

12-0967-cv
NGC Network Asia v. PAC Pacific Group Int'l

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3
4 SUMMARY ORDER
5

6 **RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT.**
7 **CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007,**
8 **IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE**
9 **PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A**
10 **SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY**
11 **MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC**
12 **DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING**
13 **A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT**
14 **REPRESENTED BY COUNSEL.**

15
16 At a stated term of the United States Court of Appeals for the Second Circuit, held at
17 the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York,
18 on the 11th day of February, two thousand thirteen.

19
20 PRESENT: AMALYA L. KEARSE,
21 RAYMOND J. LOHIER, JR.,
22 *Circuit Judges,*
23 LEWIS A. KAPLAN,
24 *District Judge.**

25 -----
26
27 NGC NETWORK ASIA, LLC,
28
29 *Petitioner-Appellee,*

30 v.

No. 12-0967-cv

31
32
33 PAC PACIFIC GROUP INTERNATIONAL, INC.,
34
35 *Respondent-Appellant.*

36
37 -----
38
39 FOR PETITIONER-APPELLEE: MATTHEW SOLUM (Shireen A. Barday, *on the*
40 *brief*), Kirkland & Ellis LLP, New York, NY.

* The Honorable Lewis A. Kaplan, of the United States District Court for the Southern District of New York, sitting by designation.

1
2 FOR RESPONDENT-APPELLANT: JOHN F. L. HEBB, Law Offices of John F. L.
3 Hebb, Santa Monica, CA.
4

5
6 Appeal from a judgment of the United States District Court for the Southern
7 District of New York (Katherine B. Forrest, *Judge*).

8 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,
9 AND DECREED that the judgment of the District Court is AFFIRMED.

10 PAC Pacific Group International, Inc. (“PPGI”) appeals from a judgment of the
11 United States District Court for the Southern District of New York (Forrest, J.),
12 confirming an arbitration award rendered in October 2009 and denying PPGI’s motion to
13 vacate the award and stay enforcement proceedings. We assume the parties’ familiarity
14 with the facts and record of the prior proceedings, which we reference only as necessary
15 to explain our decision to affirm.

16 1. The Order Confirming the Arbitration Award

17 On appeal from a district court’s decision to confirm or vacate an arbitration
18 award, “we review findings of fact for clear error and questions of law de novo.”
19 Scandinavian Reinsurance Co. v. St. Paul Fire & Marine Ins. Co., 668 F.3d 60, 71 (2d
20 Cir. 2012). As relevant here, the Federal Arbitration Act (the “FAA”) provides that a
21 district court may vacate an arbitration award “where there was evident partiality or
22 corruption in the arbitrators,” “where the award was procured by corruption, fraud, or
23 undue means,” or “where the arbitrators exceeded their powers, or so imperfectly
24 executed them that a mutual, final, and definite award . . . was not made.” 9 U.S.C. §
25 10(a)(1), (2), (4). On this record, there is no basis for vacating the award.
26

1 a. Evident Partiality

2 PPGI insists that the District Court should have vacated the arbitration award
3 because the arbitrator exhibited “evident partiality.” An arbitrator is disqualified under
4 that standard “only when a reasonable person, considering all of the circumstances,
5 ‘would have to conclude’ that an arbitrator was partial to one side.” Applied Indus.
6 Materials Corp. v. Ovalar Makine Ticaret Ve Sanayi, A.S., 492 F.3d 132, 137 (2d Cir.
7 2007) (emphasis added) (quoting Morelite Constr. Corp. v. N.Y.C. Dist. Council
8 Carpenters Benefit Funds, 748 F.2d 79, 84 (2d Cir. 1984)). We use a pragmatic case-by-
9 case approach to determine whether that standard is met, “remain[ing] cognizant of
10 peculiar commercial practices and factual variances.” Morelite, 748 F.2d at 84.

11 Here, the alleged conflict, which was disclosed by the arbitrator at the time of his
12 selection, involves a business relationship between Arent Fox LLP, where the arbitrator
13 was a managing partner, and National Geographic Society (“National Geographic”),
14 which had an indirect, non-controlling ownership interest in Petitioner-Appellee NGC
15 Network Asia, LLC (“NGC”). Because the arbitrator properly complied with his
16 disclosure obligations, “[t]he concern . . . that nondisclosure might create an appearance
17 of bias or even be evidence of bias is simply not present in this case”. Lucent Techs. Inc.
18 v. Tatung Co., 379 F.3d 24, 29 (2d Cir. 2004). In addition, the District Court found that
19 none of the parties to the arbitration were clients of Arent Fox, National Geographic was
20 not a party to the contract at issue or a witness in the arbitration proceedings, no
21 discovery was sought from National Geographic, and National Geographic had no
22 management rights or control over NGC. None of these findings is clearly erroneous, and
23 we cannot say that the relationship is one that would compel a reasonable person to

1 conclude that the arbitrator was partial. See id. at 31-32 (no evident partiality where
2 arbitrator disclosed that he had previously been retained as an expert by one of the
3 parties).

4 b. Undue Means

5 Nor is there record evidence that the award was procured by undue means as a
6 result of the denial by the American Arbitration Association (“AAA”) of PPGI’s
7 challenges to the arbitrator. The AAA’s Commercial Arbitration Rules required that an
8 arbitrator “be impartial and independent” and that, upon objection by a party, “the AAA
9 shall determine whether the arbitrator should be disqualified” in a “decision [that] shall be
10 conclusive.” The denial of PPGI’s challenges complied with the AAA’s rules, which
11 indisputably governed the arbitration proceedings. Under these circumstances, the
12 District Court correctly ruled that the award was not procured by undue means within the
13 meaning of the FAA. Cf. Drayer v. Krasner, 572 F.2d 348, 352 (2d Cir. 1978) (Friendly,
14 J.) (undue means provision applied where the party openly offered evidence for the
15 purpose of causing prejudice where arbitrators declined to receive the evidence).

16 c. Manifest Disregard of the Law

17 PPGI also argues that the award must be vacated because the arbitrator disregarded
18 the law regarding implied covenants of good faith and fair dealing and declined to rule on
19 its “pivotal” claim that NGC breached those covenants. We have required vacatur of an
20 arbitral award for manifest disregard of the law only where “the governing law alleged to
21 have been ignored by the arbitrator[] was well defined, explicit, and clearly applicable,”
22 and “the arbitrator knew about the existence of a clearly governing legal principle but
23 decided to ignore it.” Jock v. Sterling Jewelers Inc., 646 F.3d 113, 121 n.1 (2d Cir. 2011)

1 (quotation marks omitted). Here, the arbitrator explicitly addressed and rejected PPGI's
2 claim for breach of the implied covenants. Moreover, his conclusion that there was no
3 implied duty to make commercially reasonable efforts to sell the advertising time, based
4 on evidence that the parties explicitly chose not to include such an obligation in the
5 contract, accords with applicable law. See City of Yonkers v. Otis Elevator Co., 844 F.2d
6 42, 48 (2d Cir. 1988); Perma Research & Dev. v. Singer Co., 542 F.2d 111, 118-19 & n.4
7 (2d Cir. 1976).

8 2. Denial of Discovery

9 Post-award discovery regarding an arbitrator's alleged bias is appropriate in
10 limited situations where "clear evidence of impropriety" has been presented. Lucent, 379
11 F.3d at 32 (quotation marks omitted). For the reasons discussed above, PPGI has failed to
12 make the necessary showing of impropriety on the part of the arbitrator. Therefore, even
13 assuming PPGI adequately raised the need for discovery below, the District Court did not
14 err in refusing to permit discovery.

15 **CONCLUSION**

16 We have considered PPGI's remaining arguments on appeal and conclude that
17 they are without merit or moot. For the foregoing reasons, the District Court's judgment
18 is AFFIRMED.

19
20 FOR THE COURT:
21 Catherine O'Hagan Wolfe, Clerk of Court

22
23 The image shows a handwritten signature in cursive that reads "Catherine O'Hagan Wolfe". To the right of the signature is a circular official seal. The seal contains the text "UNITED STATES" at the top, "SECOND CIRCUIT" in the center, and "COURT OF APPEALS" at the bottom, with two small stars on either side of the center text.