

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

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

1 At a stated term of the United States Court of Appeals
2 for the Second Circuit, held at the Thurgood Marshall United
3 States Courthouse, 40 Foley Square, in the City of New York,
4 on the 19th day of February, two thousand fourteen.

5
6 **PRESENT: DENNIS JACOBS,**
7 **DEBRA ANN LIVINGSTON,**
8 **GERARD E. LYNCH,**
9 Circuit Judges.

10
11 - - - - -X
12 Abu Dhabi Investment Authority,
13 Plaintiff-Counter-Defendant
14 - Appellant,

15
16 -v.- 13-1068-cv

17
18 Citigroup, Inc.,
19 Defendant-Counter-Claimant -
20 Appellee.

21 - - - - -X

22
23 **FOR APPELLANT:** DAVID L. ELSBERG, (Peter E.
24 Calamari, Sanford I. Weisburst,
25 on the brief), Quinn Emanuel
26 Urquhart & Sullivan, LLP, New
27 York, New York.
28

1 **FOR APPELLEES:**

2 LESLIE GORDON FAGEN, (Jay Cohen,
3 Brad S. Karp, Daniel J. Toal, on
4 the brief), Paul, Weiss,
5 Rifkind, Wharton & Garrison LLP,
6 New York, New York.

7 Appeal from a judgment of the United States District
8 Court for the Southern District of New York (Daniels, J.).
9

10 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**
11 **AND DECREED** that the judgment of the district court be
12 **AFFIRMED.**
13

14 Abu Dhabi Investment Authority ("ADIA") appeals from a
15 judgment of the United States District Court for the
16 Southern District of New York (Daniels, J.) confirming an
17 arbitration award in favor of Citigroup, Inc. On appeal,
18 ADIA argues that the district court should have granted
19 ADIA's motion to vacate the award because the arbitration
20 panel ("panel") did not utilize New York's interest analysis
21 in deciding to apply the law of New York--rather than the
22 law of Abu Dhabi--to ADIA's common law fraud and negligent
23 misrepresentation claims. This choice-of-law decision,
24 argues ADIA, was in manifest disregard of the law and
25 exceeded the panel's powers, in violation of the Federal
26 Arbitration Act ("FAA"), 9 U.S.C. § 10(a)(3)-(4). We assume
27 the parties' familiarity with the underlying facts, the
28 procedural history, and the issues presented for review.
29

30 An arbitration award may be vacated if it results from
31 the arbitrators' "manifest disregard of the law" or if the
32 "arbitrators exceeded their powers." Porzig v. Dresdner,
33 Kleinwort, Benson, North America LLC, 497 F.3d 133, 138, 139
34 n.3 (2d Cir. 2007). The district court's application of the
35 manifest disregard standard, as well as the court's
36 determination that the arbitration panel did not exceed its
37 authority, are reviewed de novo. T.Co Metals, LLC v.
38 Dempsey Pipe & Supply, Inc., 592 F.3d 329, 339 (2d Cir.
39 2010).
40

41 A party seeking to vacate an award under the FAA must
42 surmount a "high hurdle." Stolt-Nielsen S.A. v. AnimalFeeds
43 Int'l Corp., 559 U.S. 662, 671 (2010). Awards are vacated
44 for manifest disregard only in "those exceedingly rare
45 instances where some egregious impropriety on the part of
46 the arbitrator[] is apparent." T.Co, 592 F.3d at 339
47 (alteration in original) (quoting Duferco Int'l Steel

1 Trading v. T. Klaveness Shipping A/S, 333 F.3d 383, 389 (2d
2 Cir. 2003)). "It is only when [an] arbitrator strays from
3 interpretation and application of the agreement and
4 effectively 'dispense[s] his own brand of industrial
5 justice' that his decision may be unenforceable." Major
6 League Baseball Players Ass'n v. Garvey, 532 U.S. 504, 509
7 (2001) (per curiam) (quoting Steelworkers v. Enter. Wheel &
8 Car Corp., 363 U.S. 593, 597 (1960)).

9
10 Here, the investment agreement ("Agreement") did not
11 specify what law should govern tort claims. However, the
12 Agreement directed that any dispute the parties could not
13 resolve was to be decided by application of the arbitration
14 rules of the International Centre for Dispute Resolution
15 ("ICDR"), see Agreement ¶ 5.6(a), and those rules state that
16 in the absence of a choice of law designation, "the tribunal
17 shall apply such law(s) or rules of law as it determines to
18 be appropriate." ICDR Rules, Art. 28(1). Consistent with
19 this provision, the panel decided the choice-of-law question
20 by consulting cases applying New York's interest analysis as
21 well as international arbitration treatises. On the basis
22 of that research, the panel concluded that New York law
23 governed ADIA's claims. The panel thus looked to two
24 relevant bodies of law, and applied those legal standards to
25 the facts, to decide the question. See Stolt-Nielsen, 559
26 U.S. at 673-74 (holding that a panel may not "proceed[] as
27 if it had the authority of a common-law court" to ignore
28 relevant law and impose its own rule). ADIA contends that
29 the panel erred in its analysis of New York's conflict of
30 law rules; but it would not matter if it did. See E. Assoc.
31 Coal Corp. v. United Mine Workers of Am., Dist. 17, 531 U.S.
32 57, 62 (2000) ("[T]he fact that a court is convinced [the
33 arbitrator] committed serious error does not suffice to
34 overturn his decision." (internal quotation marks omitted)).

35
36
37 For the foregoing reasons, and finding no merit in
38 ADIA's other arguments, we hereby **AFFIRM** the judgment of the
39 district court.

40
41 FOR THE COURT:
42 CATHERINE O'HAGAN WOLFE, CLERK
43