APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-11478
Non-Argument Calendar

D.C. Docket Nos. 4:17-cv-00117-LGW-CLR,
4:14-cv-00278-LGW-GRS

WILLIAM A. ANDERSON,

Plaintiff-Appellant,

versus

AMERICAN GENERAL LIFE INSURANCE COMPANY,
d.b.a. AIG Life and Retirement,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Georgia

(February 19, 2020)

Before ED CARNES, Chief Judge, WILSON, and MARCUS, Circuit Judges.

PER CURIAM:

APPENDIX A

William Anderson, a plaintiff proceeding pro se, appeals the district court's denial of his motion to vacate his arbitration award on his claims of race discrimination and retaliation under Title VII of the Civil Rights Act and of race discrimination under 42 U.S.C. § 1981. We affirm.

I.

The American General Life Insurance Company (AIG) hired Anderson as a sales agent in 2003. In 2012 a "service manager" position opened up and four AIG employees — including Anderson — wanted it. One of those employees, Roy Watson, was white while the other three were black. An AIG general manager named Thomas Gallo was in charge of deciding who would get the promotion, and he decided to set up a contest for it. Under the terms of that contest, the first employee to reach certain annual sales and renewal goals was supposed to win the promotion. But that did not happen. One of the black candidates (not Anderson) was the first to meet the contest criteria but was not promoted. Instead, Watson was promoted when he met the goals several months later. And Watson had a lot of help from Gallo in meeting the goals: Gallo appointed Watson to be the temporary service manager — which gave Watson the chance to "push through" extra business to himself — and Gallo used his own position to push through some business to Watson as well.

When Anderson discovered that Watson was going to be promoted, he went to Gallo's office to complain because he had met the contest criteria too. Gallo said that it was too late for him to take back Watson's promotion, but he offered to recommend to upper management that Anderson be transferred to Watson's old position. And he would "make it worth [Anderson's] while" by letting him combine his book of business with the one Watson serviced before his promotion. He also said that he would temporarily appoint Anderson to Watson's old position while they waited for upper management to approve the permanent transfer.

But at first, instead of giving Anderson the temporary appointment, Gallo gave it to a white employee, Rick Pickett. Gallo later explained to Anderson that Pickett had put in extra work to compensate for Watson being appointed temporary service manager, and appointing Pickett temporarily to Watson's old job was a way to pay him back. Gallo also said that Anderson's decision to take a two-week vacation during the temporary appointment period influenced his decision. After some back-and-forth between Gallo and Anderson, Gallo agreed to give Anderson the temporary appointment after Anderson's vacation was over. Gallo kept his promise, and Anderson worked on a temporary basis in Watson's old job from October to December 2012. But in mid-December a higher-up AIG employee who did not know Anderson's race denied his request for a permanent transfer based on objective internal policies.

In 2014 Anderson, then represented by counsel, sued AIG in federal district court for employment discrimination under Title VII and § 1981. The district court dismissed Anderson's claims on the ground that they were subject to mandatory arbitration under the terms of his contract with AIG, and we affirmed. See Anderson v. Am. Gen. Life Ins., 688 F. App'x 667, 668–70 (11th Cir. 2017). In July 2017 he refiled his complaint in the district court and moved to stay the case pending arbitration. The court granted his motion.

The same day Anderson refiled his case, he filed a demand for arbitration with the American Arbitration Association. In that demand, he claimed in relevant part (1) that AIG violated Title VII by failing to promote him because of his race; (2) that AIG violated § 1981 by refusing to afford him the same right to make and enforce his employment contract as was enjoyed by a similarly situated white man; (3) that AIG retaliated against him in violation of Title VII when he engaged in protected activity; and (4) that his arbitration agreement with AIG was void and unenforceable.

The first arbitrator assigned to Anderson's case was Beverly Baker. She presided over an initial case management phone conversation during which Anderson contended that she lacked jurisdiction over the case because the arbitration agreement was unenforceable. Baker refused to hear any evidence at that time, but she did order the parties to brief the jurisdictional question. After

reviewing the briefs she issued an order finding that the arbitration agreement was valid and that she did have jurisdiction. Anderson prepared a memorandum detailing the things about the phone conversation that he found troubling — including Baker's refusal to hear evidence — and Baker recused herself from the case a short time later.

After Baker's recusal a different arbitrator, Patricia Renovitch, was appointed. Anderson urged Renovitch to revisit the jurisdictional issue, but she refused to do so and stood by Baker's order. She then held a multi-day trial on the merits of Anderson's remaining claims. She found the facts as we have described them in this opinion and ruled that Gallo's promotion of Watson violated Title VII and § 1981 because it discriminated against all of the black applicants (including Anderson) in favor of the one white applicant. But she found that Gallo's temporary appointment of Pickett to Watson's old position did not violate those laws because Gallo had legitimate, non-discriminatory reasons for his decision. And she found that Anderson was not entitled to punitive damages because he failed to prove that upper management knew about the discriminatory nature of Gallo's contest. As a result, she issued an interim award granting Anderson compensatory damages and reasonable attorney's fees. Anderson requested that Renovitch reconsider her denial of punitive damages, but she refused to do so and

entered a final award granting Anderson the same compensatory relief as the interim award.

At that point his counsel withdrew and Anderson began representing himself. He filed in the district court a motion to vacate the arbitration award, contending that the arbitrator refused to hear material evidence, wrongly denied Anderson's motions for spoliation sanctions, raised an affirmative defense on AIG's behalf, and based her award on a mistake of fact. The district court denied the motion and Anderson brings this appeal.

II.

When reviewing a district court's denial of a motion to vacate an arbitration award, we review the district court's factual findings for clear error and its legal conclusions de novo. Frazier v. CitiFinancial Corp., LLC, 604 F.3d 1313, 1321 (11th Cir. 2010). "Because arbitration is an alternative to litigation, judicial review of arbitration decisions is among the narrowest known to the law." AIG Baker Sterling Heights, LLC v. Am. Multi-Cinema, Inc., 508 F.3d 995, 1001 (11th Cir. 2007) (quotation marks omitted). By statute we can only vacate an arbitration award in four circumstances:

> (1) where the award was procured by corruption, fraud, or undue means;
>
> (2) where there was evident partiality or corruption in the arbitrators, or either of them;

> (3) where the arbitrators were guilty of misconduct in refusing to . . . hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
>
> (4) where the arbitrators exceeded their powers . . . .

9 U.S.C. § 10(a); see Frazier, 604 F.3d at 1324.

III.

Anderson's first contention on appeal is that arbitrator Baker wrongly refused to hear during the initial case management discussion evidence relating to his contention that the arbitration agreement was unenforceable and, as a result, the arbitrator lacked jurisdiction. But an arbitrator "need not consider all the evidence the parties seek to introduce" and may "reject evidence that is cumulative or irrelevant." Scott v. Prudential Sec., Inc., 141 F.3d 1007, 1017 (11th Cir. 1998). The evidence Anderson wanted to introduce concerned whether AIG's upper management knew about the rigged promotion contest or procedure and whether AIG breached a particular term of the arbitration agreement: the so-called "open-door policy," an optional and informal dispute resolution procedure. None of that evidence was at all relevant to the jurisdictional question the arbitrator was considering.

Under the Federal Arbitration Act, "arbitration agreements are valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of the contract." Caley v. Gulfstream Aerospace Corp., 428

F.3d 1359, 1367 (11th Cir. 2005) (quotation marks omitted). Anderson presented Baker with three alleged grounds for invalidating his arbitration agreement with AIG: that AIG had breached the agreement by failing to honor the open-door policy, that the agreement lacked consideration, and that the agreement by its terms was not mandatory. Whether AIG's upper management knew about the rigged promotion procedure had nothing to do with any of those three grounds. And, as we held the last time this case was before us, see Anderson, 688 F. App'x at 669–70, if AIG did breach the open-door policy, that breach did not render the arbitration agreement unenforceable. So the arbitrator did not refuse to hear relevant evidence.

Next, Anderson contends that arbitrator Renovitch engaged in misbehavior when she denied his request for spoliation sanctions.[1] Before trial Anderson asked AIG to produce certain "new business reports," but AIG had failed to preserve those reports. Anderson requested a spoliation presumption — that is, a presumption that the allegedly spoliated evidence would have proved Gallo and Watson manipulated the contest. The arbitrator did not address that request.

To prove misbehavior Anderson must show, as a preliminary matter, that his rights have been prejudiced. See 9 U.S.C. § 10(a)(3) (stating that an award can be

[1] In his opening brief Anderson also asserted that Renovitch's failure to consider his request for spoliation sanctions showed bias or prejudice, see 9 U.S.C. § 10(a)(2). But in his reply brief he expressly abandoned that position.

vacated "where the arbitrators were guilty of misconduct in . . . any other misbehavior by which the rights of any party have been prejudiced"); Scott v. Prudential Sec., Inc., 141 F.3d 1007, 1017 (11th Cir. 1998) (stating that under § 10(a)(3) a party challenging an arbitration award based on the arbitrator's "misbehavior" must show prejudice), overruled in part on other grounds, Hall Street Assocs., LLC v. Mattel, Inc., 552 U.S. 576, 584–89 (2008). Before the arbitrator issued her initial award, Anderson argued the spoliated evidence would have shown that Gallo and Watson manipulated the promotion contest. But the arbitrator found in Anderson's favor on that question. That means her failure to address Anderson's request for spoliation sanctions did not prejudice Anderson.

After arbitrator Renovitch entered her interim award, Anderson changed his tune about what the allegedly spoliated evidence would show. He submitted a request for reconsideration of the denial of punitive damages, arguing that the missing evidence would have shown that AIG's upper management knew about the rigged contest. The arbitrator did not consider Anderson's new argument on spoliation, but her failure to do so was not "misbehavior" in any sense. In federal litigation, courts enforce a number of rules and principles that prevent parties from raising arguments too late. See, e.g., In re Egidi, 571 F.3d 1156, 1163 (11th Cir. 2009) ("Arguments not properly presented in a party's initial brief or raised for the first time in the reply brief are deemed waived."); Wilchombe v. TeeVee Toons,

Inc., 555 F.3d 949, 957 (11th Cir. 2009) ("A motion for reconsideration cannot be used to . . . raise argument or present evidence that could have been raised prior to the entry of judgment."). Those same principles may be properly applied in an arbitration proceeding where there are fewer procedural protections than in federal court. See Rosensweig v. Morgan Stanley & Co., Inc., 494 F.3d 1328, 1333 (11th Cir. 2007). The refusal to consider Anderson's belated argument was not misbehavior.

Anderson next contends that arbitrator Renovitch exceeded her powers, showed bias, and engaged in misconduct by asserting an affirmative defense to punitive damages on behalf of AIG when AIG itself had failed to do so. The factual premise of his contention is belied by the record. The arbitrator never asserted an affirmative defense to punitive damages on behalf of AIG. The denial of punitive damages was expressly based on Anderson's failure to prove that he was entitled to them, not on any affirmative defense.

Anderson further contends that arbitrator Renovitch "violated her contractual agreement" by applying the wrong burden of persuasion. AIG had argued that once Anderson made out a prima facie case AIG faced only an "exceedingly light" burden of producing a non-discriminatory reason for its action. The arbitrator rejected that AIG argument on the first day of trial. That rejection, according to Anderson, amounted to an agreement that AIG had to meet more than

an "exceedingly light" burden. He complains that the arbitrator violated the agreement by permitting AIG to prove a non-discriminatory reason by less than a preponderance of the evidence and making fact findings accordingly. Those findings, Anderson says, caused him to lose on his retaliation claim and on his claim that AIG discriminated against him by appointing Pickett to the temporary position that Anderson had been promised.

Contrary to Anderson's theory, the rulings of factfinders and decision makers do not amount to contractual agreements. Not only that, but his theory finds no place in the statutory grounds for vacating an arbitration award. See 9 U.S.C. § 10(a). A court cannot vacate an arbitration award on grounds not set out in § 10. See Frazier, 604 F.3d at 1324

Finally, Anderson challenges one of Renovitch's fact findings: that Pickett put in extra work after Watson was transferred to the temporary service manager position. Anderson has waived that argument because he did not raise it in the district court. Cf. Bryant v. Jones, 575 F.3d 1281, 1308 (11th Cir. 2009) ("It is well established in this circuit that, absent extraordinary circumstances, legal theories and arguments not raised squarely before the district court cannot be broached for the first time on appeal."). And even if Anderson had not waived the argument, an "arbitrator's improvident, even silly, factfinding does not provide a basis for a reviewing court to refuse to enforce the award." Cat Charter, LLC v.

Schurtenberger, 646 F.3d 836, 840 n.4 (11th Cir. 2011) (quoting Major League Baseball Players Ass'n v. Garvey, 532 U.S. 504, 509 (2001)).

AFFIRMED.

APPENDIX B

In the United States District Court for the Southern District of Georgia Savannah Division

WILLIAM A. ANDERSON,

Plaintiff,

v.

AMERICAN GENERAL LIFE INSURANCE d/b/a AIG LIFE AND RETIREMENT,

Defendant.

NO. 4:17-CV-117

ORDER

The Court previously dismissed this case finding that it must be arbitrated. Dkt. No. 4-3. Plaintiff timely refiled the complaint. Dkt. No. 1. Subsequently, the Court stayed and administratively closed this case pending resolution of the arbitration. Dkt. No. 10. The final arbitration award has been entered and filed with the Court. Dkt. No. 16-1. Nevertheless, Plaintiff, acting *pro se*, filed a Motion to Vacate Arbitration Award, dkt. no. 22, which is presently before the Court. The Motion has been fully briefed and is ripe for review. For the reasons that follow, Plaintiff's Motion is **DENIED.**

BACKGROUND

After this Court ruled and the Eleventh Circuit affirmed that Plaintiff's claims must be arbitrated, on July 5, 2017, Plaintiff filed a demand for arbitration with the American Arbitration

Association ("AAA"). Dkt. No. 25-1. In the demand, Plaintiff made the following relevant claims: (1) that his former employer, Defendant American General Life Insurance ("AIG") failed to promote him because of Plaintiff's race as an African-American in violation of Title VII of the Civil Rights Act of 1964; (2) that AIG violated 42 U.S.C. § 1981 by refusing to afford Plaintiff the same right to make and enforce his employment contract as was enjoyed by a similarly situated white male; (3) that AIG illegally retaliated against Plaintiff in violation of Title VII when Plaintiff engaged in protected activity; (4) that the arbitration agreement requiring these claims to be arbitrated was unenforceable because it was breached by AIG; (5) that the arbitration agreement lacked consideration; (6) that the arbitration agreement was not mandatory and thus was unenforceable; (7) and that Plaintiff was entitled to punitive damages.

An arbitrator, Beverly P. Baker, was assigned to the case, and she entered an Initial Case Management Order. Dkt. No. 22-3. That document states that an "initial telephone management conference call" was held on September 29, 2017, in which the parties, their attorneys, the arbitrator, and a case manager for the AAA participated. Id. at 2. During that telephone call, Plaintiff argued that the arbitration agreement should be voided for reasons (4) - (6) listed above. Id. As a result of this

argument, the arbitrator requested briefings on these issues, and she made her ruling on these issues in her Initial Case Management Order. Id. In that Order, the arbitrator rejected these three claims and explained her bases for doing so. Id. As a result, the arbitrator concluded that she had jurisdiction over Plaintiff's remaining claims. Id.

