FILED
Superior Court of California
County of Los Angeles

SEP 06 2024

David W. Slayton, Executive Officer/Clerk of Court
By: T. Le, Deputy

HEARING DATE: **September 5 2024** TRIAL: Not set.

CASE: **Michael Barrows, et al. v. Ronald J. Inlow**

CASE NO.: **23STCP04344**

RULING RE:
(1) PETITION TO VACATE ARBITRATION AWARD;
(2) PETITION TO CONFIRM ARBITRATION AWARD

MOVING PARTY: (1) Petitioners Michael Barrows and Eric J. Ludovico;
(2) Respondent Ronald J. Inlow

RESPONDING PARTY(S) (1) Respondent Ronald J. Inlow;
(2) Respondent Ronald J. Inlow

Respondents in the underlying arbitration filed a petition to vacate the arbitration award.

Petitioners filed a cross-petition to confirm the arbitration award.

RULING

Petitioners Michael Barrows and Eric J. Ludovico's petition to vacate the arbitration award is DENIED.

Respondent Ronald J. Inlow's cross-petition to confirm the arbitration award is GRANTED.

Petition To Vacate Arbitration Award

Petitioners Michael Barrows and Eric J. Ludovico—respondents in the underlying arbitration—bring a petition to vacate the arbitration award.

The petition to vacate is DENIED for the following reasons: (1) the petition was untimely served; (2) in the underlying petition, arbitrator Marcus disclosed all information upon which Petitioners now rely in claiming that Marcus was not actually a Public Arbitrator; as such Petitioners are deemed to have waived the objection to the Public Arbitrator designation; (3) Petitioners have not demonstrated that Marcus' representation that he did not devote 20 percent of this professional time in a year to representing or providing services to parties in disputes

09/09/2024

concerning investment accounts or transactions or employment relationships within the financial in industry was false.

1. The petition was untimely served.

> A petition to confirm an award shall be served and filed not later than four years after the date of service of a signed copy of the award on the petitioner. A **petition to vacate an award or to correct an award shall be served and filed not later than 100 days after the date of the service of a signed copy of the award on the petitioner**.

(Civ. Proc. Code, § 1288 [bold emphasis and underlining added].)

As articulated by the California Supreme Court, a petition to vacate an arbitration award, as well as a response to a petition to confirm an arbitration award, which response seeks to vacate or reduce the award, must be served within 100 days of the service of the award.

> The Act also sets out a more specific set of procedures governing postarbitration proceedings, including deadlines by which parties seeking to confirm or vacate an arbitral award must file those requests with the court. (See Code Civ. Proc., pt. 3, tit. 9, ch. 4 ["Enforcement of the Award"].) A party seeking to confirm the arbitral award may file a petition within four [*946] years of the service of the final award. (Code Civ. Proc., § 1288.) A party seeking to vacate the arbitral award, however, has much less time. A **request to vacate may be made either in a petition to vacate (*id.*, § 1285) or in a response to the petition to confirm** (*id.*, § 1285.2). **Regardless of the method, the Act imposes the same deadline: "A petition to vacate an award ... shall be served and filed not later than 100 days after the date of the service of a signed copy of the award on the petitioner"** (*id.*, § 1288), **and identically, "[a] response requesting that an award be vacated ... shall be served and filed not later than 100 days after the date of service of a signed copy of the award" on the respondent** (*id.*, § 1288.2).
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> . . .
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> **Under the plain terms of sections 1288 and 1288.2, Key had 100 days from the service of the final award to request that the arbitration award be vacated—whether she chose to do so via a standalone petition to vacate or via a response to Lender's petition to confirm the award**. Key's argument that her 139-day filing was nonetheless timely depends on the proposition that section 1290.6—a general statutory provision permitting parties to extend the default 10-day period for any responsive filing in an arbitration matter—supersedes the specific 100-day deadline for requesting that an arbitration award be vacated, at least when a petition to confirm has been filed within 100 days of the award's service. But under the governing statutes, neither deadline supersedes the other. **On the contrary, when a filing both (1) responds to a petition to confirm, and**

> **(2) requests that the arbitration award be vacated, both deadlines apply: (1) Absent a written agreement or court [*947] order, the response must be filed within 10 days after service of the petition to confirm and (2) in any event, no later than 100 days after service of the award**. This rule respects the plain language of both provisions without reading an unnecessary conflict into the statutory scheme. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387 [241 Cal. Rptr. 67, 743 P.2d 1323] ["[S]tatutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible."].)

(*Law Fin. Grp., LLC v. Key* (2023) 14 Cal.5th 932, 946-47 [bold emphasis and underlining added].)

The arbitration award was served on October 30, 2023. (Petition to Vacate, Attachment 8(c).The 100-day period to file and serve the petition to vacate expired on February 7, 2024. Although the petition to vacate was filed on November 29, 2023, it was not served upon respondent Inlow March 2, 2024—the effective date of substituted service.

Moreover, Petitioner's argument that late service of the petition to vacate should be permitted where predecessor counsel abandoned Petitioners is an argument made for the first time in the reply[1] in a portion which exceeds the 10-page reply limit set forth in Cal. Rules of Court, Rule 3.113(d) and will not be considered.

