SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 4

WILLIAM D. COHEN,

Petitioner,

Index No. 112343/05

Motion Seq. 001

- against -

J.P. MORGAN CHASE, CO., and J.P. MORGAN SECURITIES, INC.,

Respondents.

JUDGMENT

KIBBIE F. PAYNE, J.:

In March 2003, petitioner, former employee of respondent J.P. Morgan Securities, Inc., commenced an arbitration proceeding against respondents before the New York Stock Exchange (NYSE). Petitioner alleged breach of contract, failure to pay earned bonuses and severance, constructive discharge and wrongful termination, tortuous interference with prospective economic advantage and injurious falsehood, and violation of the Worker Adjustment and Retraining Notification Act, ERISA and New York Labor Law. After a hearing, an arbitration panel issued a determination denying the claim and assessing against petitioner $69,000 in forum fees. Petitioner now moves pursuant to section 10 (a) of the Federal Arbitration Act (FAA) to vacate the arbitration award and, in the alternative, to modify the award to reduce or disallow the assessment of forum fees. Respondents

cross-move for an order denying the petition and confirming the arbitration award in its entirety.[1]

It is uncontested that the FAA (9 USC § 1 et seq.) governs this securities arbitration. The FAA, "which embodies a strong 'liberal policy favoring arbitration agreement,'. . . provides for extremely limited judicial review of an arbitration award" (see In re Uram v Garfinkel, 16 AD3d 347, 348 [1st Dept. 2005]). A court may vacate an arbitration award governed by the FAA on the narrow grounds set forth in 9 USC § 10 (a). Those grounds include "where the arbitrators were guilty of misconduct . . . in refusing to hear evidence pertinent and material to the controversy" (see 9 USC § 10 [a] [3]). However, unless "fundamental fairness is violated, arbitration determinations will not be opened up for evidentiary review" (Tempo Shain Corp. V Bertek, Inc., 120 F3d 16, 20 [2d Cir 1997]; see also Congressional Securities, Inc. v Fiserv Correspondent Servs., Inc., 102 Fed. Appx. 190 [2d Cir 2004]). Arbitrators are not required to hear all evidence proffered by a party (see Tempo at 20).

Here, petitioner argues that the arbitration panel's refusal

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[1] Respondents provide that petitioner incorrectly refers to respondent JPMorgan Chase & Co. as "J.P. Morgan Chase & Co." However, respondents have made no motion for a change in the caption to correct the alleged error.

to allow the testimony of William Harrison, the chairman and chief executive officer of respondent J.P. Morgan Chase & Co., warrants vacatur of the award for misconduct. In seeking to have Mr. Harrison testify, petitioner appears to have been concerned with alleged conversations Mr. Harrison had with others in the company concerning petitioner's bonus compensation. No claim has been made that Mr. Harrison had control over the bonuses or that petitioner was denied the opportunity to bring forth witnesses with direct participation in his compensation package. Thus, petitioner has failed to establish that Mr. Harrison's testimony was pertinent and material to this proceeding or that the procedure employed here was "fundamentally unfair" (see Tempo at 20).

Next, petitioner argues that the arbitration award should be vacated "as having manifestly disregarded th[e] law" (Uram v Garfinkel, 16 AD3d 347, 348 [1st Dept 2005]). Specifically, petitioner contends that the arbitration panel wrongfully declined a copy of the unreported case Xu v J.P. Morgan Chase & Co. (US Dist Ct, SD NY, Pauley, III, J. 01 Civ 8686), during closing arguments. This argument is unavailing. There has been no showing that the arbitration panel refused to apply any known and governing legal principle when resolving this dispute (see Bear, Stearns & Co. v. 1109580 Ont., Inc., 409 F3d 87, 90 [2d Cir. 2005], quotations and citations omitted). Petitioner

attached a copy of the Xu decision to his amended complaint. In declining to accept an additional copy, the Chairman of the panel explicitly stated "[i]t's already part of the record . . .."

Finally, in the alternative, petitioner argues that the court should modify the arbitration award to reduce or disallow the assessment of NYSE forum fees. The NYSE Arbitration Rules govern the scope of the arbitration panel's powers, setting forth the protocol for awarding forum fees (see NYSE Rule 629). Petitioner does not dispute that the arbitration panel acted within its discretion and in accordance with Rules in assessing forum fees against him. Instead, petitioner makes policy arguments as to why employees commencing NYSE arbitration proceedings should not be required to pay forum fees. Accordingly, it is

ORDERED that petitioner's motion to vacate an arbitration award pursuant to section 10 (a) of the Federal Arbitration Act and, in the alternative, to modify the award to reduce or disallow the assessment of forum fees is denied; it is further

ORDERED that respondents' cross-motion to confirm the arbitration award is granted.

The foregoing constitutes the decision and order of the court.

DATE: JAN 23 2006

KIBBIE F. PAYNE, J.S.C.