[Cite as *Sicor Secs., Inc. v. Albert,* 2010-Ohio-217.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

SICOR SECURITIES, INC.	:	
	:	Appellate Case No. 22799
Plaintiff-Appellant	:	
	:	Trial Court Case No. 2007-CV-6912
v.	:	
	:	
KENNETH W. ALBERT	:	(Civil Appeal from
	:	Common Pleas Court)
Defendant-Appellee	:	
	:	

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O P I N I O N

Rendered on the 22nd day of January, 2010.

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FAIN, J.

This case is before the Court on the appeal of plaintiff-appellant, cross-appellee Sicor Securities Inc., formerly known as Tower Equities, Inc., from an order of the trial court modifying an arbitration award in favor of defendant-appellee, cross-appellant Kenneth Albert. Sicor argues that the trial court should have vacated the arbitrator's award and remanded the matter to the arbitrator for further

findings of fact. Albert cross-appeals seeking post-judgment interest.

We conclude that the arbitrator was not required to make findings of fact, and that even if the arbitrator's findings of fact concerning whether Albert had complied with Sicor's rules and procedures were erroneous, those findings of fact are not reviewable by the courts where, as here, the claims for commissions, and the factual controversies upon which those claims depend, have been submitted to the authority of the arbitrator to arbitrate by the agreement of the parties. Because the authority of an arbitrator depends upon the agreement of the parties, we conclude that the trial court acted properly under R.C. 2711.11(B) when it reduced the arbitrator's award to exclude claims that the parties had agreed to withdraw from arbitration. We conclude that the record does not portray error in the trial court's award of post-judgment interest. Therefore, we affirm the judgment of the trial court.

I

In 1997, Sicor and Albert entered into contractual agreements wherein Albert sold investment and securities products to third parties through Sicor. In 2004, Albert terminated his relationship with Sicor and made a claim for unpaid commissions. Sicor withheld payment, claiming that Albert was not entitled to the commissions, because they were subject to recapture and because Albert had violated Sicor's supervisory policies. Pursuant to the parties' agreements, the dispute was submitted to an arbitrator from the American Arbitration Association.

In May, 2007, after three days of testimony and briefing by both parties, the arbitrator awarded Albert $68,450.86, including pre-award interest of $5,055.76, and

with post-judgment interest to accrue in accordance with state law. Sicor unsuccessfully sought modification of the arbitrator's award, and in August, 2007, Sicor filed a complaint in the trial court seeking to vacate the award. Albert filed a response, and both parties briefed the issues below. In May, 2008, the trial court reduced the amount of the award by $6,545.10, pointing out that the parties had agreed to limit the claims before the arbitrator to commissions connected to accounts that formed the basis of the original claim. The trial court affirmed the award of pre-judgment interest, and affirmed the award in all other respects. Sicor appeals, and Albert cross-appeals.

Although a transcript of the three-day hearing before the arbitrator was prepared and provided to trial court for its review, neither party has caused a transcript to be filed with this Court. Nor do we have before us a copy of Sicor's supervisory policies that, according to Sicor, Albert was required to follow. Absent a complete record, we must presume regularity in the arbitration proceedings and the arbitrator's award. *Williamson v. Williams* (Nov. 21, 1985), Greene App. No. 85-CA-29. See, also, *Miller v. Mgt. Recruiters Internat'l., Inc.,* 180 Ohio App.3d 645, 2009-Ohio-236, ¶23, citations omitted.

II

Sicor's First Assignment of Error is as follows:

"THE TRIAL COURT ERRED BY NOT REMANDING THE DISPUTE TO THE ARBITRATOR ONCE THE TRIAL COURT DETERMINED THAT THE ARBITRATION AWARD DID MAKE AN EXPRESS FINDING ON A CRITICAL

ISSUE."

Sicor's Second Assignment of Error is as follows:

"AN ARBITRATION AWARD WHICH DOES NOT INCLUDE ANALYSIS AND A CONCLUSION ON A KEY LEGAL AND FACTUAL ISSUE DOES NOT DRAW ITS ESSENCE FROM THE PARTIES' AGREEMENT."

The question presented to the arbitrator was whether Albert was entitled to certain sales commissions. Sicor maintains that the arbitrator failed to make any finding regarding whether Albert had violated Sicor's supervisory policies, thereby forfeiting the commissions. Sicor insists that the trial court exceeded its authority in substituting its own finding on that issue, when instead the court should have vacated the award and remanded the matter to the arbitrator. We disagree.

