IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NATIONAL CLEARING CORPORATION f/k/a J.B. OXFORD & COMPANY, INC. and CHRISTOPHER J. URNER	:	CIVIL ACTION
	:	NO. 04-CV-4765
vs.	:	
BEN TREFF	:	

MEMORANDUM AND ORDER

JOYNER, J. **January 10, 2005**

This case is now before this Court for disposition of the Plaintiff's motion to vacate and the defendant's cross-motion to confirm an arbitration award entered on September 1, 2004 by a National Association of Securities Dealers ("NASD") arbitration panel in favor of the defendant, Ben Treff. For the reasons which follow, the plaintiff's motion shall be denied, the defendant's motion shall be granted and the award confirmed.

Factual Background

On or about February 15, 1995, Plaintiff Christopher Urner submitted an application on behalf of Defendant Ben Treff to open a brokerage account with J.B. Oxford & Company (hereinafter "Oxford"). The application included at ¶14 an acknowledgment and agreement to resolve any dispute arising out of the account by arbitration. On its face, the application reflects that it was to be a "net-trade," "cash" and "margin" individual account, that Mr. Treff was a "professional investor," with an approximate

annual income of $100,000 and a $2,000,000 net worth who was a "moderate" investor whose investment objectives were "growth" and "speculation". Several years later, however, on April 3, 2001, Mr. Treff filed a Statement of Claim with the NASD against Oxford and Urner essentially disavowing the contents of that application and alleging that when he applied to open the account, he had informed them that:

> "...he had never invested in the stock market before, was unfamiliar with the stock market, was looking to make conservative stock investments, had a net worth of approximately $300,000, was concerned with maintaining the safety of his principal and that he would require some of the money back in the near future for a contemplated purchase of a home. The account application signed by the claimant showed that he was only opening a cash account, had a net worth of $300,000, was a conservative investor looking for growth and interested in stocks. Claimant also informed respondents at the outset that he did not have a regular job and that he had saved this money, which represented his life savings and entire net worth..."

Mr. Treff further alleged in his Statement of Claim that he placed all of his savings totaling approximately $445,000 with the respondents, that respondents invested these funds primarily in a margin account which they then traded and "churned" excessively, and that this resulted in an ultimate drop in his equity position to $40,000 by the time he closed the account in July, 1996. Mr. Treff thus asserted claims for, *inter alia*, breach of contract, fraud, breach of fiduciary duty, failure to supervise the account representative and failure to handle the account in the manner required under NASD rules and regulations

and in a manner suitable to the claimant's financial condition and expressed desires.

A three-member NASD arbitration panel held hearings from June 28 through June 30, 2004 and again on August 4, 2004 in Philadelphia. At those hearings, Plaintiffs presented evidence that Mr. Treff was not who he represented himself to be and that he was in reality one Thomas Morin, who had been convicted of grand theft in Florida in 1986 and that he had been using social security numbers belonging to other persons on numerous occasions, including during the pendency of the arbitration proceedings themselves and on his account application with J.B. Oxford. Despite this evidence, the panel of arbitrators nevertheless entered an award in Mr. Treff's favor for compensatory damages in the amount of $154,030. Plaintiffs now move to vacate this award on the grounds that the arbitrators imperfectly executed their powers, because the award does not meet the test of fundamental rationality and because it compels violation of the law and is therefore contrary to public policy.

Discussion

As a general rule, judicial review of an arbitration award is extremely narrow and severely limited. Jeffrey M. Brown Associates v. Allstar Drywall & Acoustics, Inc., 195 F.Supp.2d 681, 684 (E.D.Pa. 2002), citing, *inter alia*, Mutual Fire, Marine & Inland Ins. Co. v. Norad Reinsurance Co., Ltd., 868 F.2d 52, 56