As such, this is sufficient ground to deny the petition to vacate.

2. In the underlying petition, arbitrator Marcus disclosed all information upon which Petitioners now rely in claiming that Marcus was not actually a Public Arbitrator; as such Petitioners are deemed to have waived the objection to the Public Arbitrator designation.

Petitioners also argue that arbitrator Stephen Howard Marcus was improperly classified as a Public Arbitrator by FINRA under the standards set forth in FINRA Rule 13100(x), and thereby exceeded his powers as arbitrator. The Petition cites statements made by Marcus in his profile regarding his professional experience. (Ps and As, ¶¶ 12, 17 – 18,) Because this information was available to Petitioners, their failure to object and consent to Marcus acting as arbitration constitutes a waiver of the alleged improper FINRA classification.

To allow Petitioners to withhold their objection based on this disclosed information and only assert it once they were unsuccessful in the arbitration, would be to permit Petitioners to utilize an ace-in-the-hole which undermines the advantages of arbitration.

> The issue would have been waived, however, had Moncharsh failed to raise it *before the arbitrator*. Any other conclusion is inconsistent with the basic purpose

[1] "The salutary rule is that points raised in a reply brief for the first time will not be considered unless good cause is shown for the failure to present them before. (Citations omitted.)" (*Balboa Ins. Co. v. Aguirre* (1983) 149 Cal.App.3d 1002, 1010.)

> of private arbitration, which is to finally decide a dispute between the parties. Moreover, we cannot permit a party to sit on his rights, content in the knowledge that should he suffer an adverse decision, he could then raise the illegality issue in a motion to vacate the arbitrator's award. A contrary rule would condone a level of "procedural gamesmanship" that we have condemned as "undermining the advantages of arbitration." (Citations omitted.) Such a waste of arbitral and judicial time and resources should not be permitted.

(*Moncharsh v. Heily & Blasé* (1992) 3 Cal. 4th 1, 30.)

As such, this does not constitute ground to vacate the arbitration award.

3. Petitioners have not demonstrated that Marcus' representation that he did not devote 20 percent of this professional time in a year to representing or providing services to parties in disputes concerning investment accounts or transactions or employment relationships within the financial in industry was false.

Petitioners cite the following FINRA Rule regarding the designation of a public arbitrator:

> 15. FINRA Rule 13100 (x)(3) states:
>
> (3) A person shall not be designated as a public arbitrator, who was, for a total of 15 years or more, an attorney, accountant, expert witness or other professional who has devoted 20 percent or more of his or her professional time annually to representing or providing services to parties in disputes concerning investment accounts or transactions, or employment relationships within the financial industry. [Emphasis supplied.]
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> 16. FINRA Rule 13100 (x) (7) states:
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> A person shall not be designated as a public arbitrator who is an attorney, accountant, expert witness or other professional who has devoted 20 percent or more of his or her professional time, in any single calendar year, to representing or providing services to parties in disputes concerning investment accounts or transactions, or employment relationships within the financial industry unless the calendar year ended more than five calendar years ago. [Emphasis supplied.][2]

[2] Respondent argues that Petitioners' reliance on the 13000 series FINRA rules is misplaced, and that this case involves a customer case subject to the 12000 series FINRA rules. However, Respondent's responsive brief reproduces portions of FINRA Rule 12100(aa) that are substantially similar to the rule cited by Plaintiff, and thus the Court's inquiry is the same under either rule/

Petitioners argue that Marcus was wrongfully classified because he stated that he has represented clients in FINRA and NASD matters, and thus this should have been a "red flag" that Marcus should have been classified as a non-public arbitrator under the FINRA Rules.

However, in the Arbitrator Classification Disclosures, Marcus indicated "No" in response to the questions:

Professional Time Devoted to Entities/Persons Engaged in the Securities Industry

2.a. Are you an attorney, accountant, or other professional who has, within the past five years, devoted 20 percent or more of your professional time, in any single calendar year, to any entities listed in question (1) above and/or any persons or entities associated with any of the entities listed in question (1) above?

o Yes • No

b. As an attorney, accountant, or other professional, did you, for a total of 15 years or more devote 20 percent or more of your professional time annually to any entities listed in question (1) above and/or any persons or entities associated with any of the entities listed in question (1) above?

o Yes • No

Professional Time Devoted to Parties in Disputes

3.a. Are you an attorney, accountant, expert witness or other professional who has, within the past five years, devoted 20 percent or more of your professional time, in any single calendar year, to representing or providing services to parties in disputes concerning investment accounts or transactions, or employment relationships within the financial industry?

o Yes • No

b. As an attorney, accountant, or other professional, did you, for a total of 15 years or more, devote 20 percent or more of your professional time annually to representing or providing services to parties in disputes concerning investment accounts or transactions, or employment relationships within the financial industry?

