

2/13/18 Ramasamy v. Scottrade, Inc. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

NAGARAJAN RAMASAMY,

Plaintiff and Appellant,

v.

SCOTTRADE, INC.,

Defendant and Respondent.

B279173

(Los Angeles County
Super. Ct. No.
PC055706)

APPEAL from a judgment of the Superior Court of Los Angeles County, Stephen P. Pfahler, Judge. Affirmed.

Nagarajan Ramasamy, in pro. per.; and Anthony J. Rista for Plaintiff and Appellant.

St. John, Wallace, Brennan & Folan, Patrick J. Folan for Defendant and Respondent.

I. INTRODUCTION

Plaintiff Nagarajan Ramasamy appeals from a November 4, 2016 judgment confirming an arbitration award rendered by the Financial Industry Regulatory Authority (“FINRA”) arbitration panel in favor of defendant Scottrade, Inc.¹ Finding no error, we affirm the judgment.

II. BACKGROUND

On April 11, 2015, plaintiff filed a statement of claims with FINRA for deception, misrepresentation, embezzlement, breach of privacy, cooperation with other parties for illegal withdrawal of money from plaintiff’s account, negligent failure to safeguard the interest of a client, and vicarious liability for the actions of non-party Scott Kevin Collins, a Scottrade manager. Plaintiff contended that defendant was liable, under various theories, for permitting unauthorized withdrawals and transfers from plaintiff’s Scottrade account. Plaintiff also contended that defendant, through Collins, had discriminated against him.

¹ Although plaintiff’s opening brief fails to comply with the California Rules of Court, rule 8.204(a)(1)(C), we disregard the noncompliance. (Cal. Rules of Court, rule 8.204(e)(2)(C).) We do not consider, however, the exhibit attached to plaintiff’s opening brief as it is neither relevant to the appeal nor part of the appellate record. (Cal. Rules of Court, rule 8.204(d).) Nor do we consider the arguments plaintiff raised for the first time at oral argument. (*Estate of McDaniel* (2008) 161 Cal.App.4th 458, 463; *People v. Harris* (1992) 10 Cal.App.4th 672, 686.)

The panel, composed of three arbitrators, heard testimony from witnesses including plaintiff and Collins. On April 13, 2016, the arbitrators, after considering the pleadings, testimony, and other evidence, dismissed all of plaintiff's claims. The arbitrators found that plaintiff's claims and allegations regarding defendant's liability for the losses to plaintiff's account were false.

The arbitrators also rejected plaintiff's allegation that defendant, through Collins, engaged in discriminatory conduct. In evaluating the conflicting testimony of plaintiff and Collins, the arbitrators found that Collins was credible while plaintiff was not. The arbitrators recommended expungement of any reference to the arbitration from Collins's FINRA registration records because plaintiff's allegations were false.

On July 1, 2016, defendant filed a motion with the trial court to confirm the arbitration award. Plaintiff opposed the motion and requested that the court vacate the award. On September 28, 2016, the court held a hearing on defendant's motion and plaintiff's request. On October 4, 2016, the court granted the motion and denied plaintiff's request to vacate. The court found that defendant had satisfied the requirements for confirming the arbitration award. It further found that plaintiff had failed to submit any competent evidence in support of his contention that his rights had been substantially prejudiced by the arbitrators' misconduct or by their refusal to hear evidence material to the controversy. On November 4, 2016, the court entered judgment confirming the arbitration award.

III. DISCUSSION

A. *Standard of Review*

Our review of a judgment confirming an arbitration award is limited to the grounds set forth in Code of Civil Procedure sections 1286.2 (to vacate) and 1286.6 (for correction). (*Richey v. AutoNation, Inc.* (2015) 60 Cal.4th 909, 916 (*Richey*); *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 33 (*Moncharsh*).) We review the trial court's order de novo where the facts are undisputed. (*Panoche Energy Center, LLC v. Pacific Gas & Electric Co.* (2016) 1 Cal.App.5th 68, 99; *SWAB Financial, LLC v. E*Trade Securities, LLC* (2007) 150 Cal.App.4th 1181, 1196.) To the extent the trial court's ruling rests upon a determination of disputed facts, we review for substantial evidence. (*Ibid.*)

B. *The Trial Court Properly Confirmed the Arbitration Award*

"The California Arbitration Act (Code Civ. Proc., § 1280 et seq.) and the Federal Arbitration Act (9 U.S.C. § 10 et seq.) provide limited grounds for judicial review of an arbitration award. Under both statutes, courts are authorized to vacate an award if it was (1) procured by corruption, fraud, or undue means; (2) issued by a corrupt arbitrator; (3) affected by prejudicial misconduct on the part of the arbitrator; or (4) in excess of the arbitrator's powers. (Code Civ. Proc., § 1286.2, subd. (a); 9 U.S.C. § 10(a).)" (*Richey, supra*, 60 Cal.4th at p. 916.)²

² Plaintiff argues the arbitration award should be vacated under the Federal Arbitration Act. Defendant responds that

To ensure arbitral finality, neither the trial nor appellate court may review: the arbitrators' resolution of contested issues of law and fact; the arbitrators' reasoning; or whether there was sufficient evidence to support the arbitration award. (*Moncharsh, supra*, 3 Cal.4th at pp. 10-11, 28.) "Generally, courts cannot review arbitration awards for errors of fact or law, even when those errors appear on the face of the award or cause substantial injustice to the parties." (*Richey, supra*, 60 Cal.4th at p. 916.)

Notwithstanding the limited judicial review of an arbitrator's award, plaintiff contends that the trial court should have vacated the arbitration award because: (1) there was no reasonable basis for the award; (2) the arbitrators were partial to defendant because they failed to consider the issues plaintiff raised during arbitration and refused to hear evidence material to the controversy; and (3) the arbitrators erred when they recommended expunging all references to the arbitration from Collins's records.

Plaintiff's argument that the arbitration award is not reasonable is, at bottom, a disagreement with the arbitrators' factual findings. Such findings, however, are not subject to judicial review. (*Moncharsh, supra*, 3 Cal.4th at pp. 11, 28.) Nor may courts review the arbitrators' reasoning. (*Id.* at p. 11.)

plaintiff cannot rely on the Federal Arbitration Act to vacate the award because he did not make this argument before the trial court. (*Cable Connection, Inc. v. DIRECTV, Inc.* (2008) 44 Cal.4th 1334, 1350, fn. 12.) We need not address whether plaintiff has forfeited this issue because the grounds for vacating an arbitration award are similar under both the state and federal arbitration statutes.

Nor can plaintiff prevail on his second argument, that the arbitrators were partial to defendant. Plaintiff did not submit any evidence regarding the arbitrators' purported partiality to the trial court. Nor has plaintiff submitted reporter's transcripts of the arbitration or trial court proceedings on appeal. Thus, he fails to demonstrate that the trial court erred by not vacating the arbitration award on this ground. (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132 [an appellant cannot challenge the sufficiency of the evidence to support a judgment when there is no transcript of the oral proceedings].)

Finally, plaintiff cannot prevail on his challenge to the arbitrators' recommendation that all references to this matter be expunged from Collins's FINRA registration records. The arbitrators made this recommendation after they dismissed plaintiff's claims against defendant. Their recommendation was based on their credibility assessment of plaintiff and Collins. In any event, the arbitrators' recommendation of expungement is not a ground for vacating the arbitration award. Accordingly, the trial court did not err in confirming the arbitration award.

IV. DISPOSITION

The judgment is affirmed. Defendant Scottrade, Inc. shall recover its costs on appeal from plaintiff Nagarajan Ramasamy.
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KIM, J.*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.