(3d Cir. 1989) and Amalgamated Meat Cutters & Butcher Workmen of North America v. Cross Bros. Meat Packers, Inc., 518 F.2d 1113, 1121 (3d Cir. 1975). When parties agree to resolve their disputes outside of the traditional court system, part of their agreement is that the arbitration decision is final and binding and not subject to the usual right of appeal. Kennington, Ltd., Inc. v. Wolgin, Civ. A. No. 97-CV-7492, 1998 U.S. Dist. LEXIS 6645 (E.D.Pa. May 6, 1998). To be sure, district courts have very little authority to upset arbitrators' awards and an award will be properly vacated only if there is absolutely no support at all in the record justifying the arbitrator's determinations. United Transportation Union Local 1589 v. Suburban Transit Corp., 51 F.3d 376, 379 (3d Cir. 1995). Thus, it is not proper for the court to "sit as the panel did and reexamine the evidence." Grosso v. Salomon Smith Barney, No. 03-MC-115, 2003 U.S. Dist. LEXIS 20208 at *5 (E.D.Pa. Oct. 27, 2003), quoting Mutual Fire, Marine & Inland, 868 F.2d at 56. Errors in the arbitrator's factual findings or interpretations of the law do not justify a court's review or reversal on the merits. Id., citing, *inter alia*, United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29, 36-38, 108 S.Ct. 364, 98 L.Ed.2d 286 (1987). Similarly, a court may not overrule an arbitrator simply because it disagrees with the arbitrator's construction of the contract or because it believes its interpretation is better than that of the

arbitrator. Jeffrey M. Brown Associates, supra. The party moving to vacate the award has the burden of proof. Carmel v. Circuit City Stores, Inc., Civ. A. No. 99-MC-240, 2000 U.S. Dist. LEXIS 12065 at *9 (E.D.Pa. Aug. 22, 2000).

The parties here agree and the Court so finds that this matter is governed by the Federal Arbitration Act, 9 U.S.C. §1, *et. seq.* as it clearly involves a transaction in interstate commerce. State Farm Mutual Automobile Insurance Company v. Coviello, 233 F.3d 710, 713 (3d Cir. 2000). See Also, 9 U.S.C. §2; Roadway Package System, Inc. v. Kayser, 257 F.3d 287, 293 (3d Cir. 2001)("Subject to a few exceptions not implicated here, the [FAA] applies to any 'written provision in any...contract evidencing a transaction involving commerce to settle by arbitration a controversy arising out of such contract or transaction.'")

Generally speaking, the FAA limits the court's role to determining whether the parties received a fair and honest hearing on a matter within the arbitrator's authority. In re Prudential Insurance Company of America Sales Practice Litigation, No. 01-2320, 47 Fed. Appx. 78, 79, 2002 U.S. App. LEXIS 18062, *3 (3d Cir. Sept. 2, 2002). The procedures for confirmation and/or vacation of an arbitration award are set forth in Sections 9 and 10 of the Act. Under Section 9,

> If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made

> pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made...

Section 10, in turn, provides the following in relevant part:

> (a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration–-
>
> > (1) where the award was procured by corruption, fraud, or undue means;
> >
> > (2) where there was evident partiality or corruption in the arbitrators, or either of them;
> >
> > (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
> >
> > (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.
>
> (b) If an award is vacated, and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

However, in addition to the foregoing four circumstances outlined in Section 10(a), several courts, including the Third Circuit, have recognized additional, nonstatutory bases upon which a reviewing court may vacate an arbitrator’s award under the FAA.

Roadway Package System, 257 F.3d at 291, n.2. Hence an arbitration award may also be set aside if it displays a manifest disregard for the law, if it fails to meet the test of fundamental rationality, if it is contrary to public policy or where the contracting parties agree to vacatur standards different from those set forth in the FAA. Hruban v. Steinman, No. 01-2277, 40 Fed. Appx. 723, 724, 2002 U.S. App. LEXIS 14976, *2 (3d Cir. July 24, 2002); Roadway Package System, supra.

"Manifest disregard of the law" encompasses situations in which it is evident from the record that the arbitrator recognized the applicable law, yet chose to ignore it. Grosso, 2003 U.S. Dist. LEXIS at *7, citing Jeffrey M. Brown Associates, 195 F. Supp.2d at 684-685. Other courts have held that "manifest disregard" means that the correct legal standard must have been so obvious that the typical arbitrator would readily and instantly have perceived it, the arbitrator must have been subjectively aware of that standard and he must have proceeded to ignore it in fashioning the award. Id.

