

APPENDIX A

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

OCT 29 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

GLOBAL EBUSINESS SERVICES, INC.;
SYED NAZIM ALI,

Plaintiffs-Appellants,

v.

FINANCIAL INDUSTRY REGULATORY
AUTHORITY, INC. (FINRA),

Defendant-Appellee.

No. 18-15716

D.C. No. 3:17-cv-06095-JD

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
James Donato, District Judge, Presiding

Submitted October 22, 2018**

Before: SILVERMAN, GRABER, and GOULD, Circuit Judges.

Syed Nazim Ali appeals pro se from the district court's judgment dismissing his and Global eBusiness Services, Inc.'s diversity action alleging state law claims arising from an arbitration proceeding before a Financial Industry Regulatory

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2).*

Authority (“FINRA”) panel. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Fed. R. Civ. P. 12(b)(6). *N.M. State Inv. Council v. Ernst & Young LLP*, 641 F.3d 1089, 1094 (9th Cir. 2011). We affirm.

The district court properly dismissed Ali’s claims on the basis of arbitral immunity because the claims alleged “effectively seek[] to challenge the decisional act of an arbitrator or an arbitration panel.” *Sacks v. Dietrich*, 663 F.3d 1065, 1069-70 (9th Cir. 2011) (arbitral immunity exists to “protect the decision-maker from undue influence and protect the decision-making process from reprisals by dissatisfied litigants” (citation and internal quotation marks omitted)).

We do not consider Ali’s contentions on behalf of Global eBusiness Services, Inc. because Ali, who is appearing pro se, may not represent a corporation. *See C.E. Pope Equity Tr. v. United States*, 818 F.2d 696, 697 (9th Cir. 1987).

AFFIRMED.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Civil Minutes

Date: April 12, 2018

Judge: Hon. James Donato

Time: 11 Minutes

Case No. **C-17-06095-JD**

Case Name **Global Ebusiness Services, Inc. et al v. Financial Industry Regulatory Authority, Inc.**

Attorney(s) for Plaintiff(s): Syed Ali (pro se) / James Patrick

Attorney(s) for Defendant(s): Terri L. Reicher

Deputy Clerk: Lisa Clark

Court Reporter: Vicki Eastvold

PROCEEDINGS

Motion to Dismiss - Held

Plaintiff's Counsel's Motion to Withdraw - Held

NOTES AND ORDERS

The Court grants attorney James Patrick's motion to withdraw as counsel for plaintiff Global Ebusiness Services, Inc. Dkt. No. 48.

The Court grants defendant FINRA's motion to dismiss, Dkt. No. 35, on the basis of arbitral immunity. *See Sacks v. Dietrich*, 663 F.3d 1065, 1070 (9th Cir. 2011); Dkt. No. 38 at 4-5 (plaintiffs' opposition brief making clear claims in this case are based only on "decisional acts by arbitrators and/or the forum taken in connection with presiding over the arbitration case"). Because this is a deficiency that cannot be cured by amendment, the Court dismisses FINRA from the case with prejudice.

After repeated inquiries from the Court, pro se plaintiff Syed Nazim Ali makes clear that he does not have any claims that he is asserting on behalf of himself personally against any defendant other than FINRA. Ali acknowledges that he cannot assert on a pro se basis any claims on behalf of Global Ebusiness Services, Inc., because Global Ebusiness is a corporation that can only appear through a member of the bar of this Court. Civil L.R. 3-9(b).

The Court consequently dismisses the entire case with prejudice. The Court will enter judgment and close the case.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GLOBAL EBUSINESS SERVICES, INC., et al..

Case No. 16-cv-01264-JD

Plaintiffs,

v.

INTERACTIVE BROKERS LLC,
Defendant.

ORDER RE ARBITRATION AWARD

Re: Dkt. Nos. 33, 37

Plaintiff Global eBusiness Services, Inc. petitions the Court to vacate under 9 U.S.C. § 10 an arbitration award issued against it by the Financial Industry Regulatory Authority (FINRA). Dkt. No. 33. Defendant Interactive Brokers LLC asks that the Court instead confirm the award under 9 U.S.C. § 9. Dkt. No. 37. Venue here is uncontested and not improper. *See* Dkt. Nos. 46, 47; *Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193, 195 (2000) (venue provisions of 9 U.S.C. §§ 9-11 are permissive, not restrictive). The Court denies plaintiff's petition to vacate, and confirms the award.

BACKGROUND

In this dispute between broker and customer, FINRA issued an award on November 13, 2015, denying all of Global eBusiness's claims against Interactive Brokers in their entirety. Dkt. No. 1 at ECF pp. 8-17. Global eBusiness had asserted claims for breach of fiduciary duty, churning, misrepresentation/non-disclosures, omission of facts and "bait and switch strategy," all in relation to Interactive Brokers' "handling of [Global eBusiness's] margin account." *Id.* at ECF p. 11. The award was issued by a panel of three public arbitrators. *Id.* at ECF pp. 15-17.

