UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HARTFORD FINANCIAL HOLDINGS, INC., ALAN R. STEVENSON, LIGHTHOUSE TWO CORP., CAPITAL ASSET MANAGEMENT, LTD.,and NKV, LTD.,

Petitioners,

-against-

STEVEN SINGER,

Respondent.

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08 Civ. 2459 (PKC)

MEMORANDUM AND ORDER

P. KEVIN CASTEL, District Judge:

Petitioners seek the confirmation of an arbitration award issued by a Financial Industry Regulatory Authority ("FINRA") arbitration panel (the "Arbitration Panel"), holding respondent Steven Singer liable for compensatory damages to the petitioners (the "Arbitration Award"). In addition, petitioners seek various other forms of relief which are discussed below. Singer does not contest that the Arbitration Award should be confirmed; he opposes only the additional relief that petitioners have requested. For the reasons stated below, the Arbitration Award is confirmed and the additional relief requested by petitioners is denied.

BACKGROUND

The petitioners seek confirmation of the Arbitration Award pursuant to section 9 of the Federal Arbitration Act (the "FAA"). (Second Amended Petition to Confirm Arbitration Award (the "Petition" or "Pet") ¶ 6.) In 2005, petitioners filed an arbitration claim with what was then known as National Association of Securities Dealers Dispute Resolution, and is now known as FINRA Dispute Resolution. (Id. ¶ 5.) In their statement of claim, the petitioners alleged claims for "state and federal securities fraud, common law fraud, constructive fraud,

breach of fiduciary duty, violation of state securities acts, unauthorized trading, unsuitable investments, churning, negligence, and breach of contract." (Id.) The Arbitration Panel held hearings in Manhattan from December 17 through December 21, 2007. (Id. ¶ 8.) On February 5, 2008, the Arbitration Panel issued a written award. (Exhibit 2 to the Petition.) The Arbitration Panel stated its findings and conclusions as follows:

> After considering the pleadings, the testimony and evidence presented at the hearing, the post-hearing submissions, and the expungement hearing conducted on January 10, 2008, the Panel has decided in full and final resolution of the issues submitted for determination as follows:
>
> 1. Respondent Singer is liable for and shall pay to Claimant Stevenson compensatory damages in the amount of $775,000.00 plus interest at the rate of 9% per annum from April 1, 2007 until January 31, 2008.
> 2. Respondent Singer is liable for and shall pay to Claimant Hartford Financial compensatory damages in the amount of $275,000.00 plus interest at the rate of 9% per annum from April 1, 2007 until January 31, 2008.
> 3. Respondent Singer is liable for and shall pay to Claimant Capital Asset compensatory damages in the amount of $95,000.00 plus interest at the rate of 9% per annum from April 1, 2007 until January 31, 2008.
> 4. Respondent Singer is liable for and shall pay to Claimant Lighthouse compensatory damages in the amount of $420,000.00 plus interest at the rate of 9% pre annum from April 1, 2007 until January 31, 2008.
> 5. Respondent Singer is liable for an shall pay to Claimant NKV compensatory damages in the amount of $310,000.00 plus interest at the rate of 9% per annum from April 1, 2007 until January 31, 2008.

(Id. at 4.) The Arbitration Award also stated that "[a]ny and all relief not specifically addressed herein, including punitive damages, is denied." (Id.)

On March 11, 2008, petitioners filed with this Court their original petition to confirm the Arbitration Award. (Docket No. 1.) On April 2, 2008, Singer filed a Chapter 7 petition with the United States Bankruptcy Court for the District of Colorado. (Docket No. 9.)

Due to the automatic stay, on April 8, 2008, the Court placed this action on the suspense docket. (Docket No. 11.)

On June 19, 2008, petitioners commenced an adversary proceeding in the Bankruptcy Court by filing a Complaint to Determine Dischargeability and Object to Dischargeability of Debt Due to Securities Fraud and Fraud (the "Bankruptcy Complaint"). (Exhibit C to the Declaration of Mark A. Angelov, dated November 2, 2009 (the "Angelov Decl.").) The Bankruptcy Complaint requested that the Bankruptcy Court confirm the Arbitration Award and determine that it was nondischargeable. (Id. at 7.) Alternatively, the Bankruptcy Complaint requested that if the Arbitration Award did not support a finding of nondischargeability, the Bankruptcy Court remand the case to the Arbitration Panel. (Id. ¶ 17.) Under section 523 of the Bankruptcy Code, certain claims, such as claims for "fraud or defalcation while acting in a fiduciary capacity, embezzlement or larceny," or securities fraud, cannot be discharged. 11 U.S.C. § 523(a)(4) & (19).