Appellate review of an arbitration award is confined to an evaluation of the judicial order confirming, modifying, or vacating the award; we do not review the merits of the arbitrator's award. *Warren Educ. Ass'n. v. Warren City Bd. of Educ.* (1985), 18 Ohio St.3d 170, 174, citation omitted. See, also, *E.S. Gallon Co., L.P.A. v. Deutsch* (2001), 142 Ohio App.3d 137, 144; *Piqua v. Fraternal Order of Police,* Miami App. No. 09-CA-19, 2009-Ohio-6591, ¶15, citing *Dayton v. Fraternal Order of Police* (1991), 76 Ohio App.3d 591, 597. We review the trial court's order do novo. *Piqua,* supra, at ¶15, citing *Dayton v. Internat'l. Assoc. of Firefighters,* Montgomery App. No. 21681, 2007-Ohio-1337, ¶11.

"The grounds upon which a trial court may vacate an arbitrator's award are few and narrow." *Piqua,* supra, at ¶19, citing *Dayton* (2007), supra. "Once arbitration is completed, a trial court has no jurisdiction except to confirm, vacate,

modify, or enforce the award and only on the terms provided by statute." *Piqua,* supra, at ¶17, citing *Duckett v. The Cincinnati Ins. Co.* (Aug. 27, 1984), Clark App. No. 1941. Pursuant to R.C. 2711.13, any party in an arbitration proceeding may file a motion in the common pleas court seeking an order to vacate, modify, or correct the award as provided by R.C. 2711.10 and R.C. 2711.11.

Sicor sought vacation of the arbitrator's award pursuant to R.C. 2711.10, which permits vacation of the award only if the trial court finds fraud, corruption, misconduct, or that the arbitrator exceeded his powers. *Piqua,* supra, at ¶19, citing *Goodyear Tire & Rubber Co. v. Local Union 200* (1975), 42 Ohio St.2d 516, at paragraph two of the syllabus; *Duckett,* supra; *Dayton* (1991), supra, at 597. Sicor presents no claims of fraud, corruption, or misconduct. Instead, Sicor argues that the arbitrator's award should have been vacated because the award did not draw its essence from the contractual agreements of the parties, because it is the arbitrator, not the trial court, who should make the finding whether Albert complied with the supervisory policies. Sicor appears to be arguing that the arbitrator's failure to make a specific factual finding on the policies argument amounts to the arbitrator's having exceeded his powers. We do not find this argument persuasive.

In essence, Sicor assumes that the arbitrator did not consider its claim that Albert violated its supervisory policies, because the arbitrator did not explicitly make a finding on that issue. But an arbitrator is not required to enter findings of fact. See, e.g., *N. Ohio Sewer Contrs., Inc. v. Bradley,* 159 Ohio App.3d 794, 2005-Ohio-1014, ¶19. Moreover, this argument ignores the fact that, even when factual findings are made by an arbitrator, "the trial court must be deaf to claims that an arbitrator made

factual or legal errors." *Piqua,* supra, at ¶17, citing *Huber Heights v. Am. Fedn. of State, Cty. & Mun. Employees* (Feb. 10, 1995), Montgomery App. No. 14762.

Neither party denies having agreed to arbitration. In fact, both of the agreements entered into by the parties state as follows: "Any controversy or claim...arising out of or relating to this Agreement, or the breach thereof, shall be settled in arbitration in the County of Montgomery, State of Ohio, in accordance with the rules then comprising the American Arbitration Association ('AAA') Procedures for Small Disputes. Judgment upon the award rendered may be entered in any court having jurisdiction thereof." In agreeing to submit disputes to arbitration, the parties agree to accept the results of the arbitration, even if the award is the result of factual or legal mistakes. *Piqua*, supra, at ¶18, citing *Dayton v. Fraternal Oder of Police* (June 2, 2000), Montgomery App. No. 18158, in turn citing *Goodyear,* supra, at 522. See, also, *Miller v. Mgt. Recruiters Internat'l., Inc.,* 180 Ohio App.3d 645, 2009-Ohio-236, ¶27, citation omitted; *Geist v. Ohio Dept. of Commerce* (1992), 78 Ohio App.3d 404, 408, citation omitted.

