

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JEREMY J. WALKER,

Petitioner,

v.

AMERIPRISE FINANCIAL
SERVICES, INC.,

Respondent.

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Civil No. 3:18-cv-01675-M

ORDER

Petitioner Jeremy Walker requests that this Court vacate a 2017 arbitration award by a FINRA arbitration panel (“2017 Panel”) in favor of Respondent Ameriprise Financial Services, Inc. Walker argues that the 2017 Panel is “guilty of misconduct” and “exceeded [its] powers” as described in 9 U.S.C. §§ 10(a)(3) and (4) of the Federal Arbitration Act (“FAA”). Because Walker fails to show that grounds for vacatur exist under §§ 10(a)(3) and (4), the Court denies his Petition to Vacate Arbitration Award and grants Ameriprise’s Cross-Motion to Confirm Arbitration Award.

I. Background

In May 2015, Walker resigned from his position as an Associate Financial Advisor with Scott Miller, a franchisee of Ameriprise. (ECF No. 2 ¶¶ 1, 3). In June 2015, Ameriprise and Miller filed suit against Walker in state court, alleging that Walker had taken confidential customer information from Ameriprise when he resigned from Miller’s business, and used it to solicit customers to a competing business. (ECF No. 2-2, Ex. A at 001). The state court entered a TRO, restraining Walker from using certain Ameriprise customer information and contacting

specific Ameriprise customers. (*Id.*).

Pursuant to the parties' Associate Financial Advisor Agreement, Ameriprise and Miller instituted a FINRA arbitration proceeding ("2015 Panel"), requesting injunctive relief. After a hearing on June 22, 2015, the 2015 Panel entered an order enjoining Walker from using specific Ameriprise customer information. (ECF No. 2-7, Ex. F at 002). The order set a hearing for August 11, 2015, which was "limited to the parties' request for damages, costs, and attorneys' fees." (*Id.* at 003).

Before the date of the scheduled August hearing, Walker requested that the 2015 Panel allow Walker to amend his Answering Statement to assert counterclaims against Ameriprise for unjust enrichment, fraud, and civil conspiracy ("2015 Counterclaims"). (ECF No. 2-8, Ex. G at 019). Ameriprise filed a Motion for Protection, asking the 2015 Panel to confirm that the August hearing would be limited to issues of damages and attorneys' fees related to the injunction. (ECF No. 2-9, Ex. H at 002). Ameriprise argued that Walker's 2015 Counterclaims were an attempt to "re-characterize" and "re-litigate" issues and defenses already heard and decided at the injunction hearing. (*Id.*).

The 2015 Panel conducted a telephonic hearing, and then entered an order (1) stating that the August hearing would be "limited to evidence and argument relevant to [] damages," (2) granting Walker leave to "amend his Answering Statement and assert claims or defenses as set out therein including in bar or in mitigation of [Ameriprise and Miller's] claims," and (3) denying Walker leave to amend his Answering Statement to include the 2015 Counterclaims. (ECF No. 2-10, Ex I at 002).

After the August hearing, the 2015 Panel awarded Miller damages and attorneys' fees. (ECF No. 2-13, Ex. L). The 2015 Award confirms that "[Walker] was permitted to amend his

Answer to assert claims or defenses in bar or in mitigation of [Ameriprise and Miller's] claims. [Walker] was not permitted to amend his Answer to assert counterclaims." (*Id.* at 003).

In May 2017, Walker filed a FINRA arbitration proceeding asserting fourteen claims against Ameriprise, including claims for unjust enrichment, fraud, and civil conspiracy ("2017 Claims"). (ECF No. 2-14, Ex. M at App. 052). Because the 2015 Arbitration was closed, FINRA empaneled three new arbitrators to hear Walker's 2017 Claims.

Ameriprise filed a Motion to Dismiss under FINRA Rule 13504(a)(6)(C), which allows for dismissal if "the non-moving party previously brought a claim regarding the same dispute against the same party that was fully and finally adjudicated on the merits and memorialized in an order, judgment, award, or decision." (ECF No. 2-15, Ex. N). The 2017 Panel held a telephonic hearing on the Motion to Dismiss on March 22, 2018. (ECF No. 2 ¶ 19; ECF No. 9-1, Ex. 6). On April 6, 2018, the 2017 Panel entered an award dismissing all fourteen of Walker's 2017 Claims under Rule 13504(a)(6)(C). (ECF No. 2-18, Ex. Q at 002).