On October 22, 2008, the Bankruptcy Court held a hearing on a motion to dismiss the Bankruptcy Complaint. (Angelov Decl. Exh. D.) At that hearing, the Bankruptcy Court denied petitioners' request for a remand to the Arbitration Panel. (Id. at 18:14 – 19:1.) The Bankruptcy Court concluded that a remand was inappropriate "unless there is a requirement by the parties that the arbitrator clearly specify its basis for its award." (Id. at 18:18-22.) The Bankruptcy Court reviewed the arbitration agreement and found that it did not require the Arbitration Panel to render "anything more than a bare bones decision," and it did not require the arbitrators to explain their decision. (Id. at 13:1-6.) The Bankruptcy Court reserved decision on whether it could determine nondischargeability on the face of the Arbitration Award, and instructed the petitioners to file an amended complaint. (Id. at 19:19 – 20:7.)

The petitioners filed their Amended Complaint to Determine Dischargeability and Object to Dischargeability of Debt Due to Securities Fraud and Fraud (the "Amended Bankruptcy Complaint") on November 5, 2008. (Angelov Decl. Exh. E.) In the Amended Bankruptcy Complaint, petitioners sought a determination that the Arbitration Award was nondischargeable under 11 U.S.C. § 523(a)(4) & (19). (Id. ¶ 16.)

On July 23, 2009, the Bankruptcy Court issued an order addressing the summary judgment motions filed by the petitioners and by Singer (the "Order"). (Angelov Decl. Exh. F.) In the Order, the Bankruptcy Court determined that "for a debt to be considered nondischargeable under § 523(a)(19), the debt must result from a 'judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding.'" (Id. at 4 (quoting 11 U.S.C. § 523(a)(19)(B).) The Bankruptcy Court then concluded that "FINRA is not a Federal or State judicial or administrative body," and therefore, "absent confirmation of the Arbitration Award by a court of competent jurisdiction, the award alone cannot provide a basis for the dischargeability of debt under § 523(a)(19)." (Id.) Accordingly, the Bankruptcy Court held that "the Arbitration Award is not properly before this Court for consideration." (Id.)

The Bankruptcy Court then discussed how it might rule if this Court were to confirm the Arbitration Award, and the parties, thereafter, returned to the Bankruptcy Court. The question was whether "the Arbitration Award, on its face, provide[d] [the Bankruptcy Court] with a sufficient factual basis to reach a conclusion" as to whether the Arbitration Award was dischargeable. (Id.) According to the Bankruptcy Court, "[a] plain reading of that award makes clear that it does not." (Id.) The Bankruptcy Court concluded that a trial would be required, at which it would apply the principles of Brown v. Felson, 442 U.S. 127 (1979) and look behind the

judgment for a basis to support a § 523(a)(19) claim. (Id.) The Bankruptcy Court concluded the Order by stating that "[a] trial scheduling conference shall be set by separate notice." (Id. at 5.)

On September 29, 2009, the Bankruptcy Court granted relief from the automatic stay to allow petitioners to proceed in this Court. (Docket No. 18.) The Bankruptcy Court's order lifting the automatic stay stated: "the Court, being duly advised, hereby orders that the relief sought by the application should be granted, and [petitioners] are hereby granted relief from stay in order to proceed with the stayed litigation before the United States District Court for the Southern District of New York . . . (but not to seek to enforce any judgment [petitioners] may obtain against the debtor personally or the debtor's post-petition property.)" (Id.) Petitioners filed their amended petition on October 19, 2009 and Singer filed his opposition on November 2, 2009. (Docket Nos. 21-23.) On March 25, 2010, this Court issued an order addressing a jurisdictional defect in the original and amended petitions, and requiring petitioners to correct the defect in a second amended petition, which petitioners filed on April 1, 2010. (Docket Nos. 24, 26.)

DISCUSSION

Petitioners have asked this Court not merely to confirm the Arbitration Award, but for other relief as well. Petitioners ask for a determination that the Arbitration Award is nondischargeable under section 523(a) of the Bankruptcy Code. Alternatively, they ask the Court to remand this matter to FINRA so that FINRA may order the arbitration panel to clarify the Arbitration Award. As an additional alternative, petitioners ask the Court to either review recordings of the FINRA arbitration hearings to determine whether the Arbitration Award is dischargeable, or in accordance with Brown v. Felson, to look behind the Arbitration Award to determine if the award is dischargeable. Each request for relief is discussed below.

