SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CLSA AMERICAS, LLC, Petitioner, v. MICHAEL MAYO, Respondent.	Index No.:

PETITION TO VACATE ARBITRATION AWARD THAT MANIFESTLY DISREGARDS CONTROLLING LAW

Petitioner CLSA Americas, LLC ("CLSA Americas"), through its undersigned counsel, petitions the Court pursuant to Article 75 of the New York Civil Practice Rules and the Federal Arbitration Act, to vacate the January 14, 2022 arbitral award issued in the matter of *Michael Mayo v. CLSA Americas, LLC,* FINRA Case No. 18-00633 (the "Award")[1].

Introduction

1. A Financial Industry Regulatory Authority ("FINRA") arbitral panel awarded Respondent Michael Mayo ("Mayo") a "discretionary bonus" for work performed in 2016, in contravention of the written discretionary bonus policy contained in the CLSA Americas Employee Handbook, to which Mayo had agreed to in writing throughout his employment. Mayo sought such a bonus based on theories of breach of implied contract, unjust enrichment, or

[1] The Award is attached as Exhibit 1 to the Affirmation of Barbara M. Roth ("Roth. Aff.").

fraudulent inducement. The Award was not reasoned, and it was issued in manifest disregard of the clear terms of the written discretionary bonus policy and controlling and uniformly applied New York law. No contrary legal authority exists, and no such contrary authority was ever identified for the arbitral panel.

2. This special proceeding is brought under CPLR Article 7502 and 7511, as well as 9 U.S.C. § 10, to vacate the Award.

The Parties

3. CLSA Americas is limited liability corporation organized and existing under the laws of Delaware with its principal place of business in New York, New York. CLSA Americas is a wholly owned subsidiary of CLSA Americas Holdings, Inc., a corporation organized and existing under the laws of Delaware with its principal place of business in New York, New York.

4. CLSA Americas is a registered broker/dealer and member of FINRA.

5. At all relevant times, upon information, Mayo has been a resident of New York, New York.

6. Mayo was an employee of CLSA Americas LLC in New York, New York from mid-2013 through February 27, 2017.

Jurisdiction and Venue

7. This Court has jurisdiction over the subject matter of this proceeding pursuant to Article 75 of the CPLR and the Federal Arbitration Act.

8. CLSA Americas has timely filed this Petition within 90 days of delivery of the Award on January 14, 2022.

9. Venue is proper in this Court pursuant to CPLR § 7502 because CLSA Americas and CLSA Americas Holdings, Inc. have their principal places of business in New York County, the Arbitration was held in New York County, and Mayo resides in New York County.

Statement of Facts

10. Mayo was a research analyst in the U.S. Research Group of CLSA Americas from

mid-2013 through February 2017.

11. In February 2017, a business decision was made to close down the U.S. Research and U.S. Sales groups and lay off their 90 employees.

12. Neither Mayo nor any other terminated employee received a discretionary bonus for 2016.

13. Mayo was paid a salary of $300,000 for his work in 2016.

14. At all times, CLSA Americas maintained a written bonus policy in its Employee Handbook that informed every employee that bonuses are "subject to the absolute discretion of the Company" and "not a guaranteed or contractual entitlement," the employee "should not expect" a bonus in any year even if he had received one in the past, and "[n]o one is authorized ... to make any promise of compensation or bonus unless such promise is contained in a written agreement signed by an authorized representative." (See Affirmation of Barbara M. Roth ("Roth Aff.") at ¶ 14 & Ex. 13.)

15. Mayo reaffirmed and informed CLSA Americas two times each year that he understood, agreed to and would "strictly abide" by the policies in the CLSA Americas Employee Handbook. (Roth Aff. Ex. 14.)

16. Mayo had no written guarantee of a bonus for 2016. At the arbitration, Mayo testified:

> Q: And just to be absolutely clear, you never had any written agreement for any bonus for 2016, correct, from CLSA Americas?
>
> A: That is correct.
>
> Q: Or from anybody in the CLSA Group, correct?
>
> A: That is correct.

(Roth Aff. Ex. 7 at Tr. 280:13-20.)

17. Mayo filed an Amended Statement of Claim with FINRA seeking a $3 million bonus for 2016 from CLSA Americas based on theories of breach of implied contract, unjust enrichment, or fraudulent inducement. (Roth Aff. Ex. 3.)

18. Mayo alleged there had been an implied agreement that Mayo would be paid a bonus for 2016, based on discussions with managers regarding a bonus, and the fact that "[n]o CLSA executive ever informed Mr. Mayo that despite working the entirety of 2016, he might **not** receive a bonus." (*Id.* at ¶¶ 18, 40.) (Emphasis added.)