[answer obscured in exhibit]

Given the foregoing responses, Petitioners have not demonstrated that Marcus exceeded the 20 percent threshold set forth in FINRA Rule 13110(x)(3) & (7). The Court notes that the FINRA "Arbitrator Background Information" for Marcus, which is attached to the Petition, contains a narrative recitation of his background that includes SEC-appointed work for four mutual funds almost 40 years ago, and litigation practice from 1985 to the present that included an unspecified amount of FINRA or NASD arbitration work. That background information is not so inconsistent with the statements on the disclosure form that it would render the disclosure obviously false on its face.

As such, this does not constitute ground to vacate the arbitration award.

Accordingly, the petition to vacate the arbitration award is DENIED.

Petition To Confirm Arbitration Award

Respondent Ronald J. Inlow—petitioner in the underlying arbitration—bringS a petition to confirm the arbitration award.

A petition to confirm must be served and filed no later than four years after the date of service of a signed copy of the award on the petitioner (Code Civ. Proc., § 1288) but may not be served and filed until at least 10 days after service of the signed copy of the award upon the petitioner. (Code Civ. Proc., § 1288.4.)

Although a petition to confirm arbitration award may be filed after 10 days of the service of the award (Civ. Proc. Code, § 1288.4), the hearing must be at least 100 days after the service of the award (Civ. Proc. Code, § 1288.2), which is the period of time in which the respondent may either file a file a petition to vacate the award, even if that time is beyond the 10 days in which the respondent may file a response to the petition. (Civ. Proc. Code, §§ 1285.2, 1290.6.) As articulated by the California Supreme Court, it appears that a response to a petition to confirm an arbitration award, which response seeks to vacate or reduce the award, may be served within 100 days of the service of the award.(*Law Fin. Grp., LLC v. Key* (2023) 14 Cal.5th 932, 946-47 [bold emphasis and underlining added].)

Here, the award is dated October 30, 2023, and presumably was served around that time. The 100 day period expired on February 7, 2024. This petition to confirm was filed and served on March 4, 2024. As such, the hearing is beyond the 100-day period before which a hearing may occur, and this petition was filed more than 10 days after the award. This petition is timely and not premature.

Any party to an arbitration award may petition the court to confirm, correct, or vacate the award. (Code Civ. Proc., § 1285.) "If a petition or response under this chapter is duly served and filed, the court **shall confirm** the award as made, whether rendered in this state or another state, unless in accordance with this chapter it corrects the award and confirms it as corrected, vacates the award or dismisses the proceeding." (Code Civ. Proc., § 1286 [bold emphasis added].) A petition to confirm a binding arbitration shall name as respondents all parties to the arbitration and may name any other parties to be bound by the award. (Code Civ. Proc., § 1285.) The petition shall (1) set forth the substance of or have attached a copy of the agreement to arbitrate unless petitioner denies the existence of such an agreement; (2) set forth the name(s) of the arbitrator(s); and (3) set forth or have attached a copy of the award and written opinion of the arbitrator. (Code Civ. Proc., § 1285.4(a)-(c).)

Here, the petition was served by electronic mail, which is permitted because Barrows and Ludovico were the ones who initiated this action by filing a petition. A copy of the agreement to submit the matter to arbitration was attached to the Petition as Exhibit 1.

All parties to the arbitration were named in this Petition, except Mark Stewart. (Code Civ. Proc., § 1285.) The name of the arbitrators—Stephen Howard Marcus, Jason Moriarty, and Lawrence Wayne Sarokin—are set forth in the Petition at ¶ 4. (Code Civ. Proc., § 1285.4(b).) A copy of the award and written opinion is attached to the Petition. (Code Civ. Proc., § 1285.4(c).) The terms of the Award are set forth therein. The award was as follows:

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

> 1. Respondents Barrows and Ludovico are jointly and severally liable for and shall pay to Claimant the sum of $1,035,360.46 in compensatory damages, which includes interest from October 2, 2018 through July 31, 2023 at 7% per annum.
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> 2. Respondents Barrows and Ludovico are jointly and severally liable for and shall pay to Claimant interest on the above-stated sum at the rate of 7% per annum from August 1, 2023 through the date of this Award.
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> 3. All Respondents are jointly and severally liable for and shall pay to Claimant the sum of $10,655.68 in costs.
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> 4. All Respondents are jointly and severally liable for and shall pay to Claimant the sum of $400.00 to reimburse Claimant for the non-refundable portion of the filing fee previously paid to FINRA Dispute Resolution Services.
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> 5. Barrows' request for expungement of the above-captioned arbitration (Occurrence Number 2247853) from registration records maintained by the CRD is denied.
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> 6. Ludovico's request for expungement of the above-captioned arbitration (Occurrence Number 2247841) from registration records maintained by the CRD is denied.
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> 7. Stewart's request for expungement of the above-captioned arbitration (Occurrence Number 2225773) from registration records maintained by the CRD is denied.
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> 8. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and attorneys' fees, are denied.

All the requirements for confirmation of the arbitration award have been satisfied.

Michael Barrows and Eric J. Ludovico filed an opposition citing the pending petition to vacate, which has now been denied.

Accordingly, the petition to confirm appraisal award is GRANTED.

9/6/24
DATE

CHRISTOPHER K. LUI
JUDGE, LOS ANGELES SUPERIOR COURT