I. Legal Standard

The FAA provides a "streamlined" process for a party seeking "a judicial decree confirming an award, an order vacating it, or an order modifying or correcting it." Hall Street Associates L.L.C. v. Mattel, Inc., 552 U.S. 576, 582 (2008). Under section 9 of the FAA, "a court 'must' confirm an arbitration award 'unless' it is vacated, modified, or corrected 'as prescribed' in §§ 10 and 11." Id. (quoting 9 U.S.C. § 9). Section 10(a) of the FAA sets forth four situations in which a court may enter an order vacating 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 was not made.

9 U.S.C. § 10(a). Section 11 of the FAA provides that a court may "make an order modifying or correcting" an award:

> (a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.
> (b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.
> (c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

9 U.S.C. § 11.

Prior to Hall Street, courts in this Circuit held that manifest disregard for the law was a valid basis for vacating an arbitration award. An award is in manifest disregard of the law

if the arbitrators are "fully aware of the existence of a clearly defined governing legal principle, but refuse[ ] to apply it, in effect, ignoring it." Stolt-Nielsen SA v. AnimalFeeds Int'l Corp., 548 F.3d 85, 96 (2d Cir. 2008) rev'd on other grounds by Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., ___ S. Ct. ___, 2010 WL 1655826 (U.S. Apr. 27, 2010) (alteration in original and citation omitted). In Hall Street, the Supreme Court stated that "§§ 10 and 11 respectively provide the FAA's exclusive grounds for expedited vacatur and modification." 552 U.S. at 584. After Hall Street, the Second Circuit held that the manifest disregard of the law standard remains as a "judicial gloss" on the grounds for vacatur set forth in section 10. Stolt-Nielsen, 548 F.3d at 94.[1] "So interpreted . . . manifest disregard remains a valid ground for vacating arbitration awards." T.Co Metals, LLC v. Dempsey Pipe & Supply, Inc., 592 F.3d 329, 340 (2d Cir. 2010) (quotation marks omitted). Finally, a court may remand an award to an arbitration panel if the award is so indefinite or ambiguous that the court does not "know exactly what it is being asked to enforce." Americas Ins. Co. v. Seagull Compania Naviera, S.A., 774 F.2d 64, 67 (2d Cir. 1985).

II. Analysis

The petitioners ask this Court to confirm the Arbitration Award and do one of three other things: (1) render an independent judgment on whether the Arbitration Award is nondischargeable under 11 U.S.C. § 523(a)(4) or (19); (2) either conduct a hearing or review the recordings of the arbitration hearings to look behind the Arbitration Award and make a judgment on whether it is nondischargeable; or (3) remand the case to FINRA so that it can direct the Arbitration Panel to clarify the basis for its award.

[1] In footnote in its opinion in Stolt-Nielsen, the Supreme Court stated: "We do not decide whether 'manifest disregard' survives our decision in Hall Street Associates, L. L. C. v. Mattel, Inc., . . . as an independent ground for review or as a judicial gloss on the enumerated grounds for vacatur set forth at 9 U. S. C. §10." Stolt-Nielsen S.A., 2010 WL 1655826, at *7 n.3 (quotation marks omitted).

Rendering a judgment on whether the Arbitration Award is nondischargeable, with or without conducting a hearing or reviewing the recordings of the arbitration proceeding, would violate the automatic stay. In its July 23, 2009 Order, the Bankruptcy Court noted that if the petitioners sought to confirm the Arbitration Award, they needed to seek relief from the automatic stay. (Angelov Decl. Exh. F at 4.) The Bankruptcy Court then denied competing summary judgment motions addressing whether the Arbitration Award was dischargeable, and concluded that it needed to address the issue at a trial. (Id. at 4-5.) Thus, the Bankruptcy Court's order lifting the automatic stay is best read as allowing this Court to proceed with the narrow task of determining whether the Arbitration Award should be confirmed, and not usurping the Bankruptcy Court's determination of whether the Arbitration Award is dischargeable.

This conclusion is supported by the fact that determining whether a debt is dischargeable under section 523(a)(4) – one the grounds pressed by petitioners – is a matter which the Bankruptcy Court ought to determine first. Cf. Renner v. Chase Manhattan Bank, No. 98 Civ. 926 (CSH), 2003 WL 21210182, at *1 (S.D.N.Y. May 22, 2003) (whether a claim sounding in fraud "is dischargeable in bankruptcy is appropriately addressed to the Bankruptcy Court").