19. According to Mayo, he had an "implied agreement" for a bonus based on a "long-standing policy and practice of paying Mr. Mayo an annual bonus" and therefore he "**expected** to receive same." (*Id.* at ¶¶ 40-42.) (Emphasis added.)

20. The second and third causes of action also sought the same $3 million bonus, on theories of unjust enrichment (id. at ¶¶ 44-47), or that he was "fraudulently induced" by the Employee Handbook to expect the payment of a bonus. (Id. at ¶¶ 48-53.)

21. The FINRA arbitration hearing was held on December 7, 8, 10 and 13, 2021. The hearing was transcribed, and the full transcripts are provided at Exhibit 7 to the Roth Affirmation.

22. In its Answer and pre-hearing brief, CLSA Americas explained in detail to the arbitral panel that *Kaplan v. Capital Company of America, LLC* sets forth the controlling law in New York on written discretionary bonus policies. 298 A.D.2d 110 (1st Dep't 2002), *lv to appeal denied* 99 N.Y.2d 510 (2003). CLSA Americas further explained to the panel that *Kaplan* and its progeny constitute the controlling and unopposed law of New York with respect to written discretionary bonus policies and that those cases require denial of Mayo's claims as a matter of law. (Roth Aff. Ex. 4 at pp. 9-25; Roth Aff. Ex. 6 at pp. 14-22.) Counsel also gave the panel copies of the case decisions so that the arbitrators could confirm and understand the applicable law themselves. (Roth Aff. ¶ 7.)

23. Counsel for CLSA Americas again addressed the governing law since *Kaplan* – and the unopposed universe of cases applying it – in its opening and closing arguments; Counsel for CLSA Americas also provided demonstratives in its opening and closing arguments that contained the controlling law including relevant excerpts from *Kaplan*. (Roth Aff. Ex. 7 at Tr. 42:16-45:14, 819:24-827:25; Roth Aff. Exs. 8 & 9.) In one of these excerpts, the *Kaplan* court holds:

> Given the **clearly expressed policy** of the company that **bonuses were to be paid solely at the company's discretion**, and the provision requiring a writing executed by specified persons on the company's behalf to alter the terms of the employment relationship, plaintiff has **no sustainable claim** that defendant company entered into an enforceable agreement entitling him to bonus compensation.

298 A.D.2d at 111. (Emphasis added.)

24. Counsel for CLSA Americas also discussed this well-established law again in a written post-hearing submission. (Roth Aff. at Ex. 11.)

25. In contrast, Mayo and his counsel did not provide even a **single** case decided after *Kaplan* to support his claim.

26. Instead, Mayo pointed the panel to five inapplicable cases decided before *Kaplan*, and, in a closing rebuttal, to two attorney advertisements in which an attorney soliciting business from terminated employees gave his personal impression of two arbitral awards in which the panels awarded bonuses to two claimants for undisclosed reasons under undisclosed facts. (Roth Aff. Ex. 5 at pp. 16-19; Roth Aff. Ex. 10 at pp. 1-3 & Exs. A, C.)

27. In fact, there are no cases after *Kaplan* that allow an employee to obtain a bonus, where, as here, the company has an express written policy stating that any bonuses are in the employer's sole discretion, and that the employee has no entitlement to a bonus without an authorized written agreement from the company.

28. On January 14, 2022, the panel issued the Award. In the Award, the panel granted Mayo a bonus of $400,000, with no reason or explanation.

Claim for Relief
(Vacatur)

29. CLSA Americas repeats each and every allegation contained in the foregoing paragraphs.

30. The dispositive principles of New York law concerning the meaning and legal effect of a written discretionary bonus are well-defined, explicit, and clearly applicable to this case, and there was no rational basis for the arbitral panel to ignore that governing law when it issued

the Award.

WHEREFORE, CLSA Americas respectfully requests an order:

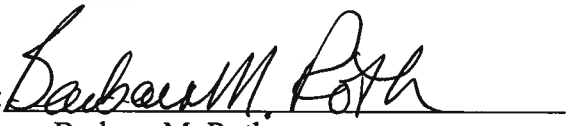
a. Vacating the Award;

b. Granting CLSA Americas its costs and fees to the full extent provided by law; and

c. Granting such other, further and different relief as this Court may determine to be just and proper.

Dated: February 14, 2022
New York, New York

HERBERT SMITH FREEHILLS
NEW YORK LLP

By: 

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