On June 26, 2018, Walker filed the instant Petition to Vacate Arbitration Award, requesting that the Court vacate the 2017 Award and remand the case to a new FINRA arbitration panel. (ECF No. 2 at 7). Walker argues that vacatur is required because the 2017 Panel is "guilty of misconduct" under 9 U.S.C. § 10(a)(3) and "exceeded [its] powers" under 9 U.S.C. § 10(a)(4). In its Response, Ameriprise requests that the Court confirm the 2017 Award and grant Ameriprise's request for attorneys' fees and costs incurred as a result of defending Walker's Petition to Vacate Arbitration Award. (ECF No. 5). On November 27, 2018, the Court held a hearing on Walker's Petition to Vacate Arbitration Award and Ameriprise's Cross-Motion to Confirm Arbitration Award.

II. Legal Standard

Under the FAA, a reviewing court must confirm an arbitration award unless grounds exist to vacate, modify, or correct its terms. 9 U.S.C. § 9. A court may only vacate an arbitration award:

- (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.

Id. § 10(a)(1)–(4). See *Citigroup Global Mkts., Inc. v. Bacon*, 562 F.3d 349, 358 (5th Cir. 2009) (holding there are no longer nonstatutory grounds for vacating arbitration awards).

Courts are not to conduct a review of the merits of an arbitrator’s decision. *Householder Grp. v. Caughran*, 354 F. App’x 848, 851 (5th Cir. 2009); see also *Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 559 U.S. 662, 671 (2010) (“It is not enough for [a party seeking vacatur] to show that the [arbitration] panel committed an error—or even a serious error.”); *Reed v. Fla. Metro. Univ., Inc.*, 681 F.3d 630, 637 (5th Cir. 2012) (“[A] court may not decline to enforce an award simply because it disagrees with the arbitrator’s legal reasons.”); *Pfeifle v. Chemoil Corp.*, 73 F. App’x 720, 722–23 (5th Cir. 2003) (“[A]n arbitrator’s erroneous interpretation of law or facts is not a basis for vacatur of an award.”).

Judicial review of an arbitration award is “exceedingly deferential.” *Petrofac, Inc. v. DynMcDermott Petrol. Operations Co.*, 687 F.3d 671, 674 (5th Cir. 2012) (internal citation

omitted); *Stolt-Nielsen S.A.*, 559 U.S. at 671 (A party seeking vacatur of an arbitration award “must clear a high hurdle.”). Courts consistently describe the scope of judicial review of arbitration awards as “among the narrowest known to the law.” *Pfeifle*, 73 F. App’x at 723 (internal citation and quotation omitted). The party seeking to vacate an arbitration award has the burden of proof, and the court must resolve any doubts or uncertainties in favor of upholding the award. *Weber v. Merrill Lynch Pierce Fenner & Smith, Inc.*, 455 F. Supp. 2d 545, 549 (N.D. Tex. 2006); *Brabham v. A.G. Edwards & Sons, Inc.*, 376 F.3d 377, 385 (5th Cir. 2004).

III. Analysis

A. Petition to Vacate Arbitration Award and Cross-Motion to Confirm Arbitration Award

Throughout his briefing and at the hearing before this Court, Walker argued that because neither the 2015 nor the 2017 Panels adjudicated the merits of his 2015 Counterclaims or his 2017 Claims, he was denied his “day in court.” *See, e.g.*, (ECF 2 at 11, 17). However, Walker did not provide the Court with a transcript of the June 2015 hearing on Ameriprise’s request for injunctive relief. Thus, there is no factual evidence that the facts underlying Walker’s 2015 Counterclaims and 2017 Claims were not actually adjudicated by the 2015 Panel.

In any case, Walker has not met his burden to show that the 2017 Award should be vacated under §§ 10(a)(3) or (4) of the FAA. Walker asserts that the 2017 Panel is “guilty of misconduct” under § 10(a)(3) because it “refused to hear evidence pertinent and material to the controversy,” and did not allow Walker to have a “fundamentally fair hearing.” (ECF No. 2 at 12, 20). The record shows that the Scheduling Order for the 2017 Arbitration required the parties to respond to discovery no later than March 15, 2018. (ECF No. 6 at APP 120). Though Ameriprise’s Motion to Dismiss was filed on January 1, 2018, the 2017 Panel held a telephonic hearing on the Motion to Dismiss on March 22, 2018, which allowed Walker sufficient time to

conduct discovery related to his 2017 Claims. Walker also filed a Preliminary Reply in Opposition to the Motion to Dismiss (*Id.* at APP 125–47) and a Supplemental Reply to the Motion to Dismiss (*Id.* at APP 148–414). Walker presented no evidence that the 2017 Panel failed to consider his pleadings or arguments regarding the Motion to Dismiss. The Court finds that the 2017 Panel was not guilty of misconduct or any other misbehavior as described by § 10(a)(3).

