CLSA Ams., LLC v Mayo
2024 NY Slip Op 30963(U)
March 21, 2024
Supreme Court, New York County
Docket Number: Index No. 650698/2022
Judge: Arlene P. Bluth
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH — *Justice* — PART 14

---X

CLSA AMERICAS, LLC

Petitioner,

- v -

MICHAEL MAYO,

Respondent.

---X

INDEX NO. 650698/2022

MOTION DATE 03/30/2022[1]

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001)1- 20, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 53, 54

were read on this motion to/for VACATE - AWARD.

The cross-petition by respondent to confirm an arbitral award is granted.

Background

Petitioner brings this proceeding to vacate an arbitral award issued by the Financial Industry Regulatory Authority ("FINRA") that awarded respondent a bonus of $400,000. It claims that respondent was its employee from mid-2013 through February 2017 and that the bonus at issue here was for work performed in 2016. Petitioner explains that the bonus was a "discretionary bonus" and that the award directly contravenes the bonus policy, which permitted petitioner to decide whether or not to issue one.

It observes that in February 2017, petitioner laid off 90 employees, including respondent, and that no one in this group received a bonus. Petitioner argues that the award was not reasoned and that respondent admitted that he never had a written agreement for the bonus.

[1] Although this proceeding was only transferred to this part a few days ago, the Court apologizes, profusely, for the absurd delay in the resolution of this proceeding. Nearly two years to decide this petition is far too long.

Respondent cross-moves to confirm the award. He claims that he pursued an arbitration before FINRA because he had a stellar 2016. He insisted throughout the arbitration process that he spoke with senior executives throughout 2016 who promised him that he was going to receive a bonus but that petitioner refused to pay him anything. Respondent observes that the arbitration took four days and that the panel awarded him $400,000.

Discussion

CPLR 7511 provides just four grounds for vacating an arbitration award, including that the arbitrator exceeded his power, which "occurs only where the arbitrator's award violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power. Mere errors of fact or law are insufficient to vacate an arbitral award. Courts are obligated to give deference to the decision of the arbitrator, even if the arbitrator misapplied the substantive law in the area of the contract" (*NRT New York LLC v Spell*, 166 AD3d 438, 438-39, 88 NYS3d 34 [1st Dept 2018]).

The central issue for this Court is that the award itself does not contain a reasoned analysis justifying the $400,000 awarded to respondent. Petitioner argues in its moving papers that this should constitute a basis to vacate the award. Respondent claims in his papers that petitioner expressly asked FINRA **not** to issue a reasoned award and that petitioner cannot complain here about the absence of a detailed decision.

In reply, petitioner does not directly deny that it did not demand a reasoned award. Instead, petitioner claims that "the arbitrators were authorized to provide a rationale for the award regardless of any request, but they did not do so" (NYSCEF Doc. No. 53 at 9). It adds that it "does not invoke this principle to 'attack' the arbitrators; rather, it does so to demonstrate that

there is no colorable justification anywhere for the Award, whether in the written terms of the Employee Handbook, in any applicable legal authority, or in the Award itself" (*id.*).

This argument is untenable in this Court's view. A review of the FINRA arbitration rules shows that parties have to make a request for an "explained decision" prior to prehearing exchanges (FINRA Arbitration Rule ¶ 13904[g]). There is no suggestion here that such a request was ever made. That FINRA "could have" issued a reasoned decision is besides the point; petitioner seems to admit that it did not demand a reasoned award and now it argues that the Court should vacate the decision because it was not a reasoned award. That tautology is not a persuasive argument (*NSB Advisors, LLC v C.L. King & Assoc., Inc.*, 61 Misc 3d 1211(A), *4 [Sup Ct, NY County 2018] [noting that a party could not complain about the amount of detail in an award where the parties did not request an explained decision from FINRA]).

In any event, the Court finds that there is no basis to disturb the award. The fact is that the decision is based on the panel's apparent agreement with respondent's position that he was promised a bonus by various senior executives of petitioner, who later reneged on that promise. The consideration of the witness testimony and the documents presented is the province of the arbitration panel and this Court is not empowered to conduct its own independent analysis of the evidence.

Summary

Petitioner cannot create a situation in which it declines to demand a reasoned decision and then claim the award should be vacated because it was not "reasoned." Of course, the parties' decision not to demand a reasoned award complicates the instant proceeding, particularly with how to evaluate FINRA's award. It also invites, as is evidenced by the papers in this proceeding, the parties to argue the case *de novo*. The Court declines to engage in such an

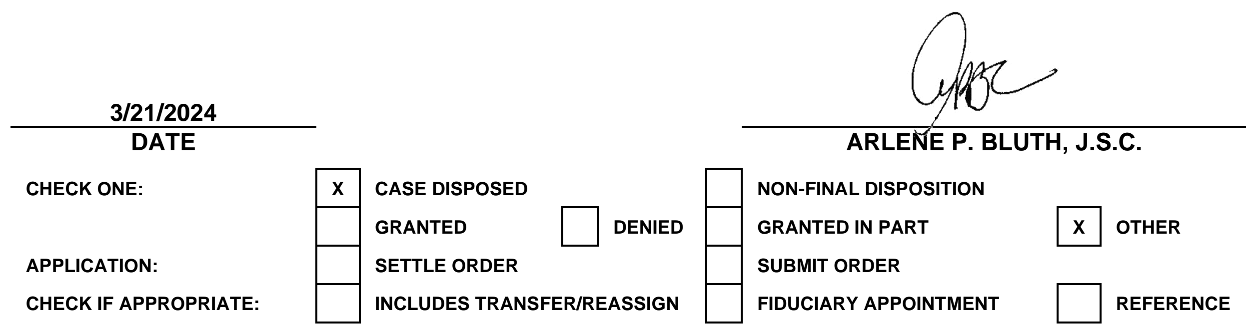
analysis of the instant dispute. The entire point of going to arbitration is to avoid relitigating the entire case again in court. And that is exactly what petitioner attempts to do here. Petitioner's papers are rife with arguments about why respondent was not entitled to receive the bonus. But that was the point of the four-day hearing and the arbitration award.

Petitioner's arguments in support of its request to vacate the award amount to a disagreement with the award. It argues that the panel disregarded applicable caselaw about discretionary bonuses. But, as noted above, in an arbitration, it doesn't even matter if a panel misapplied the applicable law (*NRT New York* LLC, 166 AD3d at 438-39).

"Indeed, courts 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, 904 NYS2d 18 [1st Dept 2010] [internal quotations and citations omitted]). Here, the parties utilized a FINRA arbitration and now petitioner disagrees with the outcome. Under CPLR 7511, that is not a basis to vacate an award.

Accordingly, it is hereby

ADJUDGED that the cross-petition to confirm the subject FINRA award is granted and the Clerk is directed to enter judgment in favor of respondent and against petitioner in the amount of $400,000 plus statutory interest from January 14, 2022 along with costs and disbursements upon presentation of proper papers therefor.



3/21/2024
DATE

ARLENE P. BLUTH, J.S.C.

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