SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ PART 13
Justice

In the Matter of the Application of:

TERRENCE HASTINGS,

Petitioner,

-against-

EFH GROUP, INC., F/K/A EF HUTTON GROUP, INC., and CHRISTOPHER J. DANIELS,

Respondents.

INDEX NO. 656523/16
MOTION DATE 04-19-2017
MOTION SEQ. NO. 001
MOTION CAL. NO.

The following papers, numbered 1 to 14 were read on this petition to/for confirm arbitration award and cross-motion to dismiss and vacate arbitration award:

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1 - 3
Answering Affidavits — Exhibits ____ cross motion ____	4 - 8, 9 - 11
Replying Affidavits ____	12 - 14

Cross-Motion: X Yes No

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Upon a reading of the foregoing cited papers, it is ordered and adjudged that the petition pursuant to CPLR §7510 to confirm the arbitrator's award and pursuant to CPLR §7514 directing entry of judgment, is granted. Respondent's cross-motion pursuant to CPLR §3211[a][2], CPLR §311 and CPLR §308 to dismiss this proceeding for failure to obtain personal jurisdiction and vacate the arbitrator's award pursuant to CPLR §7511[b] and the Federal Arbitration Act, is denied.

The parties to this proceeding entered into a "Mutual Release and Settlement Agreement" (hereinafter referred to as the "settlement agreement") effective February 11, 2014 to resolve a U.S. trademark dispute that was pending before the Trademark Trial and Appeal Board. The settlement agreement at paragraph 2 (page 10 of 13) states that Respondent paid Petitioner $60,000.00, with a remaining $120,000.00 to be paid in four equal payments of $30,000.00 every three months after February 11, 2014 with a late penalty of 10% interest on the remaining balance (Pet. Exh. B). A dispute arose between the parties and Respondent stopped making payments alleging Petitioner breached the confidentiality and non-disparagement provisions of the settlment agreement at paragraphs 5 and 12 (pages 11 and 12 of 13). Paragraph 7 (page 12 of 13) of the settlement agreement (page 12 of 13) titled "Future Litigation and Disputes" provides that any alleged breach will be resolved by an Arbitrator under the rules of the American Arbitration Association ("AAA") (Pet. Exh. B).

On October 2, 2015 Petitioner filed a Demand for arbitration with AAA, and the matter was assigned to Arbitrator Kleon Andreadis (hereinafter referred to as the "Arbitrator"). On February 5, 2016 a pre-hearing conference was held over the telephone with the Arbitrator, setting up a schedule for pre-arbitration memoranda, the scheduling of witnesses, and the date of the arbitration hearing. On April 19, 2016 a hearing was conducted before the Arbitrator. Petitioner was present and represented at the hearing by two attorneys. Respondent Christopher Daniels represented himself individually, and in his capacity as corporate officer represented Respondent EFH Group, Inc. f/k/a EF Hutton Group (hereinafter referred to individually as "EFH Group, Inc." (Pet. Exh. B). The parties were provided with the opportunity to appear, state the relevant claims, provide testimony and evidence.

On May 6, 2016, the arbitrator rendered his decision finding that Petitioner was entitled to a total award of $171,711.00. The breakdown of the award is $142,956.00 comprised of the $120,000.00 amount due under the agreement plus 10% simple interest, and $28,755.00 in attorney fees. Respondents' counterclaims seeking damages for breach of the settlement agreement were denied in all respects (Pet. Exh. A).

The petition pursuant to CPLR §7510 seeks to confirm the arbitration award and pursuant to CPLR §7514 to enter judgment including pre-judgment and post-judgment interest at the statutory rate and costs.

Respondents oppose the petition and cross-move pursuant to CPLR §3211[a][2], CPLR §311 and §308 to dismiss this proceeding for lack of personal jurisdiction, alternatively, pursuant to CPLR §7511[b][1][i] and the Federal Arbitration Act to vacate the arbitration award.

CPLR §3211[a][2] specifically states that, "the court has not jurisdiction of the subject matter of the cause of action," and does not apply to personal jurisdiction (McKinney's Consolidated Laws of New York Annotated, CPLR §3211). Respondents' motion which seeks to dismiss for lack of personal jurisdiction is citing the wrong subsection of CPLR §3211, warranting denial of that relief as defective.

Respondents alternatively pursuant to CPLR §7511[b][1][i] and the Federal Arbitration Act, seek to vacate the arbitration award on the grounds that the Arbitrator committed acts of misconduct and manifestly disregarded the law. Respondents argue that the Arbitrator in refusing to briefly adjourn the arbitration hearing by a few days, or to allow the testimony of Jamie Price, a former director of Respondent EFH Group, Inc., to testify remotely, amounts to misconduct. Respondents also argue that the Arbitrator's misconduct is shown by a statement that little evidentiary weight would be given an affidavit provided by Jamie Price, and by prohibiting Mr. Daniels, who was self-represented, from testifying about communications with Mr. Price.

It is well settled that judicial review of arbitration awards is extremely limited. A party seeking to vacate an award bears a heavy burden (Frankel v. Sardis, 76 A.D. 3d 136, 904 N.Y.S. 2d 18 [1st Dept., 2010]). Pursuant to CPLR §7511 there are limited grounds to vacate an arbitrator's award which are narrowly applied. An arbitrator's award will not be set aside even though the arbitrator misconstrues or disregards the agreement, or misapplies substantive rules of law, unless it violates strong public policy or is totally irrational (Wien & Malkin LLP v. Helmsley-Spear, Inc., 6 N.Y. 3d 471, 846 N.E. 2d 1201, 813 N.Y.S. 2d 691 [2006] and In re Stephanie Cherry v. New York State Insurance Fund,83 A.D. 3d 446, 920 N.Y.S. 2d 342 [1st Dept., 2011]).