Walker claims that the 2017 Panel “exceeded [its] powers” under § 10(a)(4). Arbitrators exceed their powers if they act contrary to express contractual provisions governing the arbitration. *21st Fin. Services, L.L.C. v. Manchester Fin. Bank*, 747 F.3d 331, 336 (5th Cir. 2014). Walker does not dispute that the 2017 Panel had the authority to consider his 2017 Claims and to decide Ameriprise’s Motion to Dismiss. Instead, Walker argues that (1) his 2017 Claims were not brought before the 2015 Panel; (2) there was never a full and final adjudication on the merits of Walker’s 2017 Claims; and (3) the full and final adjudication on the merits of Walker’s 2017 Claims have not been memorialized in any order, judgment, award, or decision. (ECF No. 2 at 14–18). At its core, Walker’s argument is that the 2017 Panel exceeded its authority because it incorrectly applied Rule 13504(a)(6)(C) in dismissing the 2017 Claims. This type of challenge does not fall within § 10(a)(4) and does not otherwise constitute a basis for vacatur, as it essentially argues that the Court should review the merits of the 2017 Panel’s decision. *Householder Grp.*, 354 F. App’x at 851; *see also Stolt-Nielsen S.A.*, 559 U.S. at 671; *Reed*, 681 F.3d at 637; *Pfeifle*, 73 F. App’x at 722–23.

Because Walker has failed to establish any legitimate grounds for vacating the 2017 Award, the Court DENIES Walker’s Petition to Vacate Arbitration Award and GRANTS Ameriprise’s Cross-Motion to Confirm Arbitration Award.

B. Attorneys' Fees

Ameriprise seeks attorneys' fees and expenses incurred as a result of defending against Walker's Petition to Vacate Arbitration Award.

“[W]hen a refusal to abide by an arbitration decision is without justification, and judicial enforcement is necessary, the court should award the party seeking enforcement reasonable costs and attorneys' fees incurred in that effort.” *Int'l Ass'n of Machinists & Aerospace Workers, Dist. 776 v. Texas Steel Co.*, 639 F.2d 279, 284 (5th Cir. 1981); *see also Bruce Hardwood Floors, Div. of Triangle Pac. Corp. v. UBC, S. Council of Indus. Workers, Local Union No. 2713*, 103 F.3d 449, 453 (5th Cir. 1997) (“An award of attorneys' fees is permitted when a party has refused to abide by an arbitration decision ‘without justification.’”); *NetKnowledge Techs., L.L.C. v. Rapid Transmit Techs.*, 2007 WL 518548 at *9 (N.D. Tex., Feb. 20, 2007) (Lynn, J.) (“A district court may award attorney's fees against a party making challenges to arbitration awards that are not cognizable under the FAA, are frivolous, or are without legal justification.”). A challenge is without justification if it “go[es] to the ‘intrinsic merits’ of a dispute.” *Delek Ref., Ltd. v. Local 202, United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union, AFLCIO*, 891 F.3d 566, 573 (5th Cir. 2018). “[W]hen parties have agreed to arbitrate a dispute, a subsequent court challenge to the merits is not justified even when that question is close because going to court is at odds with the parties' agreement to be bound by the arbitrator's decision.” *Id.* at 573–74.

Because Walker challenged the merits of the 2017 Panel's decision to grant Ameriprise's Motion to Dismiss, the Court finds that Ameriprise is entitled to reasonable and necessary attorneys' fees and costs. Ameriprise's counsel, Dayna Blair, filed a declaration stating that she spent 29.6 hours at a rate of \$345 per hour defending Walker's Petition to Vacate Arbitration

Award, for a total of \$10,212. (ECF No. 11 ¶ 4). Ms. Blair also states that Ameriprise would incur \$3,450 in attorneys' fees (10 hours of Ms. Blair's time at \$345 per hour) and additional airfare and ground transportation expenses in connection with Ms. Blair's attendance at the hearing before this Court. (*Id.* ¶ 8).

The Court finds that Ms. Blair's rate is fair and reasonable in Dallas County, Texas. The Court finds that \$13,662 in attorneys' fees is fair, reasonable, and necessary based on the hourly rate applied and the nature of the services described in Ms. Blair's declaration. Because Ameriprise provides no legal support for its request for transportation expenses, that request is denied.


IV. Conclusion

For the reasons stated above,

IT IS ORDERED that Walker's Petition to Vacate Arbitration Award (ECF No. 1) is DENIED and Ameriprise's Cross-Motion to Confirm Arbitration Award (ECF No. 5) is GRANTED.

SO ORDERED.

November 29, 2018.


BARBARA M. G. LYNN
CHIEF JUDGE