DISCUSSION

Global eBusiness acknowledges, as it must, that 9 U.S.C. § 10 sets out the “limited,

1 exclusive grounds for vacating an arbitration award,” and that as the party seeking to vacate the
2 award, it bears the burden of establishing that one of the grounds in that section justifies vacating
3 the award. *See* Dkt. No. 33 at 8-9; *U.S. Life Ins. Co. v. Superior Nat'l Ins. Co.*, 591 F.3d 1167,
4 1173 (9th Cir. 2010). It has not met that burden.

5 Global effectively invokes two of the grounds in 9 U.S.C. § 10: that the arbitrators were
6 “guilty of misconduct . . . in refusing to hear evidence pertinent and material to the controversy,” 9
7 U.S.C. § 10(a)(3), and that the arbitrators “exceeded their powers” by issuing an award that
8 exhibits a “manifest disregard of law.” 9 U.S.C. § 10(a)(4). *See* Dkt. No. 33 at 2; *Kyocera Corp.*
9 *v. Prudential-Bache Trade Servs., Inc.*, 341 F.3d 987, 997 (9th Cir. 2003) (arbitrators “exceed
10 their powers” under 9 U.S.C. § 10(a)(4) “when the award . . . exhibits a ‘manifest disregard of
11 law’”).

12 But Global has provided no evidence to satisfy § 10(a)(3). For example, although it
13 repeatedly asserts as fact that the panel “failed to evaluate any of the 97 exhibits [it] provided,”
14 Dkt. No. 33 at 6, its own reply brief makes clear that this is nothing more than pure speculation.
15 *See* Dkt. No. 39 at 8 (“The sheer volume of the evidence makes the contention that petitioner’s
16 evidence was adequately reviewed over a 4 day period unlikely.”). If anything, the fact that
17 Global had the opportunity to submit this evidence weighs in favor of confirming the award. *See*
18 *Schoenduve Corp. v. Lucent Techs., Inc.*, 442 F.3d 727, 734 (9th Cir. 2006) (“Because the
19 arbitrator did not abuse his powers by ruling on a[n] issue implicitly submitted to him, and
20 because Lucent was never denied an opportunity to present evidence as to that issue, the arbitrator
21 did not engage in any misbehavior under 9 U.S.C. § 10(a)(3).”).

22 The expeditious resolution of disputes requires that arbitrators be provided with broad
23 discretion and great deference in their determinations of procedural issues within the course of
24 arbitration. A review of the record here shows that none of the procedural decisions plaintiff
25 complains of, *see, e.g.*, Dkt. No. 33 at 6-7, falls outside that broad scope of discretion or amounts
26 to a denial of fundamental fairness. Global has not presented sufficient evidentiary support for
27 any aspect of its request to vacate the FINRA award under 9 U.S.C. § 10(a)(3), and so that ground
28 is rejected on that basis. *See Kyocera*, 341 F.3d at 1003 (proper for court to confirm arbitration

1 award where party moving to vacate “presents no evidence” that arbitrators’ decision “contains or
2 was based on any conduct that approaches the type that warrants vacatur under the Federal
3 Arbitration Act”).

4 Global’s invocation of 9 U.S.C. § 10(a)(4) also falls short. Our circuit has made clear that
5 the scope of the “exceeded their powers” language in this subsection is quite narrow, and an award
6 cannot be vacated under this subsection even when arbitrators “interpret or apply the governing
7 law incorrectly.” *Kyocera*, 341 F.3d at 997. It is only when the award is “completely irrational”
8 or manifestly disregards the law that this ground is satisfied. *Id.* But here, Global has not
9 identified any governing law that was arguably incorrectly applied by the panel, let alone
10 manifestly disregarded. So this ground, too, is rejected.

11 In sum, plaintiff has failed to sustain its burden of proving that any ground in 9 U.S.C.
12 §§ 10 or 11 is satisfied here. The Court notes that plaintiff has also invoked the California
13 Arbitration Act, and specifically, the grounds for vacating an arbitration award under California
14 Code of Civil Procedure § 1286.2. Dkt. No. 33 at 9. It is quite doubtful, however, that the CCP
15 has any application here. *See* Dkt. No. 19-4 (Interactive Brokers Institutional Services Customer
16 Agreement) at ECF p. 53 (Connecticut choice-of-law provision). Even assuming for discussion
17 purposes that it did apply, the Court would conclude that plaintiff has not provided sufficient legal
18 or evidentiary support for the grounds in CCP § 1286.2(a), either.

19 CONCLUSION

20 Under the FAA, “a court ‘must’ confirm an arbitration award ‘unless’ it is vacated,
21 modified, or corrected ‘as prescribed’ in [9 U.S.C.] §§ 10 and 11.” *Hall St. Assocs., L.L.C. v.*
22 *Mattel, Inc.*, 552 U.S. 576, 582 (2008). The Court consequently denies plaintiff’s petition to
23 vacate the award, and grants defendant’s motion to confirm it. The action is dismissed with
24 prejudice and judgment will be entered in favor of defendant.

25 IT IS SO ORDERED.

26 Dated: October 30, 2017

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28 
JAMES DONATO
United States District Judge

**Additional material
from this filing is
available in the
Clerk's Office.**