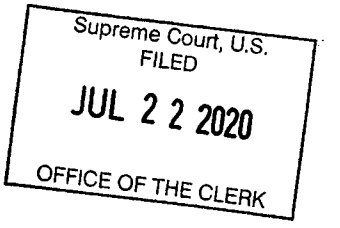
No. 20-114

In The
SUPREME COURT OF THE UNITED STATES



MICHAEL BUFKIN,
Plaintiff – Appellant – Petitioner,
v.

SCOTTRADE, INC., et al.,
Respondents – Appellees – Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ORIGINAL PETITION FOR A WRIT OF CERTIORARI WITH APPENDIX A

MICHAEL BUFKIN
7124 Lemuria Circle, #603
Naples, Florida 34109

Questions Presented

Trial

Compelled Arbitration

1. Was it error to compel FINRA arbitration of this "tax" dispute?
2. Was it error to refer anything to the un-consented-to magistrate?

Discovery

3. Was it abuse to deny Bufkin his Discovery?

FRCP 4

4. Was it abuse to find Rule 4 insufficiencies?

Eviscerating FOIA

5. Was it abuse to dismiss the IRS-related parties?

Delegation of § 451 authority – Clerical "Judgment"

6. Was it error to instruct the Clerk to enter a "Judgment"?

7. Was it error for the Clerk to sign a "Judgment"?

Appeal

Denial of access
Compelled consent

8. Did USCA11 abuse discretion by sanctioning Bufkin?

Parties to USCA11 Proceeding

Appellant

MICHAEL BUFKIN, *pro se*

Appellees

SCOTTRADE, INC.

By: NIELS P. MURPHY
LAWTON R. GRAVES
MURPHY & ANDERSON, PA
1501 San Marco Blvd.
Jacksonville, FL 32207

The IRS-related parties

JACOB LEW (former) Sec.Treas.
TIMOTHY F. GEITNER (former) Sec.Treas.

JOHN KOSKINEN (former) Comm'r, IRS
DOUGLAS SHULMAN (former) Comm'r, IRS
STEVEN T. MILLER (former) Acting Comm'r, IRS
WERFEL, DANIEL (former) Acting Comm'r, IRS

WILKINS, WILLIAM (former) Chief Counsel, IRS

C.D. BAILEY IRS Revenue Officer
CALVIN BYRD (former) IRS Revenue Officer

All By: CLINT A. CARPENTER
DoJ, Appellate Section, Tax Div.
P.O. Box 502
Washington, DC 20044

UNITED STATES OF AMERICA (intervened without formal leave (or objection) at trial)

Also By: CLINT A. CARPENTER

Directly Related Proceedings

Trial

M.D.Fla. (Fort Myers Div.)

No. 2:17-CV-00281
BUFKIN v. SCOTTRADE, INC., JACOB J. LEW, TIMOTHY F. GEITHNER, JOHN KOSKINEN, DOUGLAS SHULMAN, STEVEN T. MILLER, DANIEL WERFEL, WILLIAM J. WILKINS, C.D. BAILEY, CALVIN BYRD, and UNITED STATES OF AMERICA.

Final Order: Mar. 28, 2019 [73].
(Deputy) Clerk's "Judgment": Mar. 29, 2019 [74].

Appeal

USCA11

No. 19-12003-JJ
BUFKIN v. SCOTTRADE, INC., JACOB J. LEW, TIMOTHY F. GEITHNER, JOHN KOSKINEN, DOUGLAS SHULMAN, STEVEN T. MILLER, DANIEL WERFEL, WILLIAM J. WILKINS, C.D. BAILEY, CALVIN BYRD, and UNITED STATES OF AMERICA.

Affirmed, with sanctions: Apr. 28, 2020 ($8,000).

Petition for a Writ of Certiorari

Bufkin requests a writ of certiorari to USCA11.

Citations below

None.

Jurisdiction

(I) Date of ruling.
Apr. 28, 2020 [+90: July 27, 2020]

(ii) Extension(s).
None.

(iii) Rule 12.5.
N/A

(iv) Statutes, Jurisdiction.
28 U.S.C. §§ 1254(1), 2101(c).

(v) Statutory challenges, Rule 29.4(b).
USOA intervened. As addressed *subtly*, Titles 9, 26, *and* 28, FRCP, *and* M.D.Fla.'s Local Rules / Orders are *all* "unconstitutional", as applied.

Statement of the Case

Jurisdiction – M.D.Fla.

28 U.S.C.A. §§ 1330, 1331, 1333, 1339, 1343, 1367. Not § 1346; *DoJ* brought in USOA.

Ultimate practical question

Are IRS's FOIA Responses true and reliable?

Confiscation of SCOTTRADE account

IRS never sought, obtained, or Served any order. They sent only an administrative request to SCOTTRADE. SCOTTRADE wet its pants, sold off Bufkin's property, and sent the total over to IRS.

Investigation

Arbitration.

Bufkin contacted FINRA. The SCOTTRADE account agreement includes an arbitration clause.

FINRA confirmed that "tax" disputes are beyond their expertise, i.e., their purpose.

Liability.

Bufkin submitted FOIA Requests to IRS.

IRS has two very cryptic Responses: the *abusive* one confirms liability; the abrupt one, no liability.

IRS's abrupt Responses to Bufkin confirm that they'd have to "create documents" to respond to Bufkin's Request that they produce proof of the commercial nexus on which their claims depend.

Bufkin's FOIA Requests cover several annual time periods, including those of focus. IRS's Responses are the same for each and every single Request – they'd have to "create documents".

However, since USCA11's ruling effectively guts FOIA, IRS's Responses are essentially destroyed.

Compelled Arbitration

USCA11: Breach and "tax" are severable, i.e., parallel. Reality: They're serial – **first**, "tax" non-liability (SCOTTRADE breached); *then* damages.

Scope of arbitration agreement: Stock transaction disputes. FINRA doesn't arbitrate "tax" disputes.

Parties. Sec.Treas. (IRS) isn't party to the SCOTTRADE account agreement. Sec.Treas. also isn't a FINRA member. Why *would* he/they be? As with *all* agencies, IRS has its *own* (quite replete) in-house arbitration process. Sec.Treas. *does* consent to arbitration but *only* in-house, e.g., "Tax Court".

SCOTTRADE isn't party to the "tax" dispute, *especially* the *threshold* matter of commercial nexus.

M.D.Fla. originally *denied* SCOTTRADE's motion to compel arbitration. Then *some*thing happened. *Cf. Ballard.* SCOTTRADE replied. M.D.Fla. changed positions and ordered SCOTTRADE and Bufkin, but not also Sec.Treas., to arbitrate the "tax" dispute (via *FINRA*). Bufkin never consented or participated. Neither did Sec.Treas., who was dismissed early.

The *year* passed.

SCOTTRADE complained, blaming Bufkin.

M.D.Fla. blamed SCOTTRADE but re-ordered FINRA arbitration, overtly burdening Bufkin.

Bufkin never consented or participated. (Neither did Sec.Treas., i.e., *any* of the IRS-related parties.)

SCOTTRADE complained.

M.D.Fla. dismissed (the rest of the case).

Also, Bufkin never consented to arbitration by magistrate or to clerical decision-making.

FRCP 4

No Respondent disputed Restricted Delivery agency. The alternative is *residential* Service. Moreover, letterhead, stamps, etc., *are* signatures. *See, e.g.,* UCC.

Eviscerating FOIA

M.D.Fla. dismissed early all IRS-related parties, despite IRS's confession, via FOIA, of having no commercial nexus. This first dismissal also *intended* to entice a premature appeal. [58], [59].

Delegation of § 451 authority – Clerical "Judgment"

Upon each dismissal, M.D.Fla. instructed the Clerk to enter a "Judgment", which the Clerk did, under the *Clerk's* signature.

Appeal

Denial of access
Compelled Consent

By even *requesting* sanctions, DoJ confesses recognizing this as a "tax" dispute. At the height of irony, Bufkin, alone, raised Sec.Treas.'s "non-consent" position, i.e., that *DoJ's client(s)* never agreed / consented to FINRA arbitration, *either*. That fact, alone, facially confirms M.D.Fla.'s overreach, i.e., justifies / *compels* the appeal.

On top of *that*, by seeking sanctions, *DoJ* requested, and *USCA11* established, new "policy": Investigating liability via FOIA is now prohibited; that leaves litigation, which USCA11 punishes.

Argument

Trial

Compelled Arbitration

1. Was it error to compel FINRA arbitration of this "tax" dispute?

Volt Info. Sciences, Inc., 489 U.S. 468 (1989) (arbitration is "by consent" only).

M.D.Fla. errantly dismissed SCOTTRADE, the last party to be dismissed, to punish Bufkin's non-consent to FINRA arbitration of this "tax" matter.

Bufkin didn't consent to arbitrate *any* "tax" dispute, whether via IRS (Title 26), FINRA (Title 9), or otherwise (e.g., Title 28, § 636).

Sec.Treas. consents only to in-house arbitration. Sec.Treas. nowhere agreed / consented to arbitrate this *or any* "tax" dispute via FINRA.

Even *FINRA* didn't "consent". "Tax" matters are beyond their expertise, purpose, scope.

2. Was it error to refer anything to the un-consented-to magistrate?

Scope of office (Title 28), alone, is not what grants signature authority to *any* arbiter in *any* "civil case".

Per M.D.Fla.'s standing policy, a *non-assigned* judge "orders" referral. That fact *ends* subject matter jurisdiction analysis. Only the *assigned* judge may order arbitration, a unanimous-consent-, thus Record-, dependent matter.

Regarding § 636(b)(1)(A) and *dispositive* matters, USCA11 says that the recognized exceptions "do not apply here", p.4 (A-4) 1st ¶, but then lauds the un-consented-to arbiter's *analysis of dispositive facts* on which she *based* her protection order, *id.* at 5-6 (A-5). *Nothing* about the un-consented-to arbiter's ruling is separate from *dispositive* fact-finding.

Procedurally, for completeness, Bufkin's overt non-consent proves that M.D.Fla. makes *no* Record review for unanimous *any*thing. Moreover, M.D.Fla. compels consent *without Notice.* M.D.Fla. satisfies neither of § 636(c)'s two Notices, plus there's no Record-based, signed, filed, *or* Served referral order.

Discovery

3. Was it abuse to deny Bufkin his Discovery?

Absolutely no basis for protection exists. No IRS party has immunity. SCOTTRADE gets protection, if at all, at phase 2, damages, *not* at phase 1, breach.

FRCP 4

4. Was it abuse to find Rule 4 insufficiencies?

M.D.Fla. and USCA11 not only gut *ancient* agency principles on which USPS's Restricted Delivery services depend but also compel commerce.

Eviscerating FOIA

5. Was it abuse to dismiss the IRS-related parties?

Are IRS's FOIA Responses true and reliable?

If *so*, then IRS confessed / confirmed having no commercial nexus *to* enforce. Equity / guidance is rendered *moot* (***not*** "patently frivolous"), and *any* collections activity violates Bufkin's property rights.

If *not*, then FOIA is a sick joke. IRS doesn't *have* to answer truthfully, if *at all*.

"Targets" *using* FOIA are batting 1,000% in making *competent* responses to IRS activity. But M.D.Fla. and USCA11 have now eviscerated FOIA.

Related to Question 8, it's (now) USCA11 "policy" that IRS's FOIA Responses are ignored, irrelevant. By exempting IRS from FOIA, USCA11 compels investigation *solely* via litigation, which they've simultaneously *punished*, establishing a *systemic* compelled-consent policy. Thus, USCA11's policy is *monstrous*; it combines denial of access (of claims, parties, and witnesses) with *double* compelled consent (commercial nexus, thus also (in-house; here, *non*-in-house) arbitration). "Take your extremely politically incorrect, threshold issue home, and never raise it again. Don't investigate liability, via FOIA, litigation, *or* etc. Don't defend your property via testimony, from yourself *or* any witnesses, or any documents. We'll continue to punish you if you do."

SCOTTRADE, IRS, "took it all". Had IRS's Responses indicated *liability*, the solution would exhaust exclusions, exemptions, and expenses. IRS wouldn't *keep* it all. But, since IRS confessed, *repeatedly*, having *no* commercial nexus, *cf. Pollock I*, 157 U.S. 429 (1895), *Pollock II*, 158 U.S. 601 (1895), *the* solution ***is*** litigation. They'll *return* it all, plus.

Compelled Consent – Clerical "Judgment"

6. Was it error to instruct the Clerk to enter a "Judgment"?

Clerks don't have § 451 authority, which is non-delegable. *F&M Schaefer Brewing Co.*, 356 U.S. 227 (1958) ("*judges*" sign "judgments"). Thus, Docs. [58] *and* [73] make illegal referrals. *See* Question 7.

7. Was it error for the Clerk to sign a "Judgment"?

See Question 6. USCA11: FRCP 58(b). *Exactly.* USCA11 **proves** [58], [59] *facially* violate the *jurisdictional* barrier. *Cf.* § 636(b)(1)(A).

F&M Schaefer predates 1965. Thus, R.58(b) either systemically, brazenly delegates § 451 illegally *or* depends on consent, i.e., silence. *Cf. Roell.*

Appeal

Denial of access
Compelled consent

8. Did USCA11 abuse discretion by sanctioning Bufkin?

M.D.Fla. punished Bufkin's non-consent to FINRA arbitration of this "tax" case by dismissing.

By sanctioning Bufkin for appealing M.D.Fla.'s compelled arbitration ruling, USCA11 (a) compels not only (1) Bufkin *and* Sec.Treas. into otherwise non-consented-to arbitration, *Volt Info. Sciences, Inc.*, but also (2) Bufkin into compelled consent to liability, generally; hence (b) eviscerates FOIA.

Compelled arbitration also overtly denies access to the § 451 judge.

Related to Question 5, by destroying FOIA, USCA11 also destroys that evidence. Via sanctions,

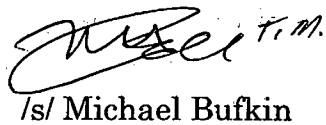
USCA11 punishes investigation via litigation. This *universal* prohibition on investigation both denies access *and* compels consent to liability, *systemically*.

IRS's FOIA Responses *are* true, reliable, *and prompt*, and USCA11 has *no jurisdiction* to ***prevent*** investigation, to ***prohibit*** use of the facts produced, *or* to ***punish*** assertion of rights based on those facts.

Relief Requested

- Grant Certiorari.
- Vacate USCA11's ruling, in all respects.
- Vacate M.D.Fla.'s Clerk's "Judgments" and M.D.Fla.'s "orders" purporting to delegate § 451 authority to the Clerks.
- Vacate both/all M.D.Fla.'s dismissals.
- Reinstate the case. Something like, "Bufkin nowhere consented to arbitrate any tax dispute" will address this FOIA hurdle.
- Remand for Discovery and trial.
- Award costs.
- And, Grant all other relief applicable.

Respectfully submitted,



/s/ Michael Bufkin
MICHAEL BUFKIN