer is personally liable for the tortious injury committed by him regardless of a piercing of the corporate veil." *Capitol Indemnity Corp, supra* at 125. Consequently, the *Capitol* Court held that it was appropriate to impose personal liability upon the corporate president of his insurance agency, Interstate, without piercing the corporate veil, but based on a breach of fiduciary duty:

It is undisputable that [the corporate president] should be imputed with knowledge and participation in Interstate's breach of fiduciary duty to Capitol. His status as president, large shareholder, and personal signatory to the agency agreement as well as debt contracts stands as overwhelming evidence of his full knowledge and responsibility for the handling of Interstate's trust undertakings. [He] has breached his fiduciary duty stemming from these separate obligations: 1) his status as president of Interstate; 2) his personal status as an insurance agent under the Michigan Code; and 3) his personal signing of the agency agreements. [*Capitol, supra* at 125 (citations omitted).]

In the present case, plaintiff was IBF's president, majority shareholder, and only employee. He personally arranged for the agency agreement with defendant and signed the agency agreement. Plaintiff acknowledged that he was aware that IBF breached a fiduciary duty owed to defendant. In addition, although plaintiff testified that IBF was the agent, not himself personally, he did have personal status as an insurance agent under the Michigan Insurance Code. Thus, the arbitrator did not commit a legal error when it determined that plaintiff was individually liable for the breach of fiduciary duty to defendant. Plaintiff failed to establish that the arbitrator relied on an error at law that led to a wrong conclusion. *Saveski, supra*.¹

Affirmed.

/s/ Karen M. Fort Hood
/s/ Helene N. White
/s/ Peter D. O'Connell

¹ In light of our disposition of this issue, we need not address plaintiff's remaining arguments. Nonetheless, the arguments were reviewed and do not entitle plaintiff to appellate relief.