SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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MARIANA TRADING INC,

Petitioner,

- v -

AMAZON.COM SERVICES, LLC, AMAZON.COM, INC.

Respondents.

INDEX NO. 651075/2023

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 27, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43

were read on this petition to VACATE ARBITRATION AWARD.

Mariana Trading Inc., ("Petitioner" or "Mariana") petitions to vacate the arbitration award in the case of *Mariana Trading Inc. v. Amazon.com Services, LLC, et al.*, AAA Case No. 01-21-0017-6005 (NYSCEF 5 ["Final Award"]). Respondents Amazon.com Services LLC and Amazon.com, Inc. (collectively "Respondents" or "Amazon") oppose the petition and cross-petition to confirm the Arbitration Award. For the following reasons, the petition to vacate the Arbitration Award is denied, and Respondents' cross-petition to confirm the award is granted.

According to the Petition, Mariana is a new business that sold merchandise through Amazon, and stored inventory in Amazon's warehouse, from approximately June 2020 to June 2021. On July 9, 2021, Amazon deactivated Mariana's account for alleged violations of the parties' Business Solutions Agreement ("BSA"). Specifically, Amazon asserted that Mariana engaged in "reviews abuse" to deceptively inflate the customer review scores of its products sold via Amazon. Pursuant to Section 2 of the BSA, Amazon withheld Mariana's Account pending

sales proceeds, amounting to $278,574.79, representing customer payments for seller-sold merchandise. On November 30, 2021, Petitioner filed a Demand for Arbitration and Request for Emergency Relief before the American Arbitration Association ("AAA"), seeking the release of the funds withheld by Amazon (Exhibit P-15).

On November 30, 2022, the Arbitrator appointed by the AAA ("Arbitrator") entered an Award denying all of Petitioner's claims and finding that Amazon was entitled under the BSA to keep the sales proceeds in Petitioner's seller account. The arbitrator assessed the evidence submitted by the parties and found that there was "sufficient evidence to establish that Mariana, acting through other entities, committed a deceptive practice, such as abuse or fraud, or that that an entity under 'common control' with Mariana committed a deceptive practice, even if Mariana itself did not do so," and thus Amazon was entitled under the BSA to retain the disputed funds (NYSCEF 5 at 6). The arbitrator rejected Mariana's arguments that Section 2 of the BSA (which permitted Amazon to withhold the disputed funds upon a finding of deceptive behavior) was unenforceable under applicable Washington law as an "unconscionable" contract term or as a punitive liquidated damages provision (*id*. at 9-11), and also rejected the argument that Amazon was collaterally estopped from enforcing Section 2 because arbitrators in certain other cases found the provision to be unenforceable (*id*. at 11-12 [noting, in part, that other arbitrators had found in Amazon's favor on the same point]).

Mariana seeks to vacate the Arbitrator's Award on the grounds that the Arbitrator's award manifestly disregarded the law, demonstrated bias in favor of Amazon and against Chinese sellers, and exceeded the Arbitrator's power.

DISCUSSION

"It is well settled that a court may vacate an arbitration award only if it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power" (*In re Falzone (New York Cent. Mut. Fire Ins. Co.)*, 15 NY3d 530, 534 [2010] [citations omitted]). "Moreover, courts are obligated to give deference to the decision of the arbitrator. This is true even if the arbitrator misapplied the substantive law" (*New York City Transit Auth v Transp. Workers' Union of Am., Local 100, AFL-CIO*, 6 NY3d 332, 336 [2005] [citations and quotations omitted]. "[A]n arbitrator's rulings, unlike a trial court's, are largely unreviewable" (*Falzone*, 15 NY3d at 534).

In sum, under New York and federal law, "'[a] party moving to vacate an arbitration award has the burden of proof, and the showing required to avoid confirmation is very high'" (*U.S. Elecs., Inc. v Sirius Satellite Radio, Inc.*, 17 NY3d 912, 915 [2011] [citation omitted]).

An arbitration award may be vacated in the event of fraud, corruption, or misconduct of the arbitrators, or if the award exhibits a manifest disregard of the law (*Wien & Malkin LLP. v Helmsley-Spear, Inc.*, 6 NY3d 471, 480 [2006]. "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 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.'" (*Id.* at 481 [citations omitted]). The "'manifest disregard' standard rarely results in vacatur because it is limited to those 'rare occurrences of apparent 'egregious impropriety' on the part of the arbitrators,' which requires 'more than a simple error in law or failure by the arbitrators to understand or apply it;'

in other words, it must be 'more than an erroneous interpretation of the law'" (*Cheng v Oxford Health Plans Inc.*, 45 AD3d 356, 357 [1st Dept 2007]).