After the initial management phone call, Plaintiff created and signed a memorandum recapping some of the discussions that he found troubling. Dkt. No. 22-2. Relevant to this Order, Plaintiff noted that the arbitrator refused to hear evidence on the three claims that were raised. Id. at 2. Thus, Plaintiff was, according to the memorandum, not permitted to present evidence on the three jurisdictional claims that the arbitrator rejected. Id.

On March 28, 2018, the parties were notified that Arbitrator Baker recused herself from the case. Dkt. No. 25-4. At some point thereafter, a new arbitrator was appointed to the case, Patricia A. Renovitch. Dkt. No. 22-5. Plaintiff resubmitted to Arbitrator Renovitch his three claims arguing that the arbitrator lacked jurisdiction, but Renovitch refused to revisit those issues and stood by the conclusions of Arbitrator Baker as memorialized in the Initial Case Management Order. Id. at 2. The parties were notified of Renovitch's decision on May 11, 2018. Id.

On early September 2018, a multi-day trial was held on Plaintiff's remaining claims. Dkt. Nos. 22-6, 22-7, 22-8. After

the trial, the parties submitted closing argument briefs setting forth their contentions. Dkt. Nos. 22-15, 22-18. On December 5, 2018, Renovitch issued a twenty-seven page Interim Award detailing her findings of fact, conclusions of law, and the ultimate award. Dkt. No. 22-11. The factual findings relevant to this Order are that in 2003 Plaintiff was hired by AIG to be a sales agent. Id. at 5. In early 2012, Plaintiff was still a sales agent and was told by the general manager of his office, Thomas Gallo, that a service manager position would soon become vacant and that Plaintiff should stay and compete for it—at the time, Plaintiff was considering leaving AIG. Id. at 6. When the position became vacant, Gallo created a promotion contest for the service manager ("SM") position. Id. Three of the applicants were black, and one was white, Roy Watson. Id. Watson, the white applicant, was eventually deemed the winner of the contest and was given the position. Id. at 10-11. Arbitrator Renovitch agreed with Plaintiff that the promotion contest discriminated against the black applicants, in favor of the white applicant. Id. at 21. But, Renovitch rejected Plaintiff's two other substantives claims and his punitive damages claim. Id. at 22-27.

After the interim award was entered, Plaintiff filed a Request for Reconsideration, setting forth many grounds in which he believed Arbitrator Renovitch erred. Dkt. No. 22-9. On January

22, 2019, Renovitch rejected Plaintiff's arguments and entered a Final Award. Dkt. No. 22-19.

Plaintiff filed this motion to vacate the award under 9 U.S.C. § 10(a) alleging that Arbitrator Baker and Arbitrator Renovitch erred, were biased, and misbehaved in many ways when adjudicating Plaintiff's claims.

DISCUSSION

I. Refusal to Hear Evidence Claim

Plaintiff first argues that the award should be vacated under 9 U.S.C. § 10(a)(3) because Arbitrator Baker refused to hear evidence regarding three of Plaintiff's claims that sought to void the arbitration agreement. Baker rejected these claims and held that the arbitration agreement was valid. Dkt. No. 22-3 at 2. Plaintiff also claims that Arbitrator Renovitch declined to revisit Baker's refusal, and thus, Renovitch also refused to hear that same evidence. The claims centered around the contention that the arbitrator lacked jurisdiction; specifically, they were: (1) that Defendant violated an "open door policy" that was part of the arbitration agreement, voiding the agreement and making it unenforceable; (2) that the arbitration agreement lacked consideration; and (3) that the arbitration agreement was "not mandatory and/or enforceable as set forth in the [Employee Dispute Resolution program]," dkt. no. 25-1 at 5. The evidence Plaintiff wished to present but was not permitted to was testimony from

witnesses about "upper management['s] knowledge of the contest manipulations." Dkt. No. 22 at 18. These witnesses "had information concerning what senior management said and did regarding the contest and job positions [Plaintiff] wanted to address by utilizing the open-door policy." Id.

Under 9 U.S.C. § 10(a)(3) an arbitration award must be vacated "[w]here the arbitrators were guilty of misconduct in refusing . . . to hear evidence pertinent and material to the controversy." Nevertheless, arbitrators "enjoy wide latitude in conducting an arbitration hearing," and they "are not constrained by formal rules of procedure or evidence." Robbins v. Day, 954 F.2d 679, 685 (11th Cir. 1992), overruled on other grounds, First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938, 948 (1995). "An arbitrator need not consider all the evidence the parties seek to introduce but may reject evidence that is cumulative or irrelevant." Scott v. Prudential Sec., Inc., 141 F.3d 1007, 1017 (11th Cir. 1998). "In addition, '[a] federal court may vacate an arbitrator's award only if the arbitrator's refusal to hear pertinent and material evidence prejudices the rights of the parties to the arbitration proceedings.'" Rosensweig v. Morgan Stanley & Co., 494 F.3d 1328, 1333 (11th Cir. 2007) (quoting Hoteles Condado Beach, La Concha & Convention Ctr. v. Union De Tronquistas Local 901, 763 F.2d 34, 40 (1st Cir. 1985)).

Here, the evidence that Plaintiff wished to present, as Plaintiff characterizes it, was not material to the claims at issue. Plaintiff wished to present evidence about upper management's alleged knowledge of the contest manipulations, but under Arbitrator Baker's ruling, this knowledge has no bearing on whether a violation of the open-door policy voided the arbitration agreement, whether the arbitration agreement lacked consideration, or whether the agreement was mandatory. Regarding the first issue—whether a breach of the open-door policy invalidated the arbitration agreement—Arbitrator Baker specifically found that Plaintiff's "insistence that [Defendant's] alleged failure to honor its Open Door Policy is fatal to the validity of the Agreement is also unavailing. . . . The Open Door Policy is an option and the agreement to arbitrate is mandatory." Dkt. No. 22-3 at 2. Further, Arbitrator Renovitch determined that she would not reopen and thus reconsider these issues. The evidence Plaintiff wished to present may have been material to whether the open-door policy was breached, but Baker deemed the issue of whether the policy was breached to be irrelevant to whether the agreement was enforceable because she found that the policy was optional but that the agreement to arbitrate was mandatory. Thus, she implicitly found that a breach of the optional, open-door policy does not affect the validity of the mandatory, arbitration agreement. Accordingly, the evidence Plaintiff wished to present

has not been shown to be "pertinent and material," 9 U.S.C. § 10(a)(3). Looking at the other two issues, the same result is warranted. Whether or not upper management was aware of the contest manipulations had no bearing on whether the arbitration agreement lacked consideration or whether it was mandatory.[1]

For these reasons, Plaintiff's motion with respect to the arbitrators' refusals to hear evidence claim is due to be **DENIED**.

II. Spoliation and Partiality Claim

Plaintiff next claims that the award must be vacated under 9 U.S.C. § 10(a)(2) and (3) because Renovitch showed partiality and misconduct by not enforcing spoliation sanctions against Defendant. Section 10(a)(2) provides for vacatur "where there was evident partiality or corruption in the arbitrators." Further, "the evident partiality standard is satisfied 'only when either (1) an actual conflict exists, or (2) the arbitrator knows of, but fails to disclose, information which would lead a reasonable person to believe that a potential conflict exists.'" Mendel v. Morgan Keegan & Co., Inc., 654 F. App'x 1001, 1003 (11th Cir. 2016) (quoting Gianelli Money Purchase Plan & Tr. v. ADM Inv'r Servs., Inc., 146 F.3d 1309, 1312 (11th Cir. 1998)). Here, Plaintiff

[1] Notably, Plaintiff does not claim that he was barred from presenting this evidence at the arbitration trial in support of his discrimination claims. Rather, he only argues that he was barred from presenting this evidence for consideration of his claims going to the validity of the arbitration agreement.

neither contends nor proves that an actual conflict existed or that a person could have reasonably believed one existed. Thus, § 10(a)(2) does not apply.

Turning to § 10(a)(3) it provides in relevant part that an arbitration award may be vacated "where the arbitrators were guilty . . . of any other misbehavior by which the rights of any party have been prejudiced." In response to AIG's summary judgment motion during arbitration, in his closing brief after the arbitration trial, and in his request for reconsideration of the interim award, Plaintiff moved for a finding of and remedy for spoliation. In each of these three requests, Plaintiff argued that Defendant failed to retain new business pending reports even though Defendant was on notice of pending litigation. As a remedy, Plaintiff requested that he was "entitled to a spoliation presumption that the reports would conclusively demonstrate that Gallo and Watson successfully manipulated the NFYP sales to ensure Watson's success to the detriment of the Black employees." Dkt. No. 22-14 at 20. While these records may have conclusively demonstrated manipulation, Plaintiff cannot show that he was prejudiced by a lack of a spoliation finding or spoliation presumption because the arbitrator found in favor of Plaintiff on this issue. Arbitrator Renovitch found that "[t]he overwhelming record evidence shows the SM promotion contest was a pretext to promote the white applicant." Dkt. No. 22-11 at 19. Part of that

evidence was the fact that "Gallo 'pushed through' new business for Watson during the SM contest." Id. at 21. In total, this "and other record facts reveal Gallo created, altered, and implemented SM promotion criteria to favor the white applicant." Id. Thus, because the arbitrator reached the conclusion that Plaintiff sought with the aid of a spoliation presumption, Plaintiff cannot show prejudice, or even partiality.

Furthermore, to the extent Plaintiff argues that a finding of spoliation would have impacted the punitive damages determination by Renovitch, this claim fails. Renovitch found the following regarding punitive damages:

> Upon consideration of the entire record, the preponderance of the competent and substantial evidence does not prove AIG's upper management (Benton, Parman and Luckett) knew about or supported Gallo's discriminatory treatment of the black applicants, including [Plaintiff], during the SM promotion contest. While Gallo may have acted with reckless indifference to [Plaintiff's] Section 1981 and Title VII rights during the pretextual SM promotion contest, the record does not show upper management did. Accordingly, punitive damages are not awarded.

Dkt. No. 22-11 at 26. Plaintiff argued in the closing brief at the arbitration trial that the evidence "would conclusively demonstrate that Gallo and Watson successfully manipulated the NFYP sale to ensure Watson's success to the detriment of the Black employees." Dkt. No. 22-15 at 35; see also Dkt. No. 22-14 at 20 (arguing in opposition to Defendant's summary judgment in arbitration that "the reports would conclusively demonstrate that

Gallo and Watson successfully manipulated the NFYP sales to ensure Watsons' success to the detriment of the Black employees"). Comparing Plaintiff's characterization of what the evidence would have shown to Renovitch's findings on punitive damages, it is clear that the former would not have impacted the latter. Plaintiff stated both in his opposition to Defendant's summary judgment motion and in his closing brief after the arbitration trial that the evidence would have showed that *Gallo* and *Watson* manipulated the contest. The punitive damages finding, however, does not dispute this but instead, found that upper management, i.e., *Benton*, *Parman*, and *Luckett*, were not aware of the contest manipulation. See Dkt. No. 22-11 at 26 ("[T]he preponderance of the competent and substantial evidence does not prove AIG's upper management (Benton, Parman and Luckett) knew about or supported Gallo's discriminatory treatment of the black applicants, including [Plaintiff], during the SM promotion contest."). Plaintiff's characterization of the spoliated evidence, then, is consistent with the punitive damages award and would not have impacted it.

Plaintiff's spoliation request contained in his request for reconsideration of the interim award, however, recharacterizes the evidence from his prior spoliation requests. In the request for reconsideration of the interim award, Plaintiff stated that the allegedly spoliated evidence "would have proven whether or not

upper management, specifically Curtis Benton in this case, manipulated not only the white competitor, but also the black competitors' numbers." Dkt. No. 22-9 at 6-7. Nevertheless, in the final award Renovitch "decline[d] to modify the Interim Award because the issue raised in [Plaintiff's request for reconsideration] was fully considered and properly resolved in the Interim Award." Dkt. No. 22-19 at 2. Renovitch's refusal to address Plaintiff's new argument of what the allegedly spoliated evidence would have shown does not show misbehavior. Rather, Renovitch had the power to not consider this new argument when Plaintiff was given every opportunity to make it prior to the interim award. Further, Plaintiff's recasting of the argument at that late stage in the arbitration proceedings and after the interim award is concerning.

Plaintiff's claim fails because he cannot show prejudice, and more fundamentally, he cannot show misbehavior. At most, Plaintiff can show that the arbitrator never explicitly ruled on his spoliation requests. This, by itself, is not evidence of misbehavior—especially considering that the arbitrator ruled in Plaintiff's favor on the claim that the allegedly spoliated evidence (as characterized by Plaintiff prior to the entering of the interim award) would have proven. Renovitch's refusal to address squarely Plaintiff's new argument, which was made for the first time after the interim award, is not evidence of misbehavior.

For these reasons, Plaintiff's motion with respect to Renovitch's failure to rule on Plaintiff's spoliation requests is due to be **DENIED**.

III. Contention that Arbitrator Renovitch Asserted a Defense on Defendant's Behalf

Plaintiff next argues that Arbitrator Renovitch showed partiality, exceeded her powers, and committed a manifest disregard for the law when she allegedly implemented a defense on behalf of Defendant that it did not request. In his motion to vacate, Plaintiff argues that "Arbitrator Renovitch asserted a defense [that] Defendnat never pled," which "allowed the Defendant to avoid punitive damages and was a clear overstepping of Arbitrator Renovitch's authority and [a] violation of her agreement for neutrality in ruling by [a] preponderance of [the] evidence." Dkt. No. 22 at 6. See also id. at 8 ("Arbitrator Renovitch also exceeded her authority, displayed partiality and manifestly disregarded the law when she implemented a defense on behalf of the Defendant that they did not request, in order to avoid awarding punitive damages.").

Ignoring the procedural posture of the narrow review this Court must undertake, Plaintiff's argument fails on its merits because the reason for the arbitrator's ruling on the punitive damages claim was not based on any defense. Rather, the arbitrator found that "the preponderance of the competent and substantial

evidence does not prove AIG's upper management (Benton, Parman and Luckett) knew about or supported Gallo's discriminatory treatment of the black applicants, including [Plaintiff], during the SM promotion contest. While Gallo may have acted with reckless indifference to [Plaintiff's] Section 1981 and Title VII rights during the pretextual SM promotion contest, the record does not show upper management did." Dkt. No. 22-11 at 26. The arbitrator prefaced this conclusion by recognizing the burden Plaintiff faced: "To be awarded punitive damages. [Plaintiff] acknowledges he must present '*substantial evidence* that the *employer* acted with actual malice or reckless indifference to his federally protected rights,' citing to Miller v. Kenworth of Dothan, Inc., 277 F.3d 1269,1280 (11th Cir. 2002) (citing Kolstad v. Am. Dental Ass'n, 527 U.S. 526, 536-37, 119 S. Ct. 2118, 2125-26, 144 L.Ed.2d 494 (1999)) (emphasis added)." Id. at 25. The arbitrator, then, did not manufacture a defense but simply found that Plaintiff could not satisfy his burden of proving punitive damages. Furthermore, Defendant argued in its post-trial brief that Plaintiff could not meet his burden of proof on any of his claims. Thus, the arbitrator did not manufacture a defense for Plaintiff, but found, in line with Defendant's arguments, that Plaintiff could not meet his burden of proof for his punitive damages claim. Accordingly, the factual basis of Plaintiff's argument is squarely contradicted by the record.

For these reasons, Plaintiff's motion with respect to his argument that the arbitrator improperly manufactured a defense for Defendant is due to be **DENIED.**

IV. Contention that Arbitrator Renovitch did not Rule by a Preponderance of the Evidence

Plaintiff's next argument states that the arbitrator first agreed to rule by a preponderance of the evidence but then changed her position. In the "Conclusion" section of his motion to vacate, Plaintiff elaborates on his position: "AIG in its closing arguments produced, in defiance to the Arbitrator's agreement, an affirmative position that Defendant had an exceedingly light burden with the ability to implement a single nondiscriminatory reason for their action, while stating [Plaintiff] needed a 'substantial' burden (Exhibit 18, p. 2-3). Arbitrator Renovitch violated her contractual agreement to rule by [a] preponderance of [the] evidence and adopted AIG's exceedingly light assertion to the detriment of [Plaintiff]." Dkt. No. 22 at 23. Plaintiff goes on to argue that "[f]or a fair and neutral minded Judge, Arbitrator, Jury, or average citizen, the final decisions by Arbitrator Renovitch concerning the second and third claim [sic] would have been impossible to reach based on the concept of [a] preponderance of [the] evidence." Id.

The record contradicts Plaintiff's position that Renovitch did not make her determinations based on a preponderance of the

evidence standard. See, e.g., Dkt. No. 22-11 at 3 ("The following findings of fact are based on the preponderance of the reliable evidence presented at the arbitration hearing on September 5-7, 2018."); id. at 20 ("Consideration of the preponderance of the reliable evidence in this record shows Gallo's promotion process and ultimate recommendation of the only white applicant for the SM position, with upper management's approval, discriminated against the black applicants including [Plaintiff]. Accordingly, [Plaintiff] proved the SM promotion contest was racially discriminatory in violation of his Section 1981 and Title VII rights."); id. at 21 ("The preponderance of the reliable record facts shows AIG had a legitimate business reason to appoint Pickett to temporarily collect on agency #24 from August 13 - October 8, 2012. [Plaintiff] did not prove this rationale was discriminatory."); id. at 23 ("The preponderance of the reliable record evidence does not establish AIG delayed this process in violation of [Plaintiff's] Section 1981 or Title VII rights. Accordingly, [Plaintiff] did not prove claim #3."); id. at 26 ("Upon consideration of the entire record, the preponderance of the competent and substantial evidence does not prove AIG's upper management (Benton, Parman and Luckett) knew about or supported Gallo's discriminatory treatment of the black applicants, including [Plaintiff], during the SM promotion contest."). In essence, Plaintiff is asking the Court to disagree with Arbitrator

Renovitch's findings and conclusions and to issue contrary findings and conclusions. That is not the role of the Court.

For these reasons, Plaintiff's motion with respect to his argument that the arbitrator applied the wrong standard of review is due to be **DENIED.**

V. False Evidence Claim

Plaintiff also argues that Arbitrator Renovitch made a false finding of fact and based her denial of Plaintiff's second claim—that AIG violated 42 U.S.C. § 1981 by refusing to afford Plaintiff the same right to make and enforce his employment contract as was enjoyed by a similarly situated white male—on that allegedly false finding of fact. Specifically, Plaintiff argues that "Rick Pickett was erroneously identified as having collected the service agent position #24 in May 2012 when Roy Watson was given the trial manager position. . . . it appears that the Arbitrator [Renovitch] based her interim decision primarily on this concept not present during the trial or via depositions." Dkt. No. 22 at 7 (quoting Formal Request for Reconsideration Dkt. No. 22-9 at 4); see also dkt. no. 22 at 13 ("For claim number two, Rick Pickett was erroneously and falsely identified as having collected the service agent position #24 in May, 2012 by counsel for AIG, that evidence and testimony was not presented during the entire proceeding, however the arbitrator based her decision primarily on this concept. . . .").

Plaintiff misreads and consequently misstates the interim award and Renovitch's findings and conclusions in that award. Renovitch did not find that Pickett collected the service agent position in May 2012. Instead, she found that "[t]he preponderance of the reliable record facts shows AIG had a legitimate business reason to appoint Pickett to temporarily *collect* on agency #24 from *August 13 - October 8, 2012.*" Dkt. No. 22-11 at 22 (emphases added); see also id. at 11 ("On August 27, 2012, Claimant found out from Watson [that] someone else was going to take his vacated position. The agent was Rick Pickett, a white service agent. Claimant 'was stunned' and immediately went to see Gallo. He told Claimant [that] Pickett was temporarily taking over service agency #24 for a limited time because he wanted Pickett to be able to make more money during the 'heavy collection' weeks in September and October."); id. at 22 ("Claimant claims his Section 1981 and Title VII rights were violated when Gallo appointed Pickett to temporarily collect premiums on service agency #24 from August 13 to October 8, 2012."). Thus, Plaintiff's claim that Renovitch relied on the erroneous fact that Pickett collected on service agent position #24 in May 2012 is squarely contradicted by the interim service award, which shows that Renovitch found that Pickett first collected on that position in August 2012.

For these reasons, Plaintiff's motion with respect to his false evidence claim is due to be **DENIED**.

CONCLUSION

For the foregoing reasons, Plaintiff's Motion to Vacate Arbitration Award, dkt. no. 22, is hereby **DENIED**. All other pending motions are **DENIED as moot**.

SO ORDERED, this 19th day of March, 2019.

HON. LISA GODBEY WOOD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

APPENDIX C

AMERICAN ARBITRATION ASSOCIATION
Employment Arbitration Tribunal

In the Matter of the Arbitration between

Case Number: 01-17-0003-8997

William Anderson, Claimant
-vs-
American General Life Insurance Company, Respondent

FINAL AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the personnel manual or employment agreement entered into by the above-named parties, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, and William Anderson being represented by Gwendolyn Fortson Waring of The Waring Law Firm, LLC, and American General Life Insurance Company being represented by Kenan G. Loomis of Cozen O'Connor, and having previously rendered an Interim Award dated December 5, 2018, do hereby, AWARD, as follows:

The Parties have resolved the matter of attorney's fees and costs regarding Claimant's Claim I, the 42 U.S.C.§1981and Title VII racial discrimination claim with respect to the Service Manager promotion. They notified the American Arbitration Association of this resolution by emails dated January 14 and 16, 2019.

Claimant has filed a Formal Request for Reconsideration of the Interim Award. Respondent has responded, citing to AAA Employment Arbitration Rule No. 40 (Modification of Award) and stating that the request is untimely and an inappropriate attempt to seek a redetermination of the merits of the Interim Award. Claimant has replied, stating the request is timely because Rule 40 applies only to final awards. While the request will be considered timely, as a Final Award has not been issued, the Arbitrator declines to modify the Interim Award because the issue raised in Claimant's request was fully considered and properly resolved in the Interim Award.

The administrative fees and expenses of the American Arbitration Association totaling $2,750.00, and the compensation and expenses of the arbitrators totaling $10,093.25, shall be borne as incurred.

This Award is in full settlement of all claims and counterclaims submitted in this arbitration case. All claims not expressly granted herein are hereby denied.

January 22, 2019
Date

Patricia A. Renovitch, Arbitrator

APPENDIX C

APPENDIX D

AMERICAN ARBITRATION ASSOCIATION® | INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION®

AMERICAN ARBITRATION ASSOCIATION
Employment Arbitration Tribunal

In the Matter of the Arbitration between

Case Number: 01-17-0003-8997

William Anderson
-vs-
American General Life Insurance Company

INTERIM AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the personnel manual or employment agreement entered into between the above-named parties, and having been duly sworn, and having duly heard the proofs and allegations of the parties, and William Anderson being represented by Gwendolyn Fortson Waring of **The Waring Law Firm, LLC**; and American General Life Insurance Company being represented by Kenan G. Loomis of **Cozen O'Connor**, hereby, INTERIM AWARD, as follows:

Introduction

This is an employment discrimination and retaliation case brought by former employee William A. Anderson (Claimant) against American General Life Insurance Company (AIG). On July 5, 2017, Claimant filed a Demand for Arbitration with the American Arbitration Association (AAA). AAA appointed the undersigned Arbitrator on April 11, 2018. A duly-noticed arbitration hearing was conducted September 5-7, 2018 in Savannah, Georgia. At the hearing, the parties confirmed the Arbitrator's jurisdiction to resolve the pending claims and presented exhibits and sworn testimony in support of their positions. On November 7 the parties filed post-hearing submissions.

Issues

The employment issues presented for consideration and resolution in this arbitration case are:

claim #1: whether AIG discriminated against Claimant, a black male, in the summer of 2012 by failing to promote him to a vacated service manager position in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.,* and Section 1981, 42 U.S.C. § 1981;

claim #2: whether AIG discriminated against Claimant in 2012 by not allowing him to temporarily collect premiums on vacated service agency 24 in violation of 42 U.S.C. §1981, and Section 1981, 42 U.S.C. § 1981; and

claim #3: whether AIG retaliated against Claimant in violation of Title VII and Section 1981, by delaying the return of his sales agency book after he engaged in concerted protected activities, including the filing of an EEOC charge in February 2013.

Relevant Federal Law

The parties agree the issues raised in this arbitration case allege violations of Section 1981, 42 U.S.C. § 1981, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.* These statutes provide in in relevant part:

§ 1981. Equal rights under the law

(a) Statement of equal rights
All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.
(b) "Make and enforce contracts" defined
For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.
(c) Protection against impairment
The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

§ 2000e–2. Unlawful employment practices

(a) Employer practices. It shall be an unlawful employment practice for an employer—
(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or

privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Weighing and Resolving Conflicting Evidence

An arbitrator has the authority and responsibility to determine the relevance and weight of evidence. Elkouri & Elkouri, How Arbitration Works, "Evidence – Weight and Credibility of Evidence", ch. 8.9 at p. 8-91 (7th ed. 2012). When testimony is contradictory, the arbitrator must "sift and evaluate the testimony to the best of his ability and reach the best conclusion he can as to the actual fact situation". *Id.* at p. 8-93. In determining which testimony is credible, the following factors are appropriately considered:

> **Interest**. While having a stake in the outcome does not disqualify a witness, it renders his testimony subject to most careful scrutiny. ... Few witnesses will deliberately falsify but there is a common tendency to "put your best foot forward." This tendency, either consciously or subconsciously, leads many witnesses to remember express testimony in a way favorable to the result which they hope the Hearing will produce.
>
> **Perception**. Frequently the initial observation is faulty or incomplete because the observer has no prior knowledge that a dispute will develop concerning what he had seen or heard and his casual sensory impression is not sharp and keen.
>
> **Memory**. The remembrance of an event weeks or months after it occurred is frequently dim and inaccurate and a witness may be confused as to facts which initially he correctly perceived. By lapse of time precise details may elude his memory.
>
> **Communication**. The manner in which a witness expresses what he saw and heard may fail to communicate exactly his initial perception or the occurrence. ...

Id. at p. 8-92 [citation omitted]. Other factors are the consistencies or inconsistencies in witness testimony, the motivation of witnesses, and whether their testimony is reasonable considering the circumstances of the case.

Findings of Fact

The following findings of fact are based on the preponderance of the reliable evidence presented at the arbitration hearing on September 5-7, 2018.

Claimant's Employment Background

AIG employs a network of sales and service agents throughout the country to sell and service life and health insurance products. AIG *sales agents* sell new insurance products. Their compensation is largely dependent upon their new sales, with a small percentage associated with policy renewals. *Service agents*, on the other hand, are primarily responsible for servicing existing business and ensuring that premiums on this business are paid. Sales and service agents are assigned numerical sales and service agencies. They report, respectively, to sales managers and service managers.

Thomas Gallo began working for AIG in 1999. He was promoted to general manager of the Savannah-Jacksonville office in the fall of 2011. Sales manager Carolyn Johnson and service manager Gary Carroll worked in the Savannah office and reported to Gallo then. Curtis Benton, regional administrator, was Gallo's immediate supervisor. Benton reported to CMO Steve Parman. Daphne Luckett was the Director of Persistency. She worked in AIG's Nashville office. In 2012 Luckett had authority to grant or deny agents' transfer and promotion requests.

AIG hired Claimant as a sales agent in 2003. Before that he was in the military with a "top secret clearance". He was promoted to associate manager in 2004. As associate manager from 2004-2007, Claimant supervised sales managers and service managers. He also wrote new business and received commissions on the business written by the sales and service agents he supervised.

On March 26, 2007 Claimant resigned his associate manager position to return to a sales agent position. He did this to spend more time with his son while his ex-wife was stationed overseas. After his son returned to his mother in 2009, Claimant asked to be placed in a recently vacated service agent position. However, AIG decided not to fill ("blew up") that position. Claimant accepted a sales agent position in 2009.

Claimant had an at-will employment relationship with AIG during his employment at its Savannah office.

Promotion Contest for Service Manager Position

Service Manager Carroll's Resignation - Effective April 2, 2012

On October 3, 2011 Claimant met with the new general manager (Gallo). This was one of many "interviews" Gallo scheduled to become familiar with the employees working in the Savannah-Jacksonville group. During this meeting, Claimant told Gallo he planned to leave AIG, as he was

finishing his master's degree and would be accepting a position at Savannah State University (SSU). Claimant and Gallo discussed Claimant's history with AIG, including his interest in 2009 in a service agent position. Before he left the meeting, Claimant gave Gallo a completed "Application for Special Representative Appointment (Independent Contractor)" which, if granted, would allow him to continue selling policies and receiving commissions while working for SSU.

In a meeting in late October 2011, Gallo told Claimant Carroll would be retiring in early 2012. Gallo said he wanted Claimant to stay and compete for the service manager vacancy when Carroll retired. Gallo told Claimant that if he did not get the promotion, "we'll give you a service agent position". Claimant considered this a "win-win situation to stay".

In March 2012 Carroll submitted his resignation. It became effective April 2. Claimant (a sales agent) and service agents Amos Speights, Roy Watson, and Wanda Gibson expressed interest in applying for the service manager position. Watson is white and the other three applicants are black. Claimant, Speights and Gibson worked in the Savannah area. Watson was assigned to the Savannah office, but lived in Brunswick and worked out of his home there.

Criteria for Promotion to Service Manager

Gallo prepared *criteria* for a promotion contest for the service manager position. The criteria were not part of any written AIG promotion policies. Gallo created them for this specific promotion. During the week of March 19, 2012 Gallo held a meeting to announce his promotion contest criteria. He told the sales and service agents that the winner of the contest was going to be the *first*[1] agent to

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[1] Service agent Dale Morris and the three black applicants for promotion to the service manager position testified the promotion contest criteria included the above-described NFYP and RPR terms. Morris was a "good friend" of Carroll when he was the service manager. Morris also knew Claimant from working with him from 2011-2013. Carroll asked Morris if he would be interested in the service manager when he resigned. Morris declined for personal reasons. Morris knew about the "contest that the general manager [Gallo] put on" for promotion to Carroll's position.

Watson, the only white applicant, testified he didn't remember the "details" of the promotion contest, but thought Gallo said something like "you had to get to the $350 average and maintain it for however long the contest lasted". Gallo confirmed he announced contest "criteria", including the $350 NFYP criterion, but he could not specifically recall the other criteria. A customer service representative testified in vague terms about the contest terms.

produce at least $350 worth of net annual premium and sales (NFYP) while maintaining a service agent renewal persistency rate (RPR) of at least 93%. Gallo said the contest would start after Carroll retired; he did not state an ending date. As described below, the contest ended on August 13 when AIG approved Watson's promotion to service manager.

Claimant testified he and the other two black applicants were "not very happy" about the two ($350 NFYP and 93% RPR) contest criteria for promotion Gallo announced at the March 19, 2012 meeting. To alleviate their concerns, Gallo assured them no one had satisfied these criteria so far. Watson did not object to the criteria. As the only sales agent applicant, Claimant was troubled by the RPR requirement. The sales agent RPR was calculated differently than the service agent RPR. Claimant met with Gallo after the March 19 meeting to ask his about the RPR requirement. Gallo assured Claimant the service agent RPR criterion did not apply to him.

***First** Applicant Who Met Promotion Criteria Not Promoted*

After Carroll's resignation became effective on April 2, 2012, Gallo began posting on the office "production board" (also called the "white board") the NFYP and RPR numbers of the applicants. He did this each week. Claimant monitored the board. He saw the postings in April showing Watson met the $350 NFYP criterion but not the 93% RPR criterion. Gallo did not announce Watson as the winner of the contest in April.

Speights was the first applicant to meet both contest criteria. He produced a NFYP of more than $350 while maintaining an RPR over 93% on April 23, 2012[2]. Claimant saw this on the new business report posted on the white board that morning. Claimant congratulated Speights when he

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The preponderance of the reliable evidence supports the $350 NFYP and 93% RPR criteria specifically recalled by the credible testimony of Morris and the three black applicants. The preponderance of the reliable evidence also supports the finding that when Gallo announced the criteria in March 2012, he stated the promotion would go to the *first* agent who met the two ($350 NFYP and 93% RPR) contest criteria. During the contest period, Gallo appears to have confirmed this, as shown, for example by his email to Benton on July 10, 2012 (email is quoted in the below Findings of Fact). All the black applicants specifically testified Gallo said the *first* agent to satisfy the criteria would win the promotion contest.

[2] The undisputed evidence of record confirms that Speights was the first agent applicant to satisfy both promotion contest criteria.

got to the office shortly after the posting. When Claimant and Speights came back to the office that evening, the production board numbers for Speights were not there. Gallo did not announce Speights as the winner of the promotion contest in April. Speights waited for Gallo to announce the contest was over, but Gallo did not do that in April.

Pre-Promotion Partialities Shown to Watson

In January 2012 Carroll told Watson he would be retiring. He also told Watson there was going to be a contest to fill his position. On January 26 Watson filled out AIG's "Advancement Opportunity Indication of Interest" form to show his interest in the service manager position. On March 14, 2012 Watson sold his wife an AIG policy with an annual premium of $979.80. This was a few days before Gallo announced the promotion contest criteria. On March 23 Watson sold his wife another policy. On March 26 Watson submitted to Gallo a promotion interest form. This was the same day Watson exceeded the $350 NFYP minimum sales criterion, but did not meet the RPR contest criterion.

Sometime between April 2 and 9, 2012, Gallo interviewed[3] Watson for the service manager position. On April 9 Gallo submitted a "General Manager Letter or Recommendation for Promotion" form in which Gallo recommended Watson's promotion to the service manager position. On this form Gallo states:

> I am recommending service agent Roy Watson for a promotion to the Service Manager position. In his many years of service to AGLA, Roy has shown his leadership qualifications by the example he sets to this fellow service agents both out in the field and in the office. Numerous times he has lead [sic] the service agents in the office with his sales ability as well as been a company leader. He has a positive, upbeat attitude and is a great example to the veteran service agents as well as the newer sales agents. At first being new at my position, I really did not know Roy that well. After meeting and interviewing him for the position, I believe he is the best candidate for the position and will do an excellent job. His philosophy of growing the sales of his new staff is in alignment with the company's goals as well as mine for the service side. I know he will be an excellent leader as well as be an asset to the great Jacksonville-Savanna team.

Gallo submitted this recommendation for Watson's promotion even though Watson had not met both promotion contest criteria.

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[3] The record does not show Gallo personally interviewed any applicant besides Watson for the service manager position. Before Watson's April 2012 "interview", Gallo had previously (on March 26) submitted a form to upper management stating Gallo had "discussed" the service manager position with Watson and Watson had elected to "accept further consideration for this position".

On May 14, 2012, Gallo appointed Watson temporary service manager and requested a $500.00 weekly salary increase to compensate him for performing the service manager duties. Upper management approved the increase. Watson reviewed service agents' new business reports and posted their weekly "numbers" on the white board. Watson had not met both promotion contest criteria in May and Gallo did not announce Watson the winner of the promotion contest that month.

Watson's temporary appointment to the service manager position gave him access to information and documents which were inaccessible to other applicants. For example, Watson reviewed the new business reports of the other applicants while applicants had access only to their own business in those reports. These reports list policies, or "business," to be issued in the next two weeks. The record does not show Watson used this information to his advantage during the contest period. Neither does the record show Watson used other AIG records inaccessible to the other applicants (including the "890 Reports") to his advantage before he was promoted in 2012.

As temporary service manager, Watson could "push through" business. Usually this was done by making phone requests to Underwriting. Gallo could also push through business. During the promotion contest and while Watson was the acting service manager, Gallo asked Diane Hardwick, a customer service representative (Hardwick), to help him "push through" Watson's business. Hardwick recalled one instance where Gallo called Benton to get a policy of Watson's pushed. The record does not show that Watson himself used his authority to "push" business through to his advantage during the three months he was temporary service manager.

On July 10, 2012 Gallo sent an email to Benton which confirms Gallo's belief at that time that both the $350 NFYP and 93% RPR criteria had to be met by the applicant agent who would be promoted to the service manager position. Gallo's email stated in relevant part:

> Roy [Watson] has gotten his RPR back up to 93.5% as required. ... His NFYP is still low, but with what we have in underwriting being issued he will be about the $350.00. Is there a possibility for extending his $500 another 4 weeks? He is managing the staff, attending all the management meetings, as well as doing all the responsibilities that come with the position and running his own book. Thank you.

Watson exceeded the required minimum $350 NFYP contest criterion several times in April and May 2012, but each time his RPR was below 93%.

On July 14, 2012 Watson's wife purchased another substantial policy (with an annual premium of $1,044.00). Upper management reviewed a "Personnel Change Review" form for Watson's promotion to service manager; there are four signatures on the form, the first on July 27 and the last on August 1 (signature by "HR, Legal"). A note on the form states:

> He has reached 93.55 persistency
> 365 NFYP
> Good job!

On August 6, 2012, Gallo and Watson both signed an "Advancement Opportunity Job Offer" form. This was the formal or "official" request for Watson's promotion to service manage (SM). The form indicated Watson "accepted the position as offered". The completed form also shows the requested promotion to service manager became effective on August 13.

After he became service manager on August 13, 2012, Watson testified he wanted Claimant to "acquire his book". At the time service agency #24 had a book of about $500K. Watson testified about Claimant as follows:

> William had to me the best – knowledge, the best personality for the position he had to – to do any kind of job that we had. And so I personally wanted him on my staff and went to bat numerous times to get him over.
>
> And listening to him and the product knowledge he had, I just knew he would be a big asset. But bottom line ... I got to say with the knowledge, with the personality, everything ...
>
> He wasn't doing nowhere near his ability, and that was the reason that I could never get him approved to move over to the service book.

Claimant's Complaints about Promotion Process

The new business report for July 30, 2012 shows Watson satisfied both contest criteria for the first time. This information was not posted due to Gallo being on vacation, so the other applicants did not know Watson's numbers for July 30. On August 6 Claimant knew he had $350 NFYP (the only criterion he had to meet).

When Claimant walked into the Savannah office on the morning of August 6, 2012, he heard employees saying Watson was going to take over the next week. Claimant went directly to Gallo's office to ask him if this was true. Gallo told Claimant Watson met the numbers. Claimant told Gallo

"what are you doing, I'm eligible also, I made it". Gallo didn't deny Claimant's assertion. Instead, he told Claimant he couldn't "pull it back, it's already been signed off". Claimant complained, saying "I should be considered, I made the numbers, what are you-all going to do?"

At the August 6, 2012 meeting, Gallo started talking about Claimant taking the service agent position to be vacated by Watson. Gallo told Claimant he would "make it worth your while" because "you'll get the book of business (service agency #24) and you can transfer your personal business over to make a larger book of business". Claimant accepted the offer even though he still thought the promotion contest had not been fair.

From March through August 6, 2012 Gallo never told Claimant he was not qualified to become service manager if he satisfied the contest criterion applicable to him. To the contrary, Gallo had encouraged Claimant to apply for the position. During this period neither Watson nor Claimant knew about a "traffic light strategy" to determine how well agents managed monthly account ordinary (MAO) business. Gallo did not tell them, and they did not know about, a MAO color classification guideline that might be considered for promotions to the service manager position.

Claimant's Temporary Appointment to Service Agency #24

After Watson was appointed to the service manager position on August 13, 2012, and while Claimant's transfer request to transfer to service agency #24 was pending, service agency #24 needed to be covered. Claimant thought he was going to be appointed by Gallo to temporarily service Watson's prior service agency. That is what Gallo had told him at their August 6 meeting.

On August 27, 2012, Claimant found out from Watson someone else was going to take his vacated position. The agent was Rick Pickett, a white service agent. Claimant "was stunned" and immediately went to see Gallo. He told Claimant Pickett was temporarily taking over service agency #24 for a limited time because he wanted Pickett to be able to make more money during the "heavy collection" weeks in September and October. Gallo said this would repay Pickett for the work he did on service agency #24 while Watson was temporarily assigned to the service manager position. Gallo also brought up Claimant's request to go on vacation in September as a reason not to temporarily assign him to service agency #24.

Claimant and Gallo "went back and forth," at the August 27, 2012 meeting. Finally, Claimant reluctantly agreed to a deal Gallo proposed. Gallo would approve a 2-week vacation for Claimant in

September and then assign him to temporarily take over agency #24 on October 8. Gallo later confirmed the deal in Watson's presence, saying "I've cleared it upstairs". Claimant took a vacation in September 2012. After he returned, Gallo assigned Claimant to temporarily collect on service agency #24 starting October 8.

Transfer of Personal Business to Service Agency #24

On September 7, 2012, Claimant initiated a request to transfer his non-collectible personal business in sales agency #79 to service agency #24. He did this while waiting for his application for a lateral transfer to service agency #24 to be processed.

Claimant requested to transfer only his non-collectible business (accounts where payments were mailed or bank-drafted). The request did not include his collectibles of about $1,200.00 (accounts where premiums had to be physically collected). Claimant did not want his collectible business transferred to service agency #24. Gallo approved Claimant's request, as submitted, but it still needed the approval of upper management.

AIG transferred Claimant's entire business block to service agency #24. Claimant's collectible business at the time was still $1,200. When review of the transfer request was completed on November 30, 2012, Claimant's collectible business ($1,200) was included.

Claimant worked on service agency #24 and sales agency #79 until December 11, 2011. That was the day Gallo told him Luckett had denied his lateral transfer request.

Request for Lateral Transfer from Sales Agent to Service Agent

After Watson was formally appointed service manager on August 13, 2012, he gave up his service agency #24. On August 10 Benton and Parman both approved Claimant's lateral transfer from sales agent to service agent "if he qualifies". Parman told Benton he would "work with Tom [Gallo] and Daphne [Luckett]".

Claimant submitted a request to transfer to service agency #24 on September 7, 2012. On September 11 Gallo notified Claimant by email that he needed to submit a "letter stating that once you left sales to go to service you understood you could not go back." Benton informed Gallo on September 24 he was waiting for Claimant's letter of agreement to give up his sales agency #79.

On October 8, 2012 Claimant submitted a letter confirming his willingness to state this understanding. The same day Gallo emailed Benton saying "everything is in to get William Anderson

moved from sales agency #79 to service agency #24. ... I am wondering if we can get this done asap. Thanks.". Claimant started collecting on service agency #24 on October 8.

On October 11 and 12, 2012, Gallo emailed Benton about the status of Claimant's pending lateral transfer request. Benton replied that Claimant's request "will most likely be looked at when Steve [Parman] gets back on Monday". On October 16 Gallo emailed a letter to AIG's "Senior Management" team, again urging Claimant's transfer to a service agent position be considered and approved asap, stating in part:

> I am hoping that you approve his transfer. This is not something that all of a sudden he is interested in doing. William has wanted to transfer to the service side for more than two years. ... I told him what he needed to accomplish to be able to transfer and he did as he needed to. As a sales agent William is okay. I do believe he would be better suited to the service side. He has excellent service skills. Plus, because he is older, he has been closer with the service agents that the sales agents throughout his career. The SM and I agree he would be a boost of sales energy to the service side with. He is a firm believer in the IUL & GUL products. We believe he will be infectious with these products, to the older service agents. ...
>
> In closing, please approve his transfer as it would be beneficial to William and the entire FL5A team.

Luckett was the final decision maker on Claimant's requested lateral transfer. She testified that in 2012 AIG had a "traffic light strategy" to determine how well agents managed monthly account ordinary (MAO) business. The published "Service Agent Recommendation Guidelines" in affect then state the MAO color classification for a service agent "should be green or yellow". AIG unwritten policy required Luckett to follow this published guideline.

When Luckett considered Claimant's transfer request on December 10, 2012, the quarterly compensation report register showed the MAO classification for sales agency #79 (Claimant's sales agency) was blue for the third quarter (July-September). This meant Claimant's collectible business (premiums which had to physically collected) was blue during this time. Claimant was unaware of the code green or yellow requirement. Watson did not know about this requirement either.

Luckett denied Claimant's transfer request solely because the AIG report showed sales agency #79 was code blue throughout the third quarter. Luckett did not know Claimant's race when she made her decision. Luckett sent an email on December 10 to "Southeastern Region" which states (bolding added for emphasis):

> Agent Anderson is MAO Color Classification blue due to his performance results from Q3 2012 and is still color classification Blue as of 12/10/12. Unless you have **additional information to consider**, agent is not eligible to be considered for service at this time.
>
> Also, original approval was given to fill agency 24 in August based on FMs plan to place 186, 80 and 175 on counseling for production. Please advise results from this plan.

No "additional information" was provided by Gallo or Benton to Luckett for further consideration.

After Luckett denied Claimant's lateral transfer request, Gallo "blew up" agency #24 by distributing the business to eight agents. Six agents were black and two were white. The white agents received substantially larger portions than the black agents. For example, he gave $100,000 to Pickett and $35,000 to Gibson.

Claimant's Complaints to AIG HR and EEOC

Claimant attempted to appeal Luckett's December 10, 2012 decision not to approve his lateral transfer to service agency #24. In late December he contacted the AIG human resources department (AIG HR). He submitted a four-page written complaint to initiate the process. The first paragraph states:

> I am writing this as an employee disagreement for resolution concerning what has occurred to me over the past year. Please investigate my concerns.

The complaint describes events from October 2011 through December 11, 2012.

The AIG HR Consultant, Faye Bailey, sent Gallo an email on January 2, 2013, directing him to respond to the complaint. Her email to Gallo stated:

> I have a complaint from William Anderson regarding his request to transfer from sales to service. Can you please provide me with a written statement regarding his request. I need to know when he first requested the transfer and if he was ever told it was going to be approved. Also when he was advised it was denied.
>
> On January 2, 2013 Gallo responded to Bailey with the following letter:
>
> As per your request, I am writing a brief statement of the complaint filed with you by agent William Anderson, concerning his transfer to service in August 2012, when it was official that Roy Watson would be promoted to SM. He has wanted to be transferred to the service side since 2010. William had to get all his requirements in order before he would be eligible for the 9/7/12 we submitted the transfer. His requirements were where they needed to be, but he was missing a letter stating he knew that once he transferred he could not come back to the sales side. I did not get that from him till 9/24/12 and faxed it to Steve Parman. On 10/8/12 William asked me about the statue of

> his transfer. I checked with Steve Parman. He said all the requirements were fulfilled and that it was sitting on senior management's desk. I relayed this to William. On 10/16/12, I wrote a letter to senior management. I let them know why he wanted the transfer, my feelings about William transferring and my recommendation to transfer him. In the next two months I was in constant contact with Steve Parman as to when the transfer would get final approval. Each time I spoke with Steve, I informed William that we were still waiting for the final approval. William was a temporary collection agent on agency #24, while waiting to be moved there permanently. A request to have him continue serving that agency was declined on 12/10/12. That's when we found out that his numbers had fallen below the company requirements and that he old not be transferred. I told him at that time when I found out. He was informed numerous times by his present AM, he new SM and I that he had to keep working and keep his numbers up. Obviously, that did not happen.
>
> If William wants to continue the transfer process, he is more than welcome to. I know we have spoken and he knows what the requirements are to be transferred.
>
> Please let me know if you need any additional information.

On January 15, 2013, Claimant contacted EOOC. An EEOC employee prepared a draft charge based upon what they discussed. EEOC mailed the draft charge for Claimant's signature on January 29. On February 13 Claimant went to the EEOC office and filed an amended charge which specifically alleged the 2012 promotion contest for the service manager position discriminated against the black applicants, including himself, stating in part:

> In March 2012, the Service Manager position became vacant. Mr. Gallo informed us that the first person to reach 350 wk NFYP in sales would be promoted to the position of Service Manager. One Caucasian male announced he was so far off the numbers he would not continue to complete. The three of us [the black applicants] remaining African Americans began to notice the company's push in assisting the remaining Caucasian towards making his numbers (April 23, 2012 Amos Speights (African American) made the goal of 374 and was overlooked by management and not offered the job). In June 2012, management approved Roy Watson (Caucasian) to work as trial Service Manager in Savannah GA and paid him $500 extra weekly for community 2-3 days a week from where he lived in Brunswick GA while the 3 remaining African Americans who live and work in Savannah GA were not offered the opportunity to work on a trial basis at all. Unlike the Caucasian male, the two of us African American males had prior management experience in the company and the female African American was LUTCG qualified, yet no opportunity was afforded to us. ...

This detailed EEOC charge was served upon AIG and provided clear notice of Claimant's allegation of a discriminatory service manager promotion contest Gallo conducted in 2012.

Reverse Transfer of Claimant's Block of Business Delayed

Claimant started to collect on service agency #24 on October 8, 2012. A month earlier, he requested his "block of business" be transferred from his old sales agency #79 to service agency #24. He did this anticipating his pending lateral transfer request to service agency #24 would be approved. The transfer request took several months (from September to December 2012) to be processed.

After Claimant's request to transfer to a service agent position was denied by Luckett on December 10, 2012, he decided to request that the November 30 transfer of his block of business to service agency #24 be reversed. He asked Hardwick in early January 2013 to transfer his personal business back to sales agency #79, which he understood to mean his family business. He made this request after his efforts to appeal the denial of his lateral transfer to service agency #24 were unsuccessful. Hardwick could process a reverse transfer, but she needed Gallo's prior approval. Gallo told Hardwick "his hands were tied waiting for Mr. Benton to give the okay".

Luckett testified AIG's strategy in 2012-2013 in Benton's southeast region was to move all collectible business to service agents. If a block transfer request included collectibles, it had to go through an "exception" process. This required review and approval by both Benton and Parman. Because Claimant's block of business included collectibles, his block transfer was reviewed by Benton and then Parman.

At the time Claimant requested a reverse block transfer of his agency #79, his block of business had collectibles on it amounting to about $1,200. So even though Claimant did not want his collectibles to be in included in the reverse transfer, that request had to be reviewed and approved by Parman. Gallo finally received approval from Benton and Parman in March 2013. He immediately told Hardwick to effectuate the reverse transfer. It took Hardwick "a couple of weeks" to implement the transfer Claimant's business back to sales agency #79. Claimant's block of business was not returned to Claimant until April. He lost income in the amount of $672 each month he waited for the return of his block of business.

Claimant did not know Gallo had to get approval from Benton and Parman to complete his reverse block transfer request. Luckett testified a reverse transfer request like Claimant's could take up to three months if it contained collectible business. From January through April 2013, Claimant was "struggling for income". He submitted a request on April 23, 2013 to become a special agent,

which if granted, would allow him to continue selling AIG products while doing other work. This request was granted on June 20. Claimant remained a special agent with AIG until 2017.

Claimant pursued his EEOC claims federal court. A court order sent the case to arbitration pursuant to the American General Life Companies Employment Dispute Resolution Program in effect during Claimant' employment with AIG. Clamant filed his Demand for Arbitration with AAA on July 5, 2017. The hearing on the merits of the claims in this arbitration case was conducted September 5-7, 2018 in Savannah, Georgia. The parties filed post-hearing submissions on November 7.

The sales agent positions in the Savannah office were eliminated on January 6, 2016. The service agent positions were eliminated April 30. AIG closed the Savannah office on April 30, 2016.

Claimed Damages

Claimant concedes he "cannot state definitively what his income should have been in the service agent position as he can only speculate as to what commissions he might have received had he been transferred to the service agent position beginning in August 2012 ...". The damages he claims for lost income as a service manager amount to $215,095.20. Claimant testified he calculated these damages based on an "estimate or a snap shot," stating (bolding added for emphasis):

> Q. You cannot tell me the formula to calculate the service manager damages you're claiming in this case, can you?
>
> A. No, but I told you before I think that when I talked about a snapshot, you have to find out what the agents overrides were just during that period, knowing that they would vary. You have to take an **estimate or a snapshot**. It would not be a science, and I think I was alluding to you have to just make a determination what would be fair because our industry is uniquely different.
>
> As I said before, everybody's pay fluctuates based on so many variables. It's not just an hourly rate nor is it just an annual commission, what they call an annual pay, I made $50,000 a year, what they call it annual. I'm not sure. I forgot the word for it when you just make a fixed amount regardless of how many hours you work.

Claimant also seeks compensatory and punitive damages of an unspecified amount. The record contains only vague testimony by Claimant, for example "I was really going through a lot ... a lot of stress" to support compensatory damages.

Positions of the Parties on their Arbitration Hearing Claims

Claimant raised, presented, and preserved three claims at the arbitration hearing conducted September 5-7, 2018 in Savannah, Georgia. Both parties filed lengthy post-hearing submissions on November 7 in support of their positions on the three alleged violations of Title VII, 42 U.S.C. 2000e *et seq.*, and Section 1981, 42 U.S.C. § 1981.

Claimant's Position

Claimant contends the record shows racial discrimination and retaliation by AIG in violation of his Title VII, 42 U.S.C. 2000e *et seq.*, and 42 U.S.C. § 1981 rights. He seeks lost income damages, compensatory damages, and punitive damages, as well as an award of a reasonably attorney's fee.

Claimant asserts AIG discriminated against him in violation of Title VII and Section 1981 by not promoting him to service manager (**claim #1**) and by allowing Pickett to collect on service agency 24 (**claim #2**). Claimant also asserts AIG retaliated against him in violation of Title VII and Section 1981 by delaying the reverse transfer of his book of business after he filed complaints with AIG HR and EEOC (**claim #3**). It is Claimant's position that his at-will employment relationship with AIG constituted the requisite contractual relationship upon which to base his Section 1981 claims.

Claimant contends he has prevailed on the above-identified three claims which were presented for resolution at the arbitration hearing. Claimant seeks an award finding violations of Title VII and Section 1981, and related monetary, compensatory, and punitive damages. He also requests the award of a reasonable attorney's fee.

AIG's Position

As to **claim #1** (racial discrimination arising from Claimant's failed attempt to be promoted from a sales agent to a service manager in 2012), AIG contends Claimant was not qualified. Alternatively, even if qualified and Watson received "special help," AIG contends Watson was the more qualified applicant. As to **claim #2** (racial discrimination for allowing Pickett to temporarily collect premiums on service agency #24), AIG argues Claimant was not qualified to perform service agent duties and the appointment was reasonably based on Pickett's deserving a "reward" for having covered Watson's agency after Watson was temporarily appointed service manager on May 14, 2012.

As to **claim #3** (retaliation by delaying Claimant's reverse block transfer in 2013 because he filed an AIG HR complaint in December 2012 and an EEOC charge in early 2013), AIG argues this reverse transfer took three months because Claimant's block of business included collectibles. AIG

policy at that time for a reverse transfer with collectibles required multiples levels of approval because it was "disfavored". AIG asserts Claimant failed to prove any of these claims.

AIG seeks denial of Claimant's arbitration claims and dismissal of this case.

Discussion and Opinion

The SM promotion contest discriminated against black applicants, including Claimant (claim #1).

Section 1981 prohibits racial discrimination in the "making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms and conditions of the contractual relationship." 42 U.S.C. § 1981(b). Title VII prohibits employment discrimination "against any individual with respect to his compensation, terms, conditions, or privileged of employment, because of such individual's race ...". 42 U.S.C. § 2000e-2(a)(1). Claimant alleges AIG violated these federal statutes by conducting a racially discriminatory promotion contest for the service manager (SM) position in 2012 at its Savannah office. Because of this discrimination, Claimant asserts he was denied a promotion to SM. This is **claim #1**.

Claimant concedes there is no direct evidence of racial discrimination with respect to his attempt to become the SM. Instead, he relies on circumstantial evidence. The burden-shifting framework established by *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) is therefore applicable. Under both Title VII and Section 1981 analyses, the burdens placed on each party are similar. The burden-shifting process is described in *McCann v. Tillman*, 526 F.3d 1370, 1373 (11th Cir. 2008) (Title VII racial discrimination case) as follows:

> Title VII prohibits employers from discriminating "against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). Where, as here, there is no direct evidence of discrimination, a plaintiff may prove discrimination through circumstantial evidence, using the burden-shifting framework established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). To establish a prima facie case for disparate treatment, McCann must show that "(1) she is a member of a protected class; (2) she was subjected to adverse employment action; (3) her employer treated similarly situated [white] employees more favorably; and (4) she was qualified to do the job." *EEOC v. Joe's Stone Crab, Inc.*, 220 F.3d 1263, 1286 (11th Cir.2000). If McCann satisfies these elements, the appellees must provide a legitimate, nondiscriminatory reason for their action. *Burke-Fowler v. Orange County, Fla.*, 447 F.3d 1319, 1323 (11th Cir.2006). If this burden is met, McCann must then prove that the appellees' reasons are a pretext for unlawful discrimination. *Id.*

See also Moore v. Grady Memorial Hospital Corp., 834 F.3d 1168, 1171-72 (11th Cir. 2016) (Section 1981 case concerning racially discriminatory practices).

Applying this burden-shifting test to claim #1, Claimant must prove (1) he is a member of a protected racial class, (2) he was subjected to an unfair promotion contest due to his race, (3) a similarly-situated white applicant (Watson) was treated substantially more favorably, and (4) he was qualified to apply for and be recommended for the SM position. Claimant is a black male. He was an AIG sales agent when he sought promotion to the SM position vacated by former SM Carroll. At Gallo's urging in late 2011, Claimant had declined a job offer and remained an AIG sales agent so he could compete for the expected SM vacancy.

The general manager of the Savannah-Jacksonville office (Gallo) had authority to select and recommend Carroll's replacement. He announced SM promotion contest "criteria" to Savannah office sales and service agents on March 19, 2012. According to the unwritten contest criteria, the winner would be the *first* agent to produce at least $350 worth of net annual premium and sales (NFYP) while maintaining a service agent renewal persistency rate (RPR) of at least 93%. The RPR criterion did not apply to sales agent applicants. The SM promotion contest began April 2, the effective date of Carroll's retirement. Three black agents (Claimant, Speights, and Gibson) and one white agent (Watson) told Gallo they wanted to compete for the promotion.

The overwhelming record evidence shows the SM promotion contest was a pretext to promote the white applicant (Watson). No black applicant had a genuine opportunity to win. Gallo showed substantial preferential treatment toward Watson before and throughout the contest. For example, during the first week of the contest (April 2-9, 2012), Gallo personally interviewed only Watson. On April 9 Gallo submitted a written promotion recommendation to upper management for Watson even though he had not met the NFYP and RPR contest criteria. Speights was the first applicant to satisfy all the announced contest criteria. The April 23 new business report shows this. However, Gallo did not recommend him for promotion. The contest continued.

Gallo appointed Watson as temporary SM on May 14, 2012. This increased his weekly salary by $500.00. Claimant had prior experience managing AIG sales and service agents (from 2004-2007), but Gallo preferred Watson. Gallo authorized service agent Pickett to help Watson service agency #24

(Watson's service agency) during the temporary appointment. After Watson became SM, Gallo rewarded Pickett by allowing him to collect on Watson's former agency #24 for two months.

Gallo "pushed through" new business for Watson during the SM contest. Shortly after Watson's wife bought a substantial policy on July 14, 2012, Gallo initiated the formal process for Watson's appointment as SM. The new business report for July 30 shows Watson met the RPR and NFYP contest criteria. Claimant made his numbers on August 6, as the new business report for August 13 shows. Claimant was qualified to apply for and be recommended by Gallo to the SM position. Claimant met with Gallo on August 6 and complained about not being recommended since he had satisfied the contest criteria applicable to him. Gallo did not deny Claimant's assertion.

These and other record facts reveal Gallo created, altered, and implemented SM promotion criteria to favor the white applicant. The three black applicants including Claimant had no genuine opportunity to compete against the sole white applicant. These facts in this record prove a *prima facie* racially discriminatory SM promotion process.

AIG did not present a legitimate, nondiscriminatory reason for Watson's promotion. The record shows blatant favoritism of Watson before and during the promotion process, and demonstrates Gallo created and implemented the contest as a pretext to promote Watson. Speights was in fact the first applicant to meet all the contest criteria. He did this on April 23, but Gallo did not select him. Instead Gallo extended the contest so Watson could meet the NFYP and RPR numbers.

When Gallo's actions are considered in their entirety, they reasonably infer he was never going to promote a black applicant – not Speights, not Claimant, and not Gibson – regardless of whether and when any of them satisfied the contest criteria. Gallo's preferential treatment of Watson demonstrates the promotion contest was a sham. The contest was created to make it appear black applicants had the same opportunity to be recommended for promotion as the white applicant, when they did not in reality have such an opportunity.

Consideration of the preponderance of the reliable evidence in this record shows Gallo's promotion process and ultimate recommendation of the only white applicant for the SM position, with upper management's approval, discriminated against the black applicants including Claimant. Accordingly, Claimant proved the SM promotion contest was racially discriminatory in violation of his Section 1981 and Title VII rights.

The temporary appointment of Pickett to service agency #24 did not violate federal law (claim #2).

Claimant claims his Section 1981 and Title VII rights were violated when Gallo appointed Pickett to temporarily collect premiums on service agency #24 from August 13 to October 8, 2012. This is **claim #2**. To prove this, Claimant must satisfy the above-described burden shifting test. The record shows Pickett helped service Watson's agency #24 after Gallo appointed Watson temporary SM on May 14 and before Watson was promoted on August 13. Gallo testified he made this temporary appointment on August 13 to "reward" Pickett for doing that work.

Claimant objected to Pickett's temporary appointment because Gallo had promised it to him when they met on August 6, 2012. At a second meeting on August 27 to discuss this issue, Claimant reluctantly accepted Gallo's decision to appoint Pickett because (1) he would be on vacation for two weeks in September and (2) Gallo promised to temporarily appoint him to service agency #24 on October 8. Claimant temporarily collected on service agency #24 from October 8 to December 11, the day Gallo told him Luckett had denied his lateral transfer request to service agency #24. Pickett and Claimant each temporarily collected on service agency #24 for the about same amount of time.

The preponderance of the reliable record facts shows AIG had a legitimate business reason to appoint Pickett to temporarily collect on agency #24 from August 13 – October 8, 2012. Claimant did not prove this rationale was discriminatory. What the record shows is that Gallo promised the August 13 - October 8 temporary appointment to Claimant, but gave it to Watson based on the nondiscriminatory justification explained to Claimant at the time. The evidence does not show the temporary appointment of Pickett to collect on agency #24 violated Claimant's Section 1981 or Title VII rights. Accordingly, Claimant did not prove claim #2.

AIG's reverse block transfer of Claimant's book of business did not violate federal law (claim #3).

In **claim #3** Claimant alleges his Section 1981 and Title VII rights were violated when AIG failed to timely transfer his book of business from service agency #24 to sales agency #79. He made this request in January 2013 after his appeal to AIG HR did not provide relief from Luckett's December 10, 2012 denial of his lateral transfer to service agency #24. The reverse block transfer was completed in April 2013. Claimant's retaliation claim is analyzed under the above-described burden-shifting framework established by *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

During the time AIG made his reverse block transfer request, AIG's strategy in its southeast region where Claimant worked was to move all collectible business to service agents. Because Claimant's block transfer request included collectibles, it had to go through an "exception" process. This required review and approval by both the regional administrator (Benton) and CMO Parman. Luckett testified this process could take 2-3 months. In Claimant's case, it took about three months. Claimant was unaware of this AIG strategy, the "exception" process, and how long a reverse block transfer like his could take. Claimant understandably surmised AIG might be retaliating against him based on his AIG HR and EEOC complaints filed during the winter. But that belief, however sincere, is not substantiated by reliable record evidence.

The preponderance of the reliable record evidence shows a three-month reverse block transfer time was not unusual in 2013 when collectibles were part of the book of business and the reverse block transfer was from a service agency to a sales agency. The temporal relationship between Claimant's reversal request and the reversal itself does not show a causal connection between Claimant's complaints about denial of his lateral transfer request and the return of his book of business in April 2013.

AIG proved it had a legitimate, non-discriminatory reason for the time it took to process Claimant's reverse block transfer request. The preponderance of the reliable record evidence does not establish AIG delayed this process in violation of Claimant's Section 1981 or Title VII rights. Accordingly, Claimant did not prove claim #3.

What is an appropriate remedy?

Claimant put AIG on notice of the discriminatory SM promotion process (claim #1) in early 2013. This specific allegation is described in detail in the complaint Claimant filed with EEOC on February 13, 2013. AIG had the opportunity and ability to investigate and remedy the discriminatory promotion process to which black applicants were subject in 2012. AIG could have required the SM promotion process to be redone in a nondiscriminatory manner after Claimant filed this charge with EEOC. However, AIG took no action of record in 2013 to remedy the discriminatory 2012 SM promotion contest at its Savannah office.

Claimant did not file claim #1 with AAA until July 5, 2017. AIG's Employment Dispute Resolution Program, at Section 2A (Arbitration and Mediation – Initiation of the Process) allowed

Claimant to submit his claims of racial discrimination to final and binding arbitration "at any time subject to defenses applicable to the timeliness of the claim." Had Claimant initiated the arbitration process in 2012 or 2013, a timely resolution might have remedied the promotion issue before the Savannah office was closed April 30, 2016.

It is six years since the discriminatory treatment of Claimant occurred. Requiring AIG to implement a fair, nondiscriminatory promotion process for the SM position now is not a feasible remedy. The office is closed and the applicants for the SM position no longer work there. The only potential remedy at this point is pecuniary.

Lost Income Damages and Compensatory Damages

While monetary and compensatory damages are recoverable under Title VII and Section 1981, they must be supported by reliable record evidence (not speculation or vague testimony). The standards of proof under Title VII and Section 1981 are comparable. *Patterson v. P.H.P. Healthcare Corp.*, 90 F.3d 927, 939, and 941-42 (5th Cir. 1996). Indirect proof may include estimates based on assumptions, as Claimant points out in his Proposed Order at page 39, but such estimates must be adequately grounded in reliable facts.

In its post-hearing brief AIG states it "vehemently disputes any damages award is appropriate in this case given the lack of liability". AIG contends Claimant's requested monetary damages cannot be awarded because they are all speculative. AIG cites to a 2004 district court case in Kansas, where the court cautioned about awarding damages based on speculative information, stating:

> With regard to the recovery of pecuniary damages, a plaintiff may be awarded actual damages only; those claimed damages that are speculative, remote, or uncertain may not form the basis of a lawful judgment. "The actual damages which will sustain a must be established, not by conjectures or unwarranted estimates of witnesses, but by facts from which their existence is logically and legally inferable. The speculations, guesses, estimates of witnesses, form no better basis of recovery than the speculations of the jury themselves." *United States v. Griffith, Gornall & Carman, Inc.*, 210 F.2d 11, 13 (10th Cir.1954), quoting *Central Coal & Coke Co. v. Hartman*, 111 F. 96, 98 (8th Cir.1901).

Wirtz v. Kansas Farm Bureau Services, Inc., 311 F. Supp. 2d 1197, 1218 (D. Kan. 2004). AIG makes the same assertion regarding damages under Section 1981, citing to *Gunby v. Pennsylvania Electric Company* 840 F. 2d 1108 (3rd Cir 1988) ("Courts have allowed recovery under Section 1981 for

emotional distress, but there must be sufficient evidence to support the award," citing to Er*ebia v. Chrysler Plastic Products Corp.*, 772 F.2d 1250, 1259 (6th Cir. 1985)).

Claimant responds to AIG's contention that his requested pecuniary damages are speculative, citing to *G.M. Brod & Co., Inc. v. U.S. Home Corp.*, 759 F.2d 1526, 1540-1541 (11th Cir. 1985), which states:

> Suffice it to say that "'while the damages may not be determined by mere speculation or guess, it will be enough if the evidence show[s] the extent of the damages as a matter of just and reasonable inference, although the result be only approximate'. The proof may be indirect and it may include estimates based on assumptions, so long as the assumptions rest on adequate data." *Lehrman v. Gulf Oil Corporation*, 500 F.2d at 668 (footnotes omitted) (citing *Story Parchment Co. v. Paterson Parchment Co.*, 282 U.S. 555, 563, 51 S.Ct. 248, 250, 75 L.Ed. 544 (1931); *Terrell v. Household Goods Carriers Bureau*, 494 F.2d 16, 24 (5th Cir.1974); *Hobart Brothers Co. v. Malcom T. Gilliland, Inc.*, 471 F.2d 894, 902 (5th Cir.1973); *Locklin v. Day-Glo Color Corp.*, 429 F.2d 873, 879 (7th Cir.1970), cert. denied, 400 U.S. 1020, 91 S.Ct. 584, 27 L.Ed.2d 632; *Herman Schwabe, Inc. v. United Shoe Machinery Corp.*, 297 F.2d 906 (2d Cir.1962), cert. denied, 369 U.S. 865, 82 S.Ct. 1031, 8 L.Ed.2d 85).
>
> Proof of the amount of damage is less severe than the burden of proving the fact of damage:
>
> > Very often the nature of the wrong makes ascertainment of the damages difficult; but the Supreme Court has emphasized that "[i]n such [a] case, while the damages may not be determined by mere speculation or guess, it will be enough if the evidence show[s] the extent of the damages as a matter of just and reasonable inference, although the result be only approximate." *Story Parchment Paper Co. v. Paterson Parchment Paper Co.*, 1931, 282 U.S. 555, 563, 51 S.Ct. 248, 250, 75 L.Ed. 544, 548. "[T]he jury may make a just and reasonable estimate of the damage based on relevant data...." In such circumstances "juries are allowed to act on probable and inferential as well as [upon] direct and positive proof." Bigelow v. RKO Pictures, Inc., 1946, 327 U.S. 251, 264, 66 S.Ct. 574, 580, 90 L.Ed. 652, 660.
>
> *Terrell v. Household Goods Carriers Bureau,* 494 F.2d 16, 24 (5th Cir.1974). To the same effect see *Twyman v. Roell*, 123 Fla. 2, 166 So. 215 (1936). ...

Claimant concedes he "cannot state definitely how much income he lost" as a result of Gallo's implementation of a discriminatory SM promotion contest during which Gallo afforded Watson substantial preferential treatment. The "lost income" damages Claimant seeks for claim #1 are SM

2011), the Eleventh Circuit described the "daunting obstacles under the law" to prove punitive damages should be awarded, stating:

> A plaintiff seeking punitive damages against an employer for job discrimination faces daunting obstacles under the law established by decisions of the Supreme Court and this Court. "Punitive damages are disfavored by the law and are awarded solely to punish defendants and deter future wrongdoing." Ferrill, 168 F.3d at 476 (quotation marks omitted). "The Supreme Court has directed that, for the issue of punitive damages to reach the jury in a section 1981 case, the plaintiff must come forward with substantial evidence that the employer acted with actual malice or reckless indifference to his federally protected rights." Miller v. Kenworth of Dothan, Inc., 277 F.3d 1269, 1280 (11th Cir.2002) (citing Kolstad v. Am. Dental Ass'n, 527 U.S. 526, 536–37, 119 S.Ct. 2118, 2125–26, 144 L.Ed.2d 494 (1999)) (emphasis added). "Malice means an intent to harm and recklessness means serious disregard for the consequences of one's actions." E.E.O.C. v. W & O, Inc., 213 F.3d 600, 611 (11th Cir.2000) (alteration and quotation marks omitted).
>
> "[P]unitive damages will ordinarily not be assessed against employers with only constructive knowledge of harassment." Miller, 277 F.3d at 1280 (quotation marks omitted). Instead, punitive damages are available only if "the discriminating employee was high up the corporate hierarchy or ... higher management countenanced or approved his behavior." Id. (alteration and quotation marks omitted).
>
> Moreover, "in the punitive damages context, an employer may not be vicariously liable for the discriminatory employment decisions of managerial agents where these decisions are contrary to the employer's good-faith efforts to comply with [§ 1981]." Kolstad, 527 U.S. at 545, 119 S.Ct. at 2129 (quotation marks omitted);11 see also Miller, 277 F.3d at 1280 ("[T]he Supreme Court has held that employers may assert a good faith defense to vicarious liability for punitive damages where the employment decisions of managerial agents ... are contrary to the employer's good-faith efforts to comply with [§1981]." (quotation marks omitted)).

AIG did not specifically respond to Claimant's lengthy and detailed explanation of why he sought punitive damages. AIG relied on the statement in its post-hearing brief asserting "vehement" opposition to any award of damages.

Upon consideration of the entire record, the preponderance of the competent and substantial evidence does not prove AIG's upper management (Benton, Parman and Luckett) knew about or supported Gallo's discriminatory treatment of the black applicants, including Claimant, during the SM promotion contest. While Gallo may have acted with reckless indifference to Claimant's Section 1981 and Title VII rights during the pretextual SM promotion contest, the record does not show upper management did. Accordingly, punitive damages are not awarded.

wages. Claimant's admittedly speculative calculation is $215,095.20 for 216 weeks. This estimate or snapshot of lost income is not grounded on reliable record facts.

After review of the entire record, and in consideration of the above-cited legal standards, it is determined Claimant's evidence to support alleged lost income is speculative. However, there is reliable record evidence upon which monetary relief could be awarded to remedy the discriminatory SM promotion process. The weekly stipend AIG paid for the temporary performance of SM duties (by Watson) *while the promotion contest was ongoing* is a specific indication of the value of the SM work done then. AIG approved Gallo's request for approximately $500.00 a week for this purpose. Claimant's prior experience managing AIG service agents for three years (2004-2007) demonstrates he was capable of at least temporarily performing the SM work Watson did in 2012 while the promotion contest was ongoing.

As stated above, AIG had an opportunity to remedy the discriminatory promotion process in 2013, but failed to do so. It is reasonable to infer AIG could have redone the SM promotion process, this time in a nondiscriminatory manner, within a year from the time Claimant filed his EEOC charge on February 13, 2013. Accordingly, to remedy the racially discriminatory treatment of Claimant, he is awarded $500.00 a month from April 2, 2012 (when Carroll's SM resignation became effective and the contest began) to December 31, 2013. This is a reasonable timeframe during which AIG could have implemented a nondiscriminatory SM promotion process. The total award is $10,500.00 ($4,500 in 2012 and $6,000 in 2013).

Claimant relied on his own testimony to support an award of compensatory damages. This testimony is vague in time and extent. It lacks a precise and detailed factual basis upon which to base a monetary award. Accordingly, no compensatory damages are awarded.

Punitive Damages

Claimant seeks punitive damages for his racially discriminatory treatment during the SM promotion process. To be awarded punitive damages, Claimant acknowledges he must present "*substantial evidence* that *the employer* acted with actual malice or reckless indifference to his federally protected rights," citing to *Miller v. Kenworth of Dothan, Inc.*, 277 F.3d 1269, 1280 (11th Cir.2002) (citing *Kolstad v. Am. Dental Ass'n*, 527 U.S. 526, 536–37, 119 S.Ct. 2118, 2125–26, 144 L.Ed.2d 494 (1999)) (emphasis added). In *Ash v. Tyson Foods, Inc.,* 664 F.3d 883, 900-901 (11th Cir.

Reasonable Attorney's Fee

Claimant seeks a reasonable attorney's fee. Ordinarily, a claimant who has prevailed on a significant issue in a Section 1981 or Title VII case is granted this relief absent unusual circumstances. Claimant prevailed on a significant claim, claim #1 (the discriminatory SM promotion process in 2012) and won substantial damages. Accordingly, he is awarded a reasonable attorney's fee **as to claim #1.** This amount of this fee must be support by detailed and contemporaneous records which justify reasonable charges in this arbitration case. Claimant shall have thirty days to provide documentation to support its requested amount of a fee award for claim #1, to which AIG may respond in thirty days.

Conclusion

Claimant proved by a preponderance of the reliable record evidence that he was subject to a racially discriminatory SM promotion process in 2012 at AIG's Savannah office. This process violated his Section 1981 and Title VII rights (claim #1). To remedy the violation of these rights, Claimant is awarded $10,500.00 in damages. All other claims and damage requests are denied.

Claimant is also granted a reasonable attorney's fee for the time and costs of litigating claim #1 during this arbitration process. This award must be supported by detailed and contemporaneous records which justify a reasonable fee. The parties are encouraged to attempt to reach agreement on the amount of the reasonable attorney's fee within sixty days from the date of this Decision and Award. If agreement is not reached, their evidence and arguments will be resolved by the Arbitrator.

ARBITRATION AWARD

Claimant proved by a preponderance of the reliable record evidence that AIG violated Title VII, 42 U.S.C. § 1981a *et seq.*, and Section 1981, 42 U.S.C. § 1981a, by its racially discriminatory promotion process for the service manager position at the Savannah office in 2012 (claim #1). To remedy this violation of federal law, Claimant is awarded $10,500.00 in damages and a reasonable attorney's fee. This fee is limited to the litigation of the discriminatory promotion claim before AAA. All other claims and requested relief are denied.

This Award shall remain in full force and effect until such time as a Final Award is rendered.

Patricia A. Renovitch

Patricia A. Renovitch, Arbitrator, December 5, 2018

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

WILLIAM A. ANDERSON	)	
	)	
Plaintiff,	)	
	)	**CIVIL ACTION NO: CV 417-117**
vs.	)	
	)	
AMERICAN GENERAL LIFE INSURANCE d/b/a AIG LIFE AND RETIREMENT	)	
	)	
Defendant,	)	

PLAINTIFF'S MOTION TO VACATE ARBITRATION AWARD

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, WILLIAM ANDERSON, Plaintiff in the above case and files this Motion to Vacate Arbitration Award respectfully shows the Court the following:

INTRODUCTION

Pursuant to Federal Arbitration Act 9.U.S.C.§§ 10(a)(1)(2)(3)(4): O.C.GA 9-9-13(1)(2)(3)95). Plaintiff files this Motion to Vacate Arbitration Award. With a case filed before the federal court in the Southern District of Georgia Savannah Division for employment discrimination and retaliation. Plaintiff brought suit for the employer's violations of the Civil Rights Act of 1964 for employment discrimination; 42 U.S.C. Section 1981 and Title VII for employment discrimination and retaliation: and for employment discrimination on disability violations under the Americans with Disability Act of 1990. After Plaintiff filed suit, the Defendant answered suit by filing a Motion to Dismiss or in the Alternative, to Stay and Compel Arbitration. The Court ruled in favor of Defendant and compelled Arbitration.

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This Court compelled arbitration of this matter based on its ruling that the Defendant' s Employment Dispute Resolution Program contract ("EDRP") was not illusory. However, the Court would allow an arbitrator to decide whether or not the Defendant breached its Employment Dispute Resolution Program contract as claimed by the Plaintiff. The Court did not grant a stay along with its ruling. Plaintiff appealed the ruling to the Eleventh Circuit Court of Appeals and the Court subsequently upheld the lower court's ruling. Because of an error in the implementation of a stay, the Plaintiff was required to re-file the case and the federal court allowed the case to be stayed until after the arbitration was complete (Exhibit 1 Refiled stay). Plaintiff filed the necessary paperwork to initiate the arbitration process as instructed by the Court.

Arbitrator Beverly Baker was appointed to the case on August 29, 2017. Once appointed, during a telephone management conference call on October 6, 2017, the arbitrator refused to hear evidence pertinent and material to the controversy and made an arbitrary ruling on significant issues 5-7 of Claimant's Arbitration case that no breach occurred and she was going to hear the case:

(5) for breach of contract for Defendant's failure and refusal to follow the provision entitled "open door policy" as set forth in Defendant's arbitration clause and the Employee Dispute Resolution Program ("EDR program"); and/or in the alternative;

(6) to void the alleged arbitration contract because it lacks consideration as set forth in said alleged arbitration contract; and it cannot be severed or saved because the alleged arbitration contract consists of a single indivisible promise by Defendant to honor the terms of the EDR Program as consideration for giving up Plaintiff's rights to litigate his claims in a court of law;

(7) For a determination that the alleged arbitration contract is not mandatory and/or enforceable as set forth in the EDR program and therefore this arbitration should be dismissed so that Plaintiff can pursue his Section 1981 and State law claims in federal court.

This refusal to hear evidence was documented with witnesses, one of whom was a representative from the American Arbitration Association (AAA) and put on record with the AAA as it occurred during a telephone management conference call (See attached Memorandum of Record/Statement of Facts ("MFR/SOF") submitted to the AAA. (Exhibit 2). Counsel for the Claimant stated on two separate occasions to the arbitrator that she was making a ruling on the case without allowing us to present any of our evidence; Arbitrator Baker replied on both occasions that she did not need to see any of our evidence. This was in violation of Title 9 U.S. Code, Section 10(a)(3).

Counsel for the Claimant then asked Arbitrator Baker did she even read the employee contract that our case involved; Arbitrator Baker replied that she had not. When counsel for the Claimant inquired as how the decision was made without hearing evidence or reading the employment contract, Arbitrator Beverly Baker mentioned reading some kind of documents she received and stated something to the fact that an arbitration agreement was not breachable. Arbitration agreements are bound by simple contract law, therefore this assertion flies in the face of contract law. A contract that has terms, conditions, and acceptance standards cannot be determined unbreachable without being read. That statement can only be true if history shows that every company's arbitration agreement is identical and no arbitration agreement has ever been found to be breached by either side. *Szuts v. Dean Witter Reynolds, Inc.*, 931 F.2d 830 (11th Cir., 1991). Counsel for the Claimant also argued several times to the arbitrator that she was making a ruling without the court reporter present and it should be recorded in writing. The arbitrator disagreed until Ms. Jara of the AAA came off of mute and instructed the arbitrator to send a written order to the AAA. Arbitrator Baker submitted that order several months later on

January 23, 2018 containing what Claimant deems an attempt to cover up her judicial misconduct. (Exhibit 3)

Defendant's response to the MFR/SOF filed with the AAA did not refute the Arbitrator's refusal to hear evidence or most of the other issues documented. It only addressed one statement concerning Arbitrator Baker's comment that she had "spent half her career on the side of big business / corporate America." and went on to suggest Claimant was trying to strike Ms. Baker as an Arbitrator (Exhibit 4 Defendant Email). This was false as Claimant had only submitted the MFR/SOF to document unrecorded and extremely significant facts.

On March 28, 2018, with several motions to compel Defendant AIG to cooperate with the spirit of the arbitration procedure concerning discovery still un-resolved, Arbitrator Beverly Baker recused herself.

On April 11, 2018, Arbitrator Patricia Renovitch was assigned to replace Arbitrator Beverly Baker. Counsel for the Claimant immediately afforded the new arbitrator the opportunity to correct the judicial misconduct of the first arbitrator and allow us to present to our evidence so that we would not once again be denied due process and receive a fair hearing. Arbitrator Renovitch's response was to state that she would not revisit jurisdictional issues decided by the first arbitrator. By refusing to hear evidence pertinent and material to our controversy, Arbitrator Renovitch also became guilty of misconduct. (See attached email stream Exhibit 5). The right to have the case judged by evidence was a right Claimant did not wave.

Despite Defendant AIG's response to the Claimant's request to the second Arbitrator concerning the hearing of evidence with an assertion that Claimant has been arguing jurisdictional issues stemming from the Federal Court and subsequently from the Eleventh

Circuit Court of Appeals, that is not the case. (email stream Exhibit 5). Both Courts found the contract not to be illusory, but as contract law states, only a valid contract can be breached. Once the contract was found not to be illusory, Claimant succumbed to the ruling ordering the case to be brought before arbitration with the full understanding that if the Arbitrator found the valid EDRP arbitration contract in breach, Claimant would be allowed to continue its case within the jurisdiction of the federal court. The arbitrators violated judicial protocol by refusing to hear evidence when given three opportunities to do so. These refusals denied the Claimant a fair hearing and under Title 9 U.S. Code, Section 10(a)(3) are considered misconduct by the arbitrator.

In addition, Arbitrator Renovitch asserted a defense which Defendant never pled. This defense allowed the Defendant to avoid punitive damages and was a clear overstepping of Arbitrator Renovitch's authority and violation of her agreement for neutrality in ruling by preponderance of evidence.

On September 5, 2018 during the opening day of trial, the standard or proof was agreed upon by all to be preponderance of the evidence. Defendant then asked the Court (Arbitrator Renovitch) to allow an exceedingly light burden of showing that they had a nondiscriminatory reason for their conduct. Arbitrator Renovitch rejected his request and stated that she was going to interpret exceedingly light as preponderance of evidence, which is 50 percent plus a very small amount (Exhibit 6, Tr p. 6: 23-25; p. 7: 1-25; pg. 8: 1-25). This statement constituted a contract of agreement that the Court was bound by. As previously stated by the Eleventh Circuit, "an arbitrator is not free to reinterpret the parties' dispute and frame it in his own terms." *Int'l Bhd. of Elec. Workers v. Verizon Fla., LLC*, 803 F.3d 1241 (11th Cir., 2015). Claimant will show that he relied on that agreement to his detriment.

Arbitrator Renovitch not only violated her contractual agreement by deciding her award in a way contrary to the terms of that agreement leading to partiality, but ignored physical evidence and testimony and based the decision of one claim primarily on a false evidence fact that was not presented during the entire trial by either side, therefore, tipping the scale based on preponderance of evidence in favor of the Defendant in violation of 9 U.S. Code (10)(a)(2). This false evidence was also addressed in a timely matter prior to the granting of the final award and could have easily been addressed by the Arbitrator if she had wanted to be truly neutral and unbiased. (Exhibit 9 , RFR p. 3: para 3, p. 4: para 1):

"Further, Claimant respectfully addresses that Rick Pickett was erroneously identified as having collected the service agent position #24 in May 2012 when Roy Watson was given the trial manager position. There is absolutely no mention of Rick Pickett servicing Agency #24 during the month of May 2012 in any deposition or trial testimony from either side. However, it appears that the Arbitrator based her interim decision primarily on this concept not present during the trial or via depositions. The actual pay statements provided by AIG clearly identify that Rick Pickett did not work or receive payment on that position until after 13 August 2012; a full week after claimant was identified as fully qualified to assume the position permanently. In Mr. Gallo's deposition answers concerning the vacation of claimant, Gallo used the term, "I think; I'm assuming; I believe," even at one time saying "No, Okay" to claimant okaying Rick Pickett collecting on agency #24. [Gallo depo. p. 110:22-24; p. 111:1-24; p. 112:1-8]. Claimant's testimony was clear: he testified that he mentioned his desire to go on vacation to Mr. Gallo well after the discriminatory move had already been made.[Tr. p. 162:12-25] It is understandable that the misunderstanding about the white male collecting the position in May of 2012, when Roy became a trial manager, can give the appearance that he was rewarded the position temporarily for working hard on it prior to August 2012, however, physical evidence and testimony from both sides clearly prove that was not the case."

(Gallo deposition at Exhibit 10)

Arbitrator Renovitch refused to relinquish her position. It is Claimant's assertion that this is an example of overstepping her authority and showing of partiality when she refused to avail herself of the opportunity to correct such an obvious mistake as her Final Award had not yet been granted. Arbitrator Renovitch once again aided AIG with undocumented evidence to

render her conclusion and rule against Claimant in violation of her agreement to be neutral as well as her contractual agreement to rule by preponderance of evidence as all other evidence outweighed the one false assertion and this created a bias to the detriment of the Claimant. (OCGA 9-9-13(b)(1),(2) and (3)).

Arbitrator Renovitch also exceeded her authority, displayed partiality and manifestly disregarded the law when she implemented a defense on behalf of the Defendant that they did not request, in order to avoid awarding punitive damages to the detriment of the Claimant 9 U.S. Code (10)(4) and O.C.GA 9-9-13 (2)(3)(5). The Arbitrator had plenty of time to consider her decision as this violation was also pointed out to her prior to the Final Award being granted. The law was clearly defined and the Arbitrator refused to heed the legal principle and in fact ignored Claimant's request by giving virtually no response at all. This once again shows an overwhelming move to grant partiality and favor to the Defendant. (RFR p. 6: para 2-4)

"This reconsideration is requested because the Arbitrator acknowledges that she has made a determination, which has not been argued by the Respondent, to-wit: "AIG did not specifically respond to Claimant's lengthy and detailed explanation of why he sought punitive damages". An arbitrator is 'not free to reinterpret the parties' dispute and frame it in his own terms.'

Int'l Bhd. Of Elec. Workers, Local Union 824 v. Verizon Fla., LLC, 803 F.3d 1241, 1246 (11th Cir. 2015).

Claimant reiterates that AIG's failure and refusal to respond to Claimant's request for punitive damages demonstrates that it knew or should have known that it manipulated the contest and refused to acknowledge or admit the evidence of its senior management's manipulation. As the case law indicates, and as the Arbitrator cited, Respondent had a good faith defense to Claimant's punitive damages claim, which put AIG on notice from the filing of the arbitration demand. However, Respondent's failure to even assert, at a minimum, the good faith defense is fatal. Yet, the Arbitrator has afforded Respondent a defense that AIG has neither argued nor put forth at any time during this matter; not in its Answer, not on its dispositive motion on summary judgment, not in evidence during the hearing, and not in its closing argument."

(Exhibit 11, Interim Award p. 25, para 2).

Accordingly, Claimant was unsuccessful in part in Arbitration. Although the Arbitrator ruled in his favor on the major issue, the Arbitrator failed to award punitive damages.

Arbitrator Renovitch failed to enforce judicial standards that would have allowed Claimant to properly discover and expose Regional Vice President Curtis Benton's knowledge of contest manipulation. This again aided AIG in its position not to be held accountable via punitive damages.

