COURT OF APPEALS
DECISION
DATED AND FILED

February 6, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-3275 **Cir. Ct. No. 01-CV-22**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

J. J. JORDAN & ASSOCIATES, INC.,

PLAINTIFF-APPELLANT,

V.

FLAMBEAU CORPORATION,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Iowa County: WILLIAM D. DYKE, Judge. *Affirmed*.

Before Dykman, Deininger and Lundsten, JJ.

¶1 PER CURIAM. J.J. Jordan & Associates (Jordan) appeals the circuit court's order denying its request to vacate an arbitrator's award. The issue is whether the arbitrator's award demonstrates a manifest disregard for the law. We conclude that it does not. Therefore, we affirm.

¶2 The relevant facts are not in dispute. Flambeau Corporation manufactures plastic automobile parts. Jordan was Flambeau's manufacturer's sales representative, helping Flambeau sell its products to DaimlerChrysler. Jordan had been Flambeau's manufacturer's representative since 1972.

¶3 Flambeau terminated its manufacturer's sales agreement with Jordan on May 10, 1999. The agreement between Flambeau and Jordan in effect at that time had been entered into in 1996. Paragraph 7(e) of that Agreement provided:

> In the event this Agreement is terminated for any reason, FLAMBEAU shall continue to pay REPRESENTATIVE commission in the amount due on all payments received, for shipments against customer orders secured by REPRESENTATIVE and accepted by FLAMBEAU prior to the date of termination, or within the Termination Release Period.

According to the terms of the contract, the termination release period ended on May 10, 2000, one year after the contract was terminated.

¶4 After the termination release period ended, a dispute arose about Jordan's right to commission on certain sales. The parties submitted their dispute to an arbitrator. The arbitrator concluded that Jordan was entitled to commission on sales that it had procured, provided that the goods had been shipped within the one-year termination release period.

¶5 It is well established that our review of an arbitrator's award is highly limited. ***Joint Sch. Dist. No. 10 v. Jefferson Educ. Ass'n***, 78 Wis. 2d 94, 117, 253 N.W.2d 536 (1977). "An arbitrator's award is presumptively valid, and it will be disturbed only when its invalidity is demonstrated by clear and convincing evidence." ***Nicolet High Sch. Dist. v. Nicolet Educ. Ass'n***, 118 Wis. 2d 707, 712, 348 N.W.2d 175 (1984). We will overturn an award only "if

there is a perverse misconstruction or if there is positive misconduct plainly established, or if there is a manifest disregard of the law, or if the award itself is illegal or violates strong public policy." ***Joint Sch. Dist. No. 10***, 78 Wis. 2d at 117-18. "'While this Court may disagree with the interpretation of the contract reached by the arbitrator, the parties contracted for the arbitrator's settlement of the [dispute] and that is what they [should] receive.'" ***Milwaukee Prof'l Firefighters Local 215 v. City of Milwaukee***, 78 Wis. 2d 1, 22, 253 N.W.2d 481 (1977) (citation omitted).

¶6 Jordan contends that it is entitled to commissions for an indefinite period into the future, as long as the orders have been *secured* by Jordan and accepted by Flambeau within the one-year termination release period. Jordan contends that the arbitrator's award should be vacated because the arbitrator manifestly disregarded the law by refusing to consider controlling precedent, ***Leen v. Butter Co.***, 177 Wis. 2d 150, 501 N.W.2d 847 (Ct. App. 1993) and ***Lee v. Wisconsin Physicians Serv.***, 76 Wis. 2d 353, 252 N.W.2d 24 (1977). We reject this argument for two reasons. First, there is no basis for a claim that the arbitrator did not consider these cases at all. Although the arbitrator did not cite the cases in his decision, he was certainly aware of the cases because they were extensively argued in Jordan's brief to the arbitrator.

¶7 Second, ***Leen*** and ***Lee*** are distinguishable from this case. They both involved situations where the contract was terminated *specifically for the purpose of avoiding payment of commission*. *See* ***Leen***, 177 Wis. 2d at 154, 158; ***Lee***, 76 Wis. 2d at 358-60. The premise of ***Leen*** and ***Lee—***that a principal who has acted in bad faith by terminating a contract to avoid paying commissions should be held to the promised compensation as if no revocation had occurred—does not apply to this dispute. No one has acted in bad faith. The parties simply disagree about the

amount of post-termination commissions to which Jordan is entitled under their written agreement.

¶8 Jordan also argues that the arbitrator's award should be vacated because the arbitrator improperly interpreted the contract. Jordan contends that: (1) any ambiguity in the contract should have been interpreted to preserve its right to commissions; (2) the arbitrator should have concluded that there was an implied promise to pay because Jordan and Flambeau did not have a "meeting of the minds" on the meaning of the contract; and (3) the arbitrator should not have considered past agreements between the parties because the current agreement had a clause that canceled prior agreements. Under our standard of review, however, we do not address whether an ambiguity in the agreement was properly interpreted. We address only whether the arbitrator manifestly disregarded the law. That plainly did not occur in this case. The arbitrator determined that the contract language was ambiguous and looked to extrinsic evidence to resolve the ambiguity, applying well-established principles of contract construction. Because the arbitrator engaged in a reasonable and legally sound process to resolve the parties' dispute, our inquiry is ended.

¶9 Flambeau Corporation has moved for costs, expenses and attorney's fees on appeal pursuant to WIS. STAT. RULE 809.25(3)(c) (1999-2000),[1] arguing that this appeal is frivolous. Although we have rejected Jordan's arguments, the appeal is not frivolous under the standards set forth in RULE 809.25(3). Therefore, the motion is denied.

[1] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.