Petitioner has failed to demonstrate persuasive grounds to vacate the Final Award. *First*, the Arbitrator did not demonstrate manifest disregard for the law by rendering an award in Amazon's favor. Petitioner argues that Section 2 of the BSA is unconscionable under Washington law because Section 2 allows Amazon to permanently withhold any payments to the Petitioner. However, as the Final Award demonstrates, the Arbitrator applied Washington law with respect to unconscionability, and then assessed why Section 2 of the BSA is not unconscionable or otherwise unenforceable under Washington law, concluding that "the amount withheld [from Mariana] was only about 10% of the Claimant's sales in an entire year. I find that retaining such a percentage of sales… is not overly or monstrously harsh or shocking to the conscience" (NYSCEF 5 at 9). Though Mariana makes a credible argument that Section 2 of the BSA *could* be deemed an unenforceably punitive liquidated damages provision under certain circumstances, it is not this Court's role under CPLR Article 75 to second-guess the reasoned judgment of a duly appointed arbitrator on that disputed issue of law and fact (*Sprinzen v Nomberg*, 46 NY2d 623, 632 [1979] ["While there may be some doubt whether we would have enforced the restrictive covenant now before us had this dispute been adjudicated in the courts, such consideration is irrelevant to the disposition of this case, for courts will not second-guess the factual findings or the legal conclusions of the arbitrator. The utility of the arbitration process itself is derived from its autonomy, and courts must honor the choice of the parties to have their controversy decided within this framework"]; *Ma v Griffin*, 209 AD3d 614, 614 [1st Dept 2022]).

Second, Petitioner argues that the Arbitrator exceeded his power when he awarded that Amazon may retain Mariana's funds, despite Amazon not filing a counterclaim for damages during the arbitration. The Arbitrator did not exceed his power by deciding issues expressly delegated to the Arbitrator under the BSA and in accordance with applicable Washington law. Indeed, Mariana specifically sought the *release* of such funds, so it is hardly beyond the scope of the arbitrator's remit to issue an award rejecting Mariana's claim and permitting Amazon to retain the same funds. Mariana has not identified any clause in the BSA that limited the Arbitrator's authority to decide any given issue and cites to no authority for the proposition that Amazon would need to file a counterclaim to obtain what was essentially the inverse of Mariana's own claim for declaratory/injunctive relief. The award is neither irrational nor violates any boundary on the Arbitrator's authority.

Third, Petitioner argues that the Arbitrator demonstrated bias in favor for Amazon and against Chinese sellers. In the absence of any extrinsic evidence of such purported bias, and none has been provided, Petitioner's argument rests essentially on the fact that the Arbitrator ruled against Mariana, which is insufficient (*Provenzano v Motor Veh. Acci. Indem. Corp.*, 28 AD2d 528 [1st Dept 1967] ["There is no showing in the record, apart from the claimed inadequacy of the award and the opinion of the claimant's attorney of record that the arbitrator was prejudiced, sufficient to sustain a conclusion that the arbitrator was partial."]).

For the foregoing reasons, the motion to vacate the Final Award is denied. The cross-petition to confirm the Final Award therefore is granted (CPLR 7510 ["The Court shall confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in section 7511"]).

Accordingly, it is

ORDERED that Petitioner's Petition to vacate the Final Award is **DENIED**; it is further

ORDERED that Respondents' cross-petition to confirm the Final Award is **GRANTED**; it is further

ORDERED and ADJUDGED that the Final Award entered in the arbitration known as *Mariana Trading Inc. v. Amazon.com Services, LLC, et al.*, AAA Case No. 01-21-0017-6005 is confirmed; it is further

ORDERED that the Clerk is directed to enter judgment in favor of Respondents and against Petitioner confirming the Final Award, together with costs and disbursements in this proceeding as taxed by the Clerk upon submission by Respondent of an appropriate bill of costs.

This constitutes the Decision and Order of the Court.

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9/20/2023
DATE

JOEL M. COHEN, J.S.C.

CHECK ONE:	X	CASE DISPOSED				NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE