

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Martin C. Cooper

Court of Appeals No. L-09-1127

Appellant

Trial Court No. CI0200704074

v.

Securities Service Network, Inc.

DECISION AND JUDGMENT

Appellee

Decided: February 12, 2010

* * * * *

C. William Bair and Fan Zhang, for appellant.

Robert N. Rapp, Matthew K. Kucharson, and Eric Scott Zell, for appellee.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas. On June 6, 2007, appellant filed a cause of action against appellee seeking damages incurred as a result of being improperly classified as an independent contractor rather than an employee. On August 23, 2007, the court stayed the litigation and sent the matter to arbitration before the Financial Industry Regulatory Authority ("FINRA"), pursuant to an agreement of binding arbitration between the parties. The arbitration

panel's decision was rendered on August 25, 2008. Appellant's claims were dismissed with prejudice.

{¶ 2} Appellant subsequently filed a motion for clarification of the arbitration decision. It was denied on October 8, 2008. Appellant next filed a motion to vacate the arbitration decision in the Lucas County Court of Common Pleas. Oral arguments were held on March 26, 2009. On March 31, 2009, the court denied appellant's motion to vacate the arbitration decision. This court affirms the judgment of the trial court.

{¶ 3} On appeal, appellant sets forth the following assignment of error:

{¶ 4} "The trial court (Lucas County Court of Common Pleas) erred by denying Appellant's motion to vacate the arbitration decision (April 1, 2009 Order)."

{¶ 5} Appellant further sets forth the following two issues for consideration by this court based on the assumption that the standard of appellate review for this case is de novo:

{¶ 6} "First Issue: Whether one of the arbitrators' question on the economic impact of the arbitration panel's decision on Appellee, *if* that decision was in favor of Appellant, demonstrated evident partiality.

{¶ 7} "Second Issue: Whether the arbitration panel was guilty of misconduct by refusing to hear the pertinent and material testimony from Appellant's tax expert."

{¶ 8} The following undisputed facts are relevant to the issues raised on appeal. Appellant, Martin C. Cooper, had an employment relationship with appellee, Securities

Service Network, Inc., from 2002 to 2005. Appellant filed a complaint with the Lucas County Court of Common Pleas against the appellee seeking damages for alleged monetary losses incurred as a result of being classified as an independent contractor rather than an employee. The basis of appellant's losses stemmed from an adverse tax classification status. On August 23, 2007, the trial court stayed the litigation in favor of binding arbitration as agreed to by the parties.

{¶ 9} The arbitration was conducted by FINRA and consisted of a three-person panel. On August 25, 2008, the panel issued its decision denying appellant's claims. Subsequently, appellant filed a Motion to Vacate the arbitration decision with the trial court. On March 26, 2009, the trial court held a hearing on this motion. Following a thorough hearing, the trial court issued an order denying the motion on April 1, 2009, from which this appeal followed.

{¶ 10} In his sole assignment of error, appellant claims the trial court erred by denying his motion to vacate the arbitration award. We disagree. Like court decisions, arbitration awards are presumptively valid. *Findlay City School Dist. Bd. of Edn. v. Findlay Edn. Assn.* (1990), 49 Ohio St.3d 129. Under R.C. 2711.10, arbitration awards may not be modified or vacated by the court of common pleas unless there is evidence of fraud, corruption, or material mistake. *Lynch v. Halcomb* (1984), 16 Ohio App.3d 223. See, also, *Sparks v. Barnett* (1992), 78 Ohio App.3d 448.

{¶ 11} Appellant further argues that this court must review this case using a de novo standard of review. However, under Ohio statutory law, appellate review of an arbitration award is very limited in scope. It is well-settled that "an appellate court is confined to an evaluation of the order issued by the court of common pleas pursuant to R.C. Chapter 2711 and may not consider the substantive merits of the award absent evidence of material mistake or extensive impropriety." *Rubel v. Interior Channel, Inc.*, 6th Dist. App. No. WD-89-46, citing *Lynch*, supra. See, also, *Lockhart v. Am. Res. Ins. Co.* (1981), 2 Ohio App.3d 99; *Oil, Chemical & Atomic Workers Internatl. Union, AFL-CIO, Local 7-629 v. RMI Co.* (1987), 41 Ohio App.3d 16.

{¶ 12} This court has thoroughly reviewed the trial court record with particular attention to the transcript of the proceedings. There is no evidence of any material mistake or impropriety by the trial court during the proceedings sufficient to justify a de novo review. As such, the issues raised by appellant with regards to the merits of the arbitration award are moot. Appellant's assignment of error is found not well-taken.

{¶ 13} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

Martin C. Cooper v.
Securities Service Network, Inc.
L-09-1127

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.