

SUPREME COURT OF THE STATE OF NEW
YORKCOUNTY OF NEW YORK

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:

WILLIAM F. QUINN,

Petitioner,

:

Index No. _____

v.

:

UBS FINANCIAL SERVICES INC.
UBS CREDIT CORP.

:

Respondents

:

**PETITION
TO VACATE AN
ARBITRATION
AWARD PURSUANT
TO
CPLR § 7511**

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PETITIONER WILLIAM F. QUINN (“Petitioner” or “Mr. Quinn”), through his attorney, Daniel D’Costa Esq., respectfully submits this petition to vacate the arbitration award pursuant to Section 7511 of the CPLR and Section 10 of the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1, *et seq.*

PRELIMINARY STATEMENT AND FACTS

The question before this court is whether Petitioner, William F. Quinn, should have to pay a FINRA arbitration award of over \$300,000 that would devastate his life savings when it is undisputed fact that Mr. Quinn was not afforded his right to Counsel before and during the arbitration hearing that took place on August 24, 2021. The FINRA arbitration award is marked as Petitioner’s Exhibit 1.

On August 24, 2021, a FINRA Arbitration Panel conducted an arbitration hearing through ZOOM Video Conference in the matter of *UBS Financial Services Inc. et al., v. William F. Quinn*, FINRA Case Number 16-03008. Mr. Quinn, along with all other parties, briefly participated in the hearing remotely. Mr. Quinn requested a copy of the hearing transcript from FINRA, but FINRA provided only an audio recording of the hearing.¹ The panel rendered an Award on August 31, 2021. Now, Mr. Quinn hereby respectfully moves for an Order vacating the hearing on multiple statutory grounds.

The facts alleged herein present two legal issues for the Court; *first*, a lack of due process arising from Mr. Quinn’s inability to present a fair defense with the presence of counsel, which, pursuant to article 75 of the CPLR and the FAA, militates strongly in favor of vacating the arbitral award; and *second*, an erroneous finding by the FINRA arbitration panel in refusing to postpone the hearing on sufficient cause shown, and thereby prejudiced Mr. Quinn’s right to obtain and utilize counsel throughout the hearing.

¹ Counsel will provide a copy of the audio recordings upon the Court’s request.

As these facts show, the Arbitration panel was fully aware of Mr. Quinn's inability to present a fair defense, yet deliberately ignored his desperate pleas to postpone the hearing. In a last minute desperate plea to find someone who can help, Mr. Quinn reached out to the Public Investors Advocate Bar Association ("PIABA") to see if any attorney would be able to assist him despite the bar association being largely limited to attorneys who represent public investors and not individuals who are associated with brokerage firms. In the interest of seeking justification as to how the FINRA arbitration panel could move forward with a hearing without allowing Mr. Quinn the right to retain counsel, the undersigned, Daniel D'Costa Esq., a member of PIABA, entered appearance for Mr. Quinn on August 24, 2021 and requested that the hearing be postponed so that Mr. Quinn can retain counsel and counsel would have sufficient time to review the case and be afforded the right to present a fair defense. According to page 3 of the FINRA arbitration award is marked as Petitioner's Exhibit 1, "After due deliberation, the Panel denied Respondent's adjournment request." Accordingly, the undersigned exited the hearing because the appearance was made "solely to request an adjournment."

The panel then proceeded with the hearing and allowed Respondent's case to move forward, hearing their case in chief despite Mr. Quinn's multiple requests for time to hire counsel. On August 31, 2021, the FINRA Arbitration Panel issued a final decision and Award in favor of Respondents UBS Financial Services Inc. and UBS Credit Corp. against Mr. Quinn. The Award found Mr. Quinn liable for \$269,812.27 in compensatory damages, \$97,863.62 in costs and interest, and \$2,600 in FINRA hearing fees.

THE PARTIES

1. Petitioner William F. Quinn is an individual residing in Delray Beach, Florida.
2. Respondents UBS Financial Services Inc. and UBS Credit Corp. have a registered address of 1285 6th Ave, New York, NY 10019.

ARGUMENT**I. THE COURT SHOULD VACATE THE ARBITRATION AWARD BECAUSE THE ARBITRATOR'S MISCONDUCT UNFAIRLY PREJUDICED QUINN'S RIGHT TO COUNSEL, AND SO WARRANTS VACATUR UNDER BOTH THE FEDERAL ARBITRATION ACT AND NEW YORK CPLR SECTION 75**

The arbitration award violated due process pursuant to article 75 of the CPLR and Section 10 of the FAA² because Mr. Quinn was not afforded his right to counsel, and so the award should be vacated by this Court. The Federal Arbitration Act allows for vacating the Award where the arbitrators were guilty of misconduct in refusing to postpone the hearing on sufficient cause shown, and in any other behavior by which the rights of any party have been prejudiced. 9 U.S.C. §10.

Though district court review of arbitration awards is generally narrow and deferential to the arbitrators, "the limited review is designed to identify those errors that render the arbitration award at issue 'fundamentally unfair'." *Weinberg v. Silber*, 140 F. Supp. 2d 712, 717 (N.D. Tex. 2001), *aff'd*, 57 F. App'x 211 (5th Cir. 2003) (citing *Antwine v. Prudential Bache Secs., Inc.*, 899 F.2d 410, 413 (5th Cir. 1990), and quoting *Forsythe Int'l, S.A. v. Gibbs Oil Co. of Texas*, 915 F.2d 1017, 1020 (5th Cir. 1990)). It is well-established that this Court has the authority to vacate an award when the award offends due process and fundamental fairness. *See Weinstein v. New York State Workers' Comp. Bd.*, 135 A.D.3d 948, 949 (2d Dep't 2016) ("judicial review under CPLR article 75 requires that the award be in accord with due process"); *McMahan & Co. (Dunn NewFund I, Ltd.)*, 230 A.D.2d 1, 4 (1st Dep't 1997) ("courts have expressly held that fundamental unfairness can constitute a ground for vacatur of an arbitration award" under Section 10 of the FAA); *Unigard Mut. Ins. Co. v. Hartford Ins. Grp.*, 108 A.D.2d 917, 918 (2d Dep't 1985) ("[A]rbitration decisions, whether arising from mandatory or consensual arbitration proceedings, are subject to limited judicial review

² The provisions of the FAA and New York's counterpart statute are substantively similar, particularly with respect to judicial review of arbitration awards. *See, e.g., Matter of Johnson (Summit Equities, Inc.)*, 22 Misc. 3d 631, 646 (Sup. Ct., N.Y. Cty. 2008). The FAA only displaces state law when the latter is inconsistent, which is not the case here, and thus both the FAA and the CPLR article 75 and associated case law provided guidance in this matter.

pursuant to CPLR article 75, *in order to comport with constitutional requirements of due process.*”) (emphasis added). *See also Bell Aerospace Co. Div. of Textron, Inc. v. Local 516, Int’l Union*, 500 F.2d 921, 923 (2d Cir. 1974) (although an arbitrator need not observe “all the niceties” of court she or he must afford the parties “a fundamentally fair hearing”); *Goldfinger v. Lisker*, 68 N.Y.2d 225, 231 (1986) “[p]recisely because arbitration awards are subject to...judicial deference, it is imperative that the *integrity of the process*...be zealously safeguarded.”

There simply was no integrity to the process here. The Arbitration panel was fully aware of Mr. Quinn’s lack of counsel, yet deliberately ignored his desperate pleas to postpone the hearing until he was able to retain counsel. Mr. Quinn did not have the legal knowledge or wherewithal to adequately and fairly defend himself through the Arbitration Hearing, and the Panel’s multiple refusals to adjourn so that he could retain counsel significantly prejudiced his ability to make his case.

The facts compel vacatur under CPLR article 75 and Section 10 of the FAA. With sufficient knowledge of Mr. Quinn’s lack of counsel, the Arbitrators erred in moving forward with the hearing which violated Mr. Quinn’s due process rights and violated the fundamental fairness of the proceedings. In short, this Court should vacate the arbitration award because the Arbitrators failed to meet the fundamental due process requirement of a party to adequately represent themselves.

II. THE ARBITRATOR ERRED IN DENYING MR. QUINN’S REQUEST TO ADJOURN THE HEARING, RESULTING IN PROCEDURAL MISCONDUCT

This Court should also vacate the arbitration award because the arbitrator erred in finding that the hearing can move forward despite a named Party who the underlying action seeks to enforce a judgment against, Mr. Quinn, not being afforded his right to counsel which is an error amounting to procedural “misconduct” under CPLR § 7511(b) and Section 10(a)(3) of the FAA, and resulting in prejudice to Mr. Quinn.

Section 7511(b) of the CPLR and Section 10(a)(3) of the FAA provide that the Court shall vacate an arbitration award where there has been “misconduct” and “prejudice” to the rights of a party. Importantly, “misconduct” under these provisions is not limited to cases of intentional arbitrator misconduct or overt bias, but it is interpreted broadly to encompass determinations that prejudice that rights of a party. *See In re Cragwood Managers, L.L.C. (Reliance Ins. Co.)*, 132 F. Supp. 2d 285, 287 (2d Cir. 2001) (under Section 10(a)(3), “courts may review arbitral awards to determine whether parties have been denied a fundamentally fair hearing”) (citing *Tempo Shain Corp. v. Bertek, Inc.*, 120 F.3d 16, 20 (2d Cir. 1997)). Judicial review under Section 10(a)(3) is focused “determining whether the procedure was fundamentally unfair.” *Tempo*, 120 F.3d at 20.

Here, the arbitrator’s decision to move forward with the hearing despite Mr. Quinn’s lack of counsel amounted to procedural “misconduct” within the meaning of CPLR §7511(b)(1)(i) and FAA § 10(a)(3) because the arbitrators made a finding that all named parties in attendance at the hearing were capable of moving forward with a hearing despite direct evidence procured to the panel by Mr. Quinn notifying them of his lack of counsel and inability to represent himself at a formal arbitration proceeding.

As well as constituting procedural misconduct under CPLR §7511(b) and FAA § 10(a)(3), there can be no dispute that Mr. Quinn will be severely prejudiced if he is bound by a \$300,000 award. Had Mr. Quinn been afforded a proper postponement and another hearing date, he would have contested the allegations in the Statement of Claim, which are without merit and based on a factually inaccurate record. As Mr. Quinn approaches his retirement, denying this petition to vacate would be financially devastating and would largely eliminate the savings he worked to obtain over a 40-year career.

Accordingly, Mr. Quinn has suffered both misconduct and prejudice requiring the Court to vacate the arbitration award, and dismiss the Petition.

CONCLUSION

For the foregoing reasons, Petitioner's petition to vacate the arbitration award should be granted in its entirety and such other further relief as the Court deems just and equitable.

Dated: September 20, 2021
Hicksville, New York

Respectfully submitted,

/s/Daniel D'Costa
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INDIVIDUAL VERIFICATION

Florida)
Palm Beach) ss.:

WILLIAM F. QUINN, being duly sworn, deposes and says:

I am the Petitioner in this action; I have read the foregoing Petition and know the contents thereof; that the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.


WILLIAM F. QUINN

Sworn to before me this 20 day of SEPTEMBER, 2021.


Notary Public



MARK L. JONES
Commission # GG 144662
Expires January 14, 2022
Bonded Thru Budget Notary Services