An arbitrator's award can be vacated for misconduct in the form of refusal to hear pertinent and material evidence. Erroneous evidentiary rulings may support vacatur of the arbitration award (Beals v. New York City Transit, 94 A.D. 3d 543, 942 N.Y.S. 2d 86 [1st Dept., 2012]). Absent relevant public policy considerations the sanction of preclusion is not barred at arbitration. "A court will not concern itself with the form or sufficiency of the evidence before the arbitrators or some departure from formal technicalities in the absence of a clear showing that the statutory grounds exist for vacatur of the award"(Glen Rauch Securities, Inc. v. Weinraub, 2 A.D. 3d 301, 768 N.Y.S. 2d 611[1st Dept., 2003]). The refusal to grant an adjournment can be considered misconduct "only when it results in the failure to hear pertinent and material evidence and the effective exclusion of an entire issue" (Campbell v. New York City Transit Authority, 32 A.D. 3d 350, 821 N.Y.S. 2d 27 [1st Dept., 2006]).

The Arbitrator provided a reasoned explanation for preclusion of the witness testimony and refusal to grant a last minute adjournment. Mr. Price's affidavit was accepted as evidence by the Arbitrator. The inability to cross-examine the witness due to lack of testimony, was only deemed to reduce the weight of the evidence (Cross-Mot. Exh. A, pages 7-8). The subject of Mr. Price's testimony, an e-mail sent to Mr. Price, was introduced into evidence. Testimony was provided as to the relevance of the e-mail sent to Mr. Price and its effect on the parties settlement agreement.

The transcript of the arbitration hearing does not show that Mr. Daniels, who was self-represented, was prohibited from providing pertinent and material testimony, or from cross-examining Petitioner as to the e-mail and the provisions of the settlement agreement, such that the entire issue was excluded and the foreclosed evidence would have changed the results (Cross-Mot. Exh. A). Respondents have not provided a clear showing that statutory grounds exist for vacatur of the arbitration award due to misconduct.

Respondents also argue that the Arbitrator exhibited manifest disregard of the law by ignoring the governing principal that a material breach of contract relieves further performance, warranting vacatur of the arbitration award.

"Manifest disregard of the law is a severely limited doctrine. It is a doctrine of last resort limited to rare occurrences of apparent egregious impropriety on the part of the arbitrators...To modify or vacate an award on the ground of manifest disregard of the law, a court must find both that (1) the arbitrators knew of a governing legal principal yet refused to apply it or ignored it altogether, and (2) the law ignored by the arbitrators was well defined, explicit and clearly applicable to the case" (McLaughlin, Piven, Vogel Securities, Inc. v. Ferrucci, 67 A.D. 3d 405, 889 N.Y.S. 2d 134 [1st Dept., 2009] citing to Wien & Malkin LLP v. Helmsley-Spear, Inc., 6 N.Y. 3d 471, supra at pgs. 480-481). Arbitrators have the right to fashion equitable relief and the courts are not to "interpret the substantive conditions of the contract or to determine the merits of the dispute. This is true even where the apparent or even the plain meaning of the words of the contract has been disregarded"(Transparent Value, L.L.C. v. Johnson, 93 A.D. 3d 599, 941 N.Y.S. 2d 96 [1st Dept. 2012]).

Respondents have not shown that the Arbitrator's interpretation of the confidentiality provision of the agreement was in manifest disregard of the law. It is not enough for Respondents to allege that the Arbitrator may have misapplied the law by determining that the confidentiality and disparagment provisions of the agreement were not violated. Respondents have not shown that the Arbitrator blatantly refused, or intentionally ignored, clear and explicit contract law in rendering an award that favored Petitioner.

Petitioner has shown that the May 6, 2016 Award is not irrational, imperfect or made in excess of the arbitrator's power and should be confirmed.

Accordingly, it is ORDERED and ADJUDGED, that the petition pursuant to CPLR §7510, to confirm the arbitration award and pursuant to CPLR §7514 to enter a judgment, is granted and the award rendered in favor of the Petitioner and against the Respondent is confirmed; and it is further,

ORDERED and ADJUDGED, that the Respondents' cross-motion pursuant to CPLR §3211[a][2], CPLR §311 and §308 to dismiss this proceeding for lack of personal jurisdiction, alternatively, pursuant to CPLR §7511[b][1][i] and the Federal Arbitration Act to vacate the arbitrator's award, is denied, and it is further,

ORDERED and ADJUDGED, that the Petitioner, Terrence Hastings having an address at 101 Olcott Way, Ridgefield, Connecticut, 06877, has judgment and does recover from Respondents Christopher J. Daniels and EFH Group, Inc., f/k/a EF Hutton Group, Inc., in the sum of $171,711.00, plus interest at the statutory rate per annum from May 6, 2016, as computed by the clerk in the amount of $_____, together with costs and disbursements in the amount of $ _____, as taxed by the Clerk, and Petitioner shall have execution therefor, and it is further,

ORDERED that the Clerk is directed to enter judgment accordingly.

ENTER:

MANUEL J. MENDEZ, J.S.C.

Dated: June 1, 2017

MANUEL J. MENDEZ
J.S.C.

Check one: X FINAL DISPOSITION ☐ NON-FINAL DISPOSITION
Check if appropriate: ☐ DO NOT POST ☐ REFERENCE