Thus, the Court's analysis is limited to whether the Arbitration Award should be confirmed, vacated, modified or corrected. Neither party presses an argument that the Arbitration Award should be vacated. There is no indication in the record that any of the grounds discussed above for vacating an arbitration award are present in this case.

Turning to whether the Arbitration Award should be modified or corrected, there is no indication that there "was an evident material miscalculation of figures or evident material mistake," in any description of people, things or property, or that the Arbitration Panel has

"awarded upon a matter not submitted to [it]." 9 U.S.C. § 11(a) & (b). Altering the Arbitration Award to reflect a finding of liability on fraud or securities fraud claim, as opposed to the other claims asserted by the petitioners, goes to the merits of the Arbitration Award, even if it would not alter the total amount of money awarded. This is inappropriate under section 11(c) of the FAA. LLT Int'l, Inc. v. MCI Telecomms. Corp., 69 F. Supp. 2d 510, 517 (S.D.N.Y. 1999) ("Section 11(c) is thus limited only to matters of form not affecting the merits of the controversy and 'does not license the district court to substitute its judgment for that of the arbitrators.'") (quoting Diapulse Corp. of America v. Carba, Ltd., 626 F.2d 1108, 1110 (2d Cir. 1980)).

In an alternative request for relief, petitioners ask this Court to remand the arbitration to FINRA so that the Arbitration Panel can clarify its award. Although the Arbitration Award grants each petitioner a lump sum without differentiating on which claims the award is based, this award is not so indefinite or ambiguous that the Court does not know exactly what it is being asked to enforce by confirming the Arbitration Award. The Arbitration Award states that Singer is liable to each petitioner for a specific amount of compensatory damages.

In Rich v. Spartis, the Second Circuit vacated an award and ordered the district court to remand the action to an arbitration panel for further clarification. 516 F.3d 75 (2d Cir. 2008). In that case, the claimants in an NASD arbitration brought claims arising out of losses they suffered on WorldCom, Inc. stock and other securities. Id. at 77-78. Prior to the award, a class action settlement was reached covering the claimants' losses on the WorldCom stock. Id. at 79-80. All parties agreed that the claimants could no longer recover these claims. Id. at 80.

The arbitration panel in Rich issued a lump sum award of $315,000 in compensatory damages, without specifying to which claims this amount corresponded. Id. at 79. The court ordered remand to the arbitration panel "[b]ecause the lack of clarity in the arbitration

panel's award does not permit us at this time to determine whether the Award was issued in manifest disregard of the law or exceeded the powers of the arbitrators," i.e., whether all or part of the award corresponded to the claims for the WorldCom stock. Id. at 83-84 (internal citation omitted). In making this decision, the Second Circuit "emphasize[d] that the difficulty here lies not alone in the fact that a lump sum has been awarded without explanation but in the unique circumstances of this case where, as recognized by the parties previously, it is impossible to tell what the lump sum is for." Id. at 83; see also id. at 81 ("When an arbitration panel makes a lump sum award without further explanation, courts generally will not look beyond the lump sum award in an attempt to analyze the reasoning processes of the arbitrators.") (quotation marks omitted). In this case, although the Arbitration Panel issued the lump sum Arbitration Award without specifying to which claims it corresponded, no party argues that any of the claims were an improper basis on which to issue the Arbitration Award. Therefore, unlike in Rich, there is no chance that the Arbitration Award was made in manifest disregard of the law or that the arbitrators exceeded their authority, and no need to remand the case to FINRA or the Arbitration Panel.

There is no basis to vacate, modify or correct the award and there is no basis for a remand to FINRA for clarification. Therefore, the Arbitration Award is confirmed.

Petitioners request interest in the amount of 9% per annum, accruing from February 5, 2008. This rate of interest is in accordance with N.Y. C.P.L.R. § 5004 and FINRA Rule 10330(h). Singer has not specifically objected to the request for interest. Therefore, the request for interest is granted.

CONCLUSION

The Petition (Docket No. 26) is GRANTED in so far as the Arbitration Award is confirmed and interest is set at a rate of 9% per annum, accruing as of February 5, 2008. The Petition is DENIED with respect to the other relief requested therein. All other motions are moot. The Clerk is directed to close this case.

SO ORDERED.

P. Kevin Castel
United States District Judge

Dated: New York, New York
May 3, 2010