

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

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JAMES F. JOHNSON,

Plaintiff/Counter-Defendant

-v-

File No. 94-12198-CK  
HON. PHILIP E. RODGERS, JR.

MICHIGAN MOTEL BROKERS, INC.,

Defendant/Counter-Plaintiff.

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Ronald W. Powers (P19059)  
Attorney for Plaintiff

R. Edward Kuhn (P24722)  
Attorney for Defendant

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DECISION AND ORDER

Defendant filed a Motion to Modify Arbitration Award. Plaintiff filed an Answer to Defendant's Motion to Modify Arbitration Award Dated March 31, 1994. On May 1, 1994, the parties presented their oral arguments to this Court. This Court has reviewed the motion and response, the briefs, the arbitration award and the revised decision of the arbitrator.

Defendant, on pages 1 and 2 of its brief in support of the motion, describes the procedural context in which the case now comes before the Court and the relief sought:

This is the second time that this matter has come before the Court in connection with the awards of the Arbitrator. This Court earlier remanded the matter to the Arbitrator for a clarification of the award. The revised award, which did not change the previous outcome, is now the subject of Defendant's motion for modification and Plaintiff's motion for entry of judgment.

Defendant has filed a motion for modification on two grounds: 1) Jim Johnson was, as a matter of law, an agent of Defendant when he sold the Ramada Inn of Mackinac City; and 2) [t]he letter of Plaintiff Jim Johnson requires, as a matter of law, that the Arbitrator

conclude[d] that Jim Johnson interfered in Defendant's sale of the Holiday Inn Express - St. Ignace.

Michigan's highest Court set forth the standard of review for a motion to modify an arbitration award in Gordon Sel-Way v Spence Bros, Inc, 438 Mich 488, 495-497; 475 NW2d 704 (1991):

MCL 600.5021; MSA 27A.5021 specifies that statutory arbitrations are to be conducted in accordance with the rules of the Michigan Supreme Court. In this context, the court rules provide the court with three options: it may confirm, modify or correct, or vacate the award. The court's power to modify, correct or vacate an arbitration award, however, is very limited. MCR 3.602(J) and (K). (Footnote omitted.) By narrowing the grounds upon which an arbitration decision may be invaded, the court rules preserve the efficiency and reliability of arbitration as an expedited, efficient, and informal means of private dispute resolution. See Callahan, Bramble & Lurie, Arbitration of Construction Disputes, § 8.6, p 185. See also Westminster Construction Corp v PPG Industries, Inc, 119 RI 205, 208-209; 376 A2d 708 (1977); J A Jones Construction Co v Flakt, Inc, 731 F Supp 1061, 1063 (ND Ga, 1990).

Although both MCR 3.602(J)(1)(c) and MCR 3.602(K)(1)(b) address the appropriate remedy when the court determines that the arbitrators have exceeded the scope of their authority, the trial court in this case did not vacate the award under MCR 3.602(J)(1)(c). It modified the award under MCR 3.602(K)(1)(b) which provides:

[T]he court shall modify or correct the award if:

(b) the arbitrator has awarded on a matter not submitted to the arbitrator, and the award may be corrected without affecting the merits of the decision on the issues submitted . . . .

Thus, MCR 3.602(K)(1)(b) is the pertinent court rule governing this appeal.

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Furthermore, error, if any, 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. 416 Mich 443.

[C]ourts may not substitute their judgment for that of the arbitrators and hence are reluctant to vacate or modify an award when the arbitration agreement does not expressly limit the arbitrators' power in some way.

Callahan, Bramble & Lurie, supra, p 191; 6 CJS Arbitration, § 162, pp 428-429. See also Gavin, supra, p 429<sup>1</sup>; Kaleva-Norman-Dickson School Dist v Kaleva-Norman-Dickson Teachers' Ass'n, 393 Mich 583, 594-595; 227 NW2d 500 (1975). (Footnote added.)

The following paragraph from page 3 of the Revised Decision of Arbitrator sets forth the factual findings:

This case involves a very straight-forward set of facts. The Plaintiff, James Johnson, was an independent contractor with Defendant, Michigan Motel Brokers, Inc., between January 1, 1991 and June 30, 1993. Mr. Johnson was a licensed real estate salesperson and represented the Defendant throughout the northern part of Michigan.

On January 1, 1991, the parties entered into an agreement entitled "Michigan Motel Brokers, Inc. Independent Contractor Contract" ... Pursuant to the terms of that agreement, Mr. Johnson was to act as an exclusive agent of Michigan Motel Brokers, Inc. By all accounts, Mr. Johnson did a fine job and became personal friends with the owner of Michigan Motel Brokers, Inc.

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Prior to termination with the Defendant, Mr. Johnson had earned a commission on the sale of the Heritage Inn of Traverse City. Part of the commission had been paid to Mr. Johnson on the date of closing, May 28, 1993, and the balance in the amount of \$23,056.85 was deferred. The Heritage Inn agreed to pay the balance of the commission to Defendant in two installments and it was agreed that Defendant would send Mr. Johnson the balance of the commission when received. The commission was received and never paid to Mr. Johnson; that is the genesis of this suit. During the arbitration hearing, it was admitted by the Defendant that it owed Plaintiff the sum of \$23,056.85.

Defendant contends that statutes, i.e., MCL 339.2507; MSA 18.425(2507), control the agency relationship of real estate salespersons and brokers. Defendant argues that Plaintiff did not properly transfer his real estate salesperson license and, for that reason, he should not be awarded the unpaid balance of the Heritage Inn commission. Defendant admitted during oral argument that there

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<sup>1</sup> Referring to DAIE v Gavin, 416 Mich 407; 331 NW2d 418 (1982).

was a mutually agreeable termination of the salesperson/broker relationship. On those facts, this Court must reject Defendant's argument that Plaintiff's failure to satisfy the technical requirements of license transfer "had the legal effect of continuing his agency relationship with Defendant". Defendant's Brief in Support of Motion, p 4. The Arbitrator found that there was no dispute regarding the commission and awarded Plaintiff \$23,056.85.

This Court now turns to the counterclaim of interference regarding the sale of the Holiday Inn Express. The Arbitrator in his revised decision provided a detailed, thoughtful analysis of the counterclaim, Plaintiff's activity and contacts as a real estate salesperson in northern Michigan, and the law regarding interference with an advantageous business relationship. Defendant's arguments do not persuade this Court that it should set aside the Arbitrator's conclusions. No material or substantial error has been shown. MCR 3.602(K)(1)(b); Gavin, supra; Kaleva-Norman-Dickson School Dist, supra; Gordon Sel-Way, supra.

This Court, having reviewed MCL 339.601; MSA 18.425(601), MCL 339.2507, et seq, and the parties' oral and written arguments does not find grounds upon which it may supplant or modify the arbitrator's decision. Gordon Sel-Way, supra, p 495; MCR 3.602(J(1)(c) and MCR 3.602(K)(1)(b) . The decision is affirmed.

IT IS SO ORDERED.

  
HONORABLE PHILIP E. RODGERS, JR.  
Circuit Court Judge

Dated: 6/3/95