

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

October 17, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-0391-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

JEROME M. COHEN,

Plaintiff-Appellant,

v.

**VIC TANNY INTERNATIONAL
OF WISCONSIN, INC.,**

Defendant-Respondent.

APPEAL from a judgment of the circuit court for Milwaukee County: GEORGE A. BURNS, JR., Judge. *Reversed in part and cause remanded with directions.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Jerome M. Cohen appeals from that part of the circuit court's judgment confirming the award of an arbitrator who found that Cohen's tenant, Vic Tanny, had procured insurance coverage adequate to meet the terms of the parties' lease agreement. Because the arbitrator's decision had

no support in the language of the lease, we reverse the trial court's judgment confirming the award and remand the cause for further proceedings.¹

BACKGROUND

The facts dispositive of the appeal are undisputed. On April 17, 1981, Vic Tanny entered into a lease securing 40,000 square feet of commercial property in Milwaukee from John B. Fazio, who later assigned his interest to Cohen. The lease provided in part that "Tenant shall insure itself and Landlord ... by maintaining at Tenant's expense ... the following property insurance: (a) ... fire and extended coverage insurance ... as may be required by the Mortgagee" The mortgage provided in pertinent part that "[i]nsurance coverage must at all times be maintained in proper relationship to such replacement value and must be written in amounts sufficient to prevent Mortgagor from becoming a co-insurer under the applicable policies, and may provide for a deductible not greater than \$1,000 per occurrence."

After a dispute arose between the parties regarding a common parking facility, certain utility bills, and the issue of whether Vic Tanny had maintained the insurance coverage required by the lease, Vic Tanny filed a demand for arbitration. At the arbitration hearing, Vic Tanny offered evidence that it maintained property insurance with a deductible of \$250,000 for fire and extended coverage loss through December 1993. Thereafter, Vic Tanny's deductible fell to \$100,000 per occurrence.

Cohen presented evidence showing that he purchased insurance with a \$1,000 deductible for the premises leased by Vic Tanny for the time period from November 8, 1987 through September 8, 1994. Cohen claimed that the premiums for this insurance totaled \$21,423.

That part of the arbitrator's award relevant to this appeal provided as follows: "Insurance furnished by [Vic Tanny] was more than adequate. [Cohen] is not entitled to reimbursement of any insurance premiums paid by

¹ This is an expedited appeal under RULE 809.17, STATS.

him." Cohen sought review of the arbitrator's award in the circuit court. The circuit court affirmed.

DISCUSSION

"Judicial review of arbitration awards is very limited." *Milwaukee Professional Firefighters Local 215 v. City of Milwaukee*, 78 Wis.2d 1, 21, 253 N.W.2d 481, 491 (1977). Our function is merely a supervisory one, ensuring "that the parties receive the arbitration that they bargained for." *Id.* at 22, 253 N.W.2d at 491. The arbitrator "obtains his authority from the contract of the parties." *Id.* at 21, 253 N.W.2d at 491. Accordingly, while this court will afford both flexibility and latitude to the arbitrator in formulating remedies, it remains incumbent upon the arbitrator to confine himself or herself to the terms of the contract. *Id.* at 25, 253 N.W.2d at 493. Where an arbitrator fails to confine an award to the terms of the agreement, "the arbitrator exceeded his power in respect thereto," and the arbitration award will be reversed. *Id.* Similarly, this court will reverse an arbitration award if the court finds "no language in the contract which would allow for the finding made by the arbitration board." *Lukowski v. Dankert*, 184 Wis.2d 142, 153, 515 N.W.2d 883, 887 (1984).

Here, the terms of the lease are undisputed. The lease required the tenant, Vic Tanny, to secure insurance meeting the requirements of the mortgage. Vic Tanny's failure to purchase such insurance was uncontested. The lease does not contain any language suggesting that an arbitrator may determine the "adequacy" of the insurance actually provided by the tenant. We conclude, therefore, that the arbitrator's finding that the insurance provided by Vic Tanny was adequate has no support in the language of the contract. Accordingly, this part of the arbitrator's award must be reversed. See *Milwaukee Bd. Sch. Directors v. Milwaukee Tchrs' Educ. Ass'n*, 93 Wis.2d 415, 428-29, 287 N.W.2d 131, 138 (1980) (arbitration award reversed where arbitrator lacked authority under the contract to order school board to appoint substitute teachers to regular teaching positions). Therefore, the cause must be remanded for the determination of the damages owed to Cohen by Vic Tanny.

By the Court.—Judgment reversed in part and cause remanded with directions.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.