SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49

SUNCICA RELJIC and TRADITION SECURITIES AND DERIVATIVES, INC. (f/k/a TRADITION ASIEL SECURITIES, INC.)

Petitioners/Counterclaim Respondents,
-against-

TULLETT PREBON FINANCIAL SERVICES, LLC
Respondent/Counterclaim Petitioner
-and-

TULLETT PREBON AMERICAS CORP., TULLETT PREBON (AMERICAS) HOLDINGS, INC., TULLETT PREBON PLC, RICHARD A. HIGGS, and STEPHEN C. DUCKWORTH
Counterclaim Petitioners

INDEX NO. 650092/2017

MOTION SEQ. NO. 002

Petitioners bring this action pursuant to CPLR Article 4 and sections 3001, 7502, and 7511, as well as the Federal Arbitration Act (FAA), to vacate the award made by a FINRA arbitration panel in the combined arbitration *Tillett Prebon Financial Services LLC v Tradition Asiel Securities, Inc., and Suncica Reljic v. Richard A. Higgsm Stephen C. Duckworth, Tullett Prebon Americas Corp., Tullett Prebon (Americas) Holding, Inc., Tillett Prebon PLC.,* FINRA Case No. 10-03265 (the Arbitration). Respondent (the claimant in the Arbitration) sought damages for Reljic's breach of her employment agreement when she left its employ. Respondent also sought damages from Tradition Asiel Securities, Inc. (Tradition), Raljic's new employer, for tortious interference with her employment contract. Petitioner brought counterclaims and third-party claims in the Arbitration alleging sexual harassment, gender discrimination, constructive discharge, and a hostile work environment. The Arbitration panel held 24 pre-hearing sessions and 105 hearing sessions between February 2011 and July 2016 (*see* Award, attached as exhibit 1 to Answer, NYSCEF Doc. No. 22). In December of 2016, the panel issued the Award, in which it stated no specific findings of fact, but awarded Respondent $4,500,000 in compensatory damages, $4,508,850.15 for attorneys' fees, and $108,228.15 for costs, for all of which Tradition and Reljic were held jointly and severally liable (*id.* at 4). Reljic's counterclaim and third party claim were denied (*id.*). Tradition and Reljic now move for the award to be vacated. Respondent and counterclaim petitioners cross move for the award to be confirmed.

"It is a bedrock principle of arbitration law that the scope of judicial review of an arbitration proceeding is extremely limited. Indeed, [c]ourts are reluctant to disturb the decisions of arbitrators lest the value of this method of resolving controversies be undermined" (*Frankel v Sardis*, 76 AD3d 136, 139 [1st Dept 2010] [internal citations omitted]). "Therefore, the showing required to avoid summary confirmation of an arbitration award is high, and a party moving to vacate the award has the burden of proof" (*U.S. Elecs., Inc. v Sirius Satellite Radio, Inc.*, 73 AD3d 497, 498 [1st Dept 2010]). Pursuant to CPLR 7511, the award may be vacated if movant's rights "were prejudiced by:

(i) corruption, fraud or misconduct in procuring the award; or

(ii) partiality of an arbitrator . . . ; or

(iii) an arbitrator . . . making the award exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter was not made."

None of these criteria apply, and petitioners do not argue that they do. Petitioners focus on the FAA. "Under the statute, a court may vacate an arbitration award either on the grounds set forth in section 10(a) of the FAA or on one of the several judicially recognized "non-statutory" grounds, such as irrationality . . ., manifest disregard of the law or evidence or public policy" (Sawtelle v Waddell & Reed, Inc., 304 AD2d 103, 108 [1st Dept 2003][internal citations omitted). "Since arbitration awards are, under federal law, subject to extremely limited review, the showing required to avoid summary confirmation of an arbitrator award is high . . . . Manifest disregard clearly means more than error or misunderstanding with respect to the law and to modify or vacate an award on this ground, a court must find both that (1) the arbitrators knew of a governing legal principle 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. A court may infer that the arbitrators manifestly disregarded the law if it finds that the error made by them is so obvious that it would be instantly perceived by the average person qualified to serve as an arbitrator. Determining whether to make this inference is not an easy task and a reviewing court must proceed with caution. If there is even a barely colorable justification for the outcome reached, the court must confirm the arbitration award" (*id.* [internal citations and quotations omitted]).