Moreover, an arbitrator exceeds his authority only if he rules on questions or matters not before him. Simply reaching a particular result based on his view of the contract and the evidence submitted, even if this court might reach a different result from that same evidence, does not mean that the arbitrator exceeded his authority. Coltec Industries, Inc. v. Elliott

Turbocharger Group, Inc., Civ. A. No. 99-1400, 1999 U.S. Dist. LEXIS 13684 (E.D.Pa. Sept. 9, 1999). See Also, Sun Ship, Inc. V. Matson Navigation Co., 785 F.2d 59, 62 (3d Cir. 1986). Findings of fact and the inferences to be drawn therefrom are the exclusive province of the arbitrator. Exxon Shipping Co. V. Exxon Seamen's Union, 73 F.3d 1287, 1297 (3d Cir. 1996), citing United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29, 36, 44, 108 S.Ct. 364, 369-70, 374, 98 L.Ed.2d 286 (1987). A court cannot tamper with arbitrator's credibility determinations. Grosso, 2003 U.S. Dist. LEXIS at *14.

To warrant vacatur on public policy grounds, the arbitration award must "violate a well-defined and dominant public policy, which we must ascertain by reference to the laws and legal precedents and not from general considerations of supposed public interests." Hruban v. Steinman, 40 Fed. Appx. At 724, quoting Exxon Shipping Co. v. Exxon Seaman's Union, 993 F.2d 357, 360 (3d Cir. 1993). The terms of the arbitral award also will not be subject to judicial revision unless they are "completely irrational," and in making this determination, the reviewing court must consider the evidence presented to the arbitrators and the prevailing law. Elliott v. Kidder, Peabody & Co., Civ. A. No. 92-837, 1992 U.S. Dist. LEXIS 9659 at *3 (E.D.Pa. July 7, 1992). For an award to be "completely irrational," it is not enough that a court find that the arbitrators erred, but rather

it must find that their decision indeed escaped the bound of rationality. Clarendon National Insurance Co. v. NCO Financial Systems, Inc., Civ. A. No. 03-69, 2004 U.S. Dist. LEXIS 7098 at *7 (E.D.Pa. April 8, 2004). See Also, Janney, Montgomery Scott, Inc. v. Oleckna, Civ. A. No. 99-4307, 2000 U.S. Dist. LEXIS 6524 AT *9 (E.D.Pa. May 15, 2000).

As noted, the plaintiffs here seek to vacate the arbitration award at issue on the grounds that, by entering an award in favor of someone who never provided a valid social security number or credible evidence of his true identity, the arbitrators imperfectly executed their powers such that a mutual, final and definite award was not made, they violated public policy and entered an award that was fundamentally irrational.

Distilled to its essence, Plaintiffs' argument challenges the arbitrators' decision to disregard the evidence which they presented challenging Mr. Treff's credibility and identity and to enter an award in his favor. While we would agree that Mr. Treff's identity and use of numerous social security numbers is indeed suspect, we simply cannot, on the basis of the record before us, find that the award violated any well-defined and dominant public policy, that it escaped the bounds of rationality or that the arbitrators imperfectly executed their powers in issuing it. Again, decisions on evidentiary matters fall within the broad discretion of the arbitrators. See, Grosso, 2003 U.S.

Dist. LEXIS 20208 at *17-*18. It was clearly within the arbitrators' province to accept or reject and to weigh the evidence concerning Mr. Treff's identity and credibility, and while we may have considered and weighed the evidence presented differently, the above caselaw makes clear that this is not a basis upon which to disturb the arbitration award. For these reasons, we must deny the motion to vacate and grant the motion to confirm the arbitration award of September 1, 2004.

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BEN TREFF	:	

ORDER

AND NOW, this 10th day of January, 2005, upon consideration of the Plaintiffs' Motion to Vacate, Modify or Correct Arbitration Award and Defendant's Cross-Motion to Confirm Arbitration Award, it is hereby ORDERED that the Plaintiffs' Motion is DENIED, the Defendant's Motion is GRANTED and the Arbitration Award entered by the panel of arbitrators before the National Association of Securities Dealers on September 1, 2004 is CONFIRMED.

BY THE COURT:

s/J. Curtis Joyner
J. CURTIS JOYNER, J.