An arbitrator's award must be upheld if it draws its essence from the agreements of the parties. *Goodyear,* supra, at 520, citing *United Steelworkers of Am. v. Enterprise Wheel & Car Corp.* (1960), 363 U.S. 593, 597, 80 S.Ct. 1358, 4 L.Ed.2d 1424. "An arbitrator's award draws its essence from an agreement when (1) the award does not conflict with the express terms of the agreement, and (2) the award has rational support or can be rationally derived from the terms of the agreement." *Piqua*, supra, at ¶24, citing *Ohio Office of Collective Bargaining v. Ohio Civil Serv. Employees Assoc.* (1991), 59 Ohio St.3d 177, syllabus; and *Montgomery*

Cty. Sheriff v. Fraternal Order of Police, 158 Ohio App.3d 484, 2004-Ohio-4931, ¶22. We find both tests satisfied.

In its decision, the trial court explained at some length why it concluded that the arbitrator had considered the issue of whether Albert had, in fact, violated Sicor's supervisory policies, and the trial court concluded that although the arbitrator did not expressly address the issue of compliance with Sicor's policies in his written award, he did expressly address the issue at the hearing. The trial court need not have gone to this trouble. Even if the arbitrator's award had been completely erroneous factually, legally, or both, so long as the claims the arbitrator adjudicated were within the scope of the claims submitted to the arbitrator for adjudication, the award cannot be said to conflict with the terms of the agreement, or to fail to have rational support, or be rationally derived from the terms of the agreement. The essence of an arbitration agreement is to submit certain claims or classes of claims to an arbitrator, not the courts, to adjudicate, along with factual or legal controversies necessary to resolve those claims.

Parenthetically, we note that although Albert did agree to comply with Sicor's policies, the agreements do not imply that a failure to comply could result in a waiver of all unpaid commissions.

Any conclusion that the resolution of factual or legal disputes upon which a claim submitted to arbitration depends remain open for review by the courts would contravene the Ohio public policy encouraging the resolution of disputes through arbitration. *N. Ohio Sewer Contrs.,* supra, at ¶11, citing *Kelm v. Kelm* (1993), 68 Ohio St.3d 26, 27, 1993-Ohio-56. See, also, *Piqua,* supra, at ¶16, citations omitted.

In furtherance of this policy, arbitration awards are presumed valid, and a reviewing court may not substitute its own contractual interpretation for that of an arbitrator, to whom the parties agreed to submit their dispute. *Dayton* (1991), supra, at 597, citing *Findlay City School Dist. Bd. of Edn. v. Findlay Edn. Assn.* (1990), 49 Ohio St.3d 129. See, also, *Piqua,* supra, at ¶17, citations omitted. In submitting a dispute to arbitration, parties to the dispute presumably repose at least as much confidence, if not more confidence, in the efficacy of the arbitral forum, as contrasted with the efficacy of the judicial forum, in resolving their dispute. Either forum, being humanly manned, is capable of committing both factual and legal errors.

Finally, we turn to the trial court's modification of the award to exclude claims that the parties had agreed not to submit to arbitration. "[T]he court of common pleas in the county wherein an award was made in an arbitration proceeding shall make an order modifying or correcting the award upon the application of any party to the arbitration if...[t]he arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matters submitted." R.C. 2711.11(B). Just as the parties may agree to submit claims to arbitration, they can agree to exclude particular claims from arbitration. Because the arbitrator's award included claims that the parties had agreed were not to be submitted to arbitration, the trial court had the authority to modify the award under R.C. 2711.11(B).

Sicor's First and Second Assignments of Error are overruled.

III

Albert's assignment of error is as follows:

"MR. ALBERT IS ENTITLED TO POST-ARBITRATION AWARD INTEREST."

In his cross-appeal, Albert argues that he is entitled to post-arbitration interest on his award. The arbitrator awarded post-judgment interest "in accordance with applicable state law." The trial court did not specifically address the issue of post-judgment interest, but with the exception of reducing the award for claims that the parties had agreed not to arbitrate, the trial court did confirm the award "[i]n all other respects." Because the award of post-judgment interest was confirmed by the trial court, we conclude that the record does not portray error in this respect, and Albert's sole assignment of error is overruled.

IV

All of the assignments of error of both parties having been overruled, the judgment of the trial court is Affirmed.

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DONOVAN, P.J., and GRADY, J., concur.

Copies mailed to:

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Hon. Timothy N. O'Connell