Petitioners argue that holding them jointly and severally liable for damages shows the

panel found them jointly and severally liable for breach of contract and tortious interference with that contract, a clear error, as Tradition cannot breach a contract to which it is not a party and Reljic cannot tortiously interfere with a contract to which she *is* a party. Petitioners also argue that Tullett engaged in spoliation of evidence sought in connection with Reljic's counterclaim and third party claim, entitling her to an adverse inference, and that the panel's dismissal of Reljic's claims proves its failure to grant an inference.

The award itself merely states the panel's conclusions. It does not explain what, if any, adverse inferences were made, nor what evidence the panel found credible or compelling[1]. Nor does it specify which damages sprung from which claims. It merely states that "Tradition and Reljic are jointly and severally liable for . . . compensatory damages in the amount of $4,500,000" (Award at 4). While petitioners argue this structure indicates the panel impermissibly found Reljic liable for tortious interference and Tradition liable for breach of contract, there is a simpler interpretation, that each petitioner was found liable on the claim brought against it, with the panel imposing respondent's compensatory damages (not the contractual liquidated damages) against each, while seeking to avoid awarding double damages. In other words, the petitioners were held liable for the same damages, but for different reasons. While petitioners argue that attorneys' fees were awarded pursuant to the contract, supporting their argument that Tradition was improperly held liable for breach of contract, the award contradicts this theory, explaining that the attorneys' fees are awarded "as all parties requested attorneys' fees" (*id.*).

As far as petitioners argue that the panel also "manifestly disregarded applicable law in ignoring Tullett's spoliation of evidence and gross discovery misconduct" (Memo at 23, NYSCEF Doc. No. 5), petitioners claim that an adverse inference of inappropriate actions by Tullett supervisory employees was appropriate, given Tullett's actions in failing to preserve and turn over relevant documents. Further, petitioners argue that, had the panel made the inference,

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[1]"Arbitrators are not required to provide the rationale for their award, and courts generally will not look beyond the lump sum award in an attempt to analyze the reasoning processes of the arbitrators" (*Wall St. Assoc., L.P. v Becker Paribas Inc.*, 27 F3d 845, 849 [2d Cir 1994] quoting *Barbier v Shearson Lehman Hutton Inc.*, 948 F2d 117, 121 [2d Cir.1991] *see also Shirley Silk Co. v Am. Silk Mills*, 257 AD 375, 376 [1st Dept 1939]).

the only possible conclusion would have been to find for Reljic on her claims (*id.* at 24-25). As the panel failed to find in her favor, it must have "disregarded the law and so erred in its evaluation of the evidence" (*id.* at 25).

This court may only vacate an arbitration award for manifest disregard of the law if it finds "both that (1) the arbitrators knew of a governing legal principle 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" (*Wallace v Buttar*, 378 F3d 182, 189 [2d Cir 2004] quoting *Banco de Seguros del Estado v Mutual Marine Office, Inc.*, 344 F3d 255, 263 [2d Cir 2003]). While petitioners argue and cite cases which state that sanctions are appropriate in the situation they allege (Reply, NYSCEF Doc. No. 49, at 9-10), it cites no case stating that such an inference, or any specific sanction, is required. CPLR 3216, titled "Penalties for refusal to comply with order or to disclose," provides that if a party "refuses to obey an order for disclosure or wilfully fails to disclose information which the court finds ought to have been disclosed . . . , the court may make such orders with regard to the failure or refusal as are just." No sanction is mandatory. While the panel may have had discretion to impose some sanction on Tullett, an adverse inference is not required and the panel's alleged failure to impose an adverse inference does not constitute manifest disregard for the law (*see Wien & Malkin LLP v Helmsley-Spear, Inc.*, 6 NY3d 471, 485 [2006] [panel acting within its discretion does not manifestly disregard the law]).[2] Petitioners have failed to meet their burden of showing manifest disregard of the law.

Accordingly, it is

ORDERED that petitioners' motion to vacate the Award is DENIED; and it is further

ORDERED that the cross motion of respondent and counterclaim petitioners to confirm the Award is hereby GRANTED, and this case may be marked disposed.

This constitutes the decision and order of the court.

DATED: July 10, 2017

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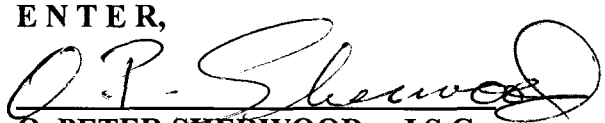

O. PETER SHERWOOD J.S.C.

[2]If, indeed, the panel declined to impose any sanction. Given the lack of explanation in the Award, it is possible the panel imposed some sanction which was either weighed as part of the evidence or deducted from amounts owed to Tullett.