Finally, that Arbitrator Renovitch's decision was so unfair as to be manifestly unreasonable. Arbitrator determined the $10,500 monetary award for Claimant by using speculative dates, including a time frame in which Claimant had already left the company to award $500 per week when the white comparator made hundreds of thousands of dollars in the position obtained by discrimination from a nearly 500 Billion dollar organization. Claimants personal and financial losses so greatly outweighed Arbitrator Renovitch's capricious reasoning as to be manifestly unreasonable and unjust.

FACTUAL & PROCEDURAL BACKGROUND

A brief recasting of the factual and procedural background of this case will aid in putting the basis for this motion in context.

The American Arbitration Association appointed the 2nd Arbitrator, Patricia Renovitch on April 11, 2018. An arbitration hearing was conducted September 5 -7, 2018 in Savannah, Georgia. Of the claims submitted to arbitration, these three claims were ultimately decided to be addressed during the trial:

(1) for claims pursuant to his EEOC charge for violations of TITLE VII of the Civil Rights Act of 1964, as amended in 1991, 42 U.S.C. 2000e et seq. for failure to promote because of race, Black, and for adversely affecting the terms and conditions of employment of Plaintiff because of his race, and promoting a white male, Roy Watson;

(3) for Defendant's violations pursuant to 42 U.S.C. §1981 for failure and refusal to afford Plaintiff the same right to make and enforce his employment contract and secure a promotion and income as was enjoyed by a similarly situated white male, Roy Watson and others because of Plaintiff's race, Black.

(4) For claims for Defendant's illegal retaliation in violation of Title VII, against the Plaintiff for engaging in protected activity in complaining about the racial discrimination.

These claims were adjusted to read:

claim #1: whether AIG discriminated against Claimant, a black male, in the summer of 2012 by failing to promote him to a vacated service manager position in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq., and Section 1981, 42 U.S.C. § 1981;

claim #2: whether AIG discriminated against Claimant in 2012 by not allowing him to temporarily collect premiums on vacated service agency 24 in violation of 42 U.S.C. §1981, and Section 1981, 42 U.S.C. § 1981; and

claim #3: whether AIG retaliated against Claimant in violation of Title VII and Section 1981, by delaying the return of his sales agency book after he engaged in concerted protected activities, including the filing of an EEOC charge in February 2013.Prior to the arbitration hearing and within the afforded time frame, Counsel for the claimant filed interrogatories and discovery motions served on the defendant, AIG.

Claimant prevailed on the most substantial claim #1 concerning racial discrimination violating Section 1981 and Title VII for failing to promote to the Service Manger Position, but Claimant was not properly made whole by the arbitration process.

Prior to the arbitration hearing and within the afforded time frame, Counsel for the Claimant filed interrogatories and discovery motions served on the defendant, AIG.

Claimant requested the contact information on Regional Vice President Curtis Benton only to discover that AIG intentionally provided incorrect information. When compelled by

Claimant's attorney to provide correct information, Counsel for the defendant claimed that they did not have it (Exhibit 12 p. 4). However, AIG later submitted an affidavit from Curtis Benton in support of its dispositive motion indicating that they indeed had his contact information, but did not provide it to Claimant as required. Shortly after that on 18 May, 2018, AIG did produce the contact information for contacting Mr. Benton through his attorney only (Exhibit 13).

Throughout the arbitration procedure, Claimant submitted several motions to compel discovery of interrogatories answers and document production, both the former and current arbitrator and AIG failed to honor the spirit of those judicial demands. Ultimately, parties resolved the basic discovery issues under the second arbitrator. However, Claimant invoked a spoliation claim against Defendant for first refusing to produce and subsequently claiming they no longer had an extremely important report that would have clearly identified who, what, when, and how the contest numbers were being manipulated (Exhibit 17, #14). Claimant accused AIG of manipulating those contest numbers from the start of this case. Claimant pled to Arbitrator Renovitch on four separate occasions a request for spoliations, first during our response to AIG's dispositive motion (Exhibit 14, p. 18-19, secondly during the trial (Exhibit 6, p. 117: 10-25, p. 118: 1-21), thirdly during the closing briefs (Exhibit 15, p. 25-27), and fourthly during the timely filed Request for Reconsideration ("RFR"), (Exhibit 9, p. 5: para 2), submitted prior to the granting of the Final Award.

In the Interim award there was no mention of our spoliation request and the arbitrator seemed to confuse two entirely different document reports. Claimant explained in the RFR the seemingly confusion and reasserted the extreme importance of the destroyed evidence and how the Arbitrator by misunderstanding the difference could have inadvertently aided the Defendant,

AIG in avoiding punitive damages and pleaded with her to consider our spoliation request. (Exhibit 9, RFR: p. 5: para 2; p. 6: para 1).

'AIG first refused to produce, then answered they no longer maintained a document paramount to this case. The interim award brief seems to confuse the New Business Pending Reports with the Agent Compensation Reports (R600s). Claimant testified to the extreme significance of that New Business document during the trial and requested spoliation; however, the Arbitrator gave no attention to it. [Tr. p. 117:19-25, p. 118:1-22]. This is extremely important in that the R600's showed the final NFYP (i.e. 350 NFYP & 93% RPR), but the New Business Pending Reports that AIG failed to preserve would have shown details per policy submitted to the home office and the remarks section reflects exactly who, what, when, and how the NFYP number manipulations would have occurred towards the controlling of the NFYP. Claimant again requests granting consideration of its Spoliation request due to AIGs disposal of New Business Pending Reports that would have proven whether or not upper management, specifically Curtis Benton in this case, manipulated not only the white competitor, but also the black competitors' numbers. Do to the failing to produce, then failing to preserve evidence by AIG that could have clearly given the Arbitrator answers, it can be understood how the Arbitrator's interim ruling could have inadvertently aided AIG in its relief from punitive damages.'

At no point of the arbitration process did Arbitrator Renovitch acknowledge Claimant's spoliation request. Arbitrator Renovitch completely ignored the spoliation request addressing AIGs disposal of new business reports that would have proved upper management manipulated white competitor's numbers. AIG claimed that they no longer had those reports although they were the focal point of the contest numbers from the on start of this case. Arbitrator Renovitch once again aided AIG's position by refusing to acknowledge or address the request for spoliation against AIG. Arbitrator Renovitch's actions aided AIG in preventing the discovery of Senior Management involvement. In negating her contractual agreement to rule based upon preponderance of evidence, Arbitrator Renovitch also ignored physical evidence and testimony that indicated upper management, Curtis Benton's, involvement in contest number manipulation (Exhibit 10, Gallo dep. pp. 71-72 and email at Exhibit 16). Three witnesses, Diane Hardwick, Wonda Gibson, and Dale Morris testified as to how only upper management, specifically

Regional Vice President Curtis Benton, could order the manipulation of the comparators' numbers at that level. AIG put up no defense whatsoever for the spoliation or participation of Curtis Benton. (Exhibit 9, RFR pg 1, para 2; pg 2, para 2 and Exhibit 7, Trial):

"Hardwick testimony indicated that Gallo, Watson, and Benson worked together on at least one occasion to push business through to benefit Watson during the contest. When agents write business, it is sent for approval to the home office where underwriting reviews and approves the business and it becomes issued and reflected as net sales or denied. Only a general manager like Gallo could call or cause the administrative staff to contact underwriting and find out information about why or when business pending would be approved. [Tr. p. 320:10-19]. However, only a Regional level manager like Benton can get underwriting to push the business through quicker. [Tr. p. 320:20-25, p. 321:1-2].

Gallo asked Hardwick to fax a request to push through business for Watson during the contest. [Tr. p. 323:1-11]. Hardwick testified: "Now, I do recall an occasion...he [Watson] had this big policy that he needed to be issued, pushed through in order for him to meet his goal. So, Mr. Gallo had me to fax it to the home office. That way it will go to underwriting quicker because we had a special number--fax number that we could send business through to underwriting. And when they got it, I know that he [Gallo] called Mr. Benton, and when it gets to underwriting, to call him and see if he [Benton] can get it pushed through, see what was the holdup so [sic] that he could go ahead and push the business through." [Tr p. 331:17-25, p.332:1-8]. Wonda Gibson's testimony of hearing the Regional manager saying how he'd be up there and "he's" going to hit the button to get it [new business] pushed through [tr. p. 361:1-3]. Dale Morris' trail testimony of a former RVP named Ron Callahan, who would often manipulate business by pushing it through or delaying its issue. [Tr. p 387:11-14, p 388:1-4]"

(Exhibit 7, Trial)

For claim number two, Rick Pickett was erroneously and falsely identified as having collected the service agent position #24 in May, 2012 by counsel for AIG, that evidence and testimony was not presented during the entire proceeding, however the arbitrator based her decision primarily on this concept not presented by either physical evidence or testimony during the trial or via depositions. The actual pay statements clearly identify that Rick Pickett did not work or receive payment on that position until August, 2012. There is absolutely no mention of Rick Pickett servicing Agency #24 during the months of May thru July, 2012 in any deposition

or trial testimony, therefore there can be no record to show. All parties from both sides testified that Rick Pickett collected agency #24 in August of 2012 only. This fact was timely revealed to the Arbitrator prior to the issue of her final award and Claimant stated in the RFR that it could be understood how that misunderstanding concerning false evidence could lead her to the conclusion that AIG had a nondiscriminatory reason for the discriminatory action AIG made concerning the placement of a white male temporarily in a position promised permanently to the black male, blocking that black male from assuming the position permanently.

For claim number three, concerning the transfer of personal business to service agency #24 and its delayed return to agency #79. This personal business was less than 25% of Claimant's agency #79. Personal business represents the agent's family, personal friends, fellow church members, and other such close personal relations. Non-collectible business is client accounts that are paid by bank draft or mailing payments directly to the Home Office. Collectible business is client accounts that are paid by mailing payments directly to a local agent or physically collected payments by a local agent.

Evidence and testimony clearly indicate that Claimant only transferred his personal business from Agency #79 to Agency #24. (Exhibit 9, RFR p. 4: para 2; p. 5: para 1):

"It should also be noted that collectable business being a reason for the return delay was not mentioned by AIG during its deposition interviews with its witnesses Thomas Gallo and Roy Watson, with Claimant, or in its request for dispositive motion on summary judgment. Evidence and testimony indicate that claimant only transferred a portion that was his personal business from Agency #79 to Agency #24 and not his entire book of business. Claimant's book of business was over $230,000 of non-collectible business and contained only a minuscule amount of ($1200) collectable business that was non-personal. Diane Hardwick testified that claimant had collectible business on his agency and that was correct; however, when pressed by AIG, she clearly stated several times that she could not verify that claimant had transferred the small amount of collectible, but only wanted his personal business returned.[Tr. p. 335:1-5, p. 336:17-24]. Claimant testified that only his personal business, which was all non-collectible, was

requested to be transferred back to him and documented Policy Registers verified such [Tr. p. 434:18-25, p. 435:1-10]. Physical evidence also proves that the return was not conducted until after a retaliation claim was filed to EEOC and Thomas Gallo lied under oath about knowing of the EEOC filing during that time. Although asked, AIG failed to provide any type of written policy or correspondence concerning collectable business, but wants to rely only upon Deborah Carter, who works in licensing and commissions and whose job description on the record does not cover policy registers. In Ms. Carter's brief testimony, she claimed familiarity with policy registers only. Counsel for the defendant asked her 3 quick questions: (1) had she reviewed claimant's policy register, (2) did the transfer have collectible on it, (3) would the transfer back therefore have collectible on it? (not did it have collectible on it). Ms. Carter answered yes to all three questions; however, AIG moved on in questioning and did nothing to corroborate its last minute, added on defense [Tr p. 480:1-10]. However, Ms. Daphne Luckett only called it a strategy and was careful to say "if" collectible business was included it could cause a long delay. [Tr. p. 505:13-15]. Claimant humbly suggests that Deborah Carter's statement alone did not provide a non-discriminatory reason for AIG's retaliatory behavior.

(Exhibit 8, Trial)

Once again, this was less than 25% of Agency #79's book of business worth over $230,000 with only a minuscule amount of ($1,200) worth of collectable business on it and that business was non-personal. Claimant prepared the transfer and Diane Hardwick performed the transfer, both testified that only Claimant's personal business which was all non-collectible was transferred and documented Policy Registers verified such."

Arbitrator Renovitch accepted AIG's verbal claim from a company employee, Debbie Carter that never saw or handled the transfer that the entire business block was transferred, to include the ($1,200) worth of collectible business despite evidence to the contrary. Arbitrator Renovitch ruled against the Claimant on his retaliation claim based solely on AIG's undocumented verbal claim that the ($1,200) collectible business needed some kind of special handling in order to be returned to Claimant and therefore justified AIG not returning Claimants personal business. Documented physical evidence showed that the return was not done until after Claimant filed a retaliation claim with the EEOC. AIG had admitted in its interrogatory

answer that no such policy concerning collectible business transferred existed (Exhibit, Tr, p. 519: 18-23) and only testified verbally that they adopted a strategy. Senior management Daphne Luckett was untruthful in an email stating that Claimant was unqualified to assume the service agent in the third quarter of 2012 because of being color coded blue. (Exhibit 8, Tr. P. 500: 7-9) When faced by counsel for Claimant with the Claimant's actual personnel reports, Daphne Luckett was forced to recant week by week the entire third quarter of 2012 as Claimant not color coded blue, but a qualified color code of yellow (Exhibit 8, p. 511: 11 thru p. 514: 16). This untruthfulness and bad faith behavior of senior management was overlooked by Arbitrator Renovitch. Again, Arbitrator Renovitch violated the agreement to rule by preponderance of evidence and aided AIG with undocumented evidence against documented evidence to render her conclusion with an exceeding light burden for a nondiscriminatory reason, especially a reason that was undocumented, uncorroborated, and not mentioned during any part of the arbitration process until mentioned by Debbie Carter.

SCOPE OF JUDICIAL REVIEW OF ARBITRATION AWARDS

The Federal Arbitration Act (FAA) has placed strong limits on judicial review of arbitration awards. In fact, courts will not overturn or vacate an arbitrator's award unless the arbitrator has violated a provision under Section 10a of the FAA. Accordingly, under the FAA Section 10a an arbitrator's award can be vacated under the following circumstances:

(a)(1), is where the award was procured by corruption, fraud, or undue means.

(a)(2) where there was evident partiality or corruption in any arbitrator.

(a)(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing despite a party's showing of sufficient cause to postpone or refusal to hear evidence pertinent,

and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(a)(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the submitted subject matter was not made.

ARGUMENT

Claimant understands that it not within the Courts jurisdiction to revisit merits in any fashion once they were ruled upon by the Arbitrator, particularly in the Final Award. Claimant is not asking the Courts to revisit the merits, but to determine based upon the Arbitrator's binding agreement to be neutral and the agreed upon standard of preponderance of evidence, that the overwhelming spirit of the arbitration hearing has been tainted with bias, misconduct, overstepping of authority and partiality to the favor of the Defendant and to the detriment of the

Claimant in violation of statutory grounds for vacating an Arbitration award via Federal Arbitration Act 9.U.S.C.§ 10(a)(2)(3)(4); and supported by O.C.GA § 9-9-13(1)(2)(3)(5),

A. The Arbitrator Refused to Hear Evidence Material to the Controversy

FAA 9 U.S.C. § 10(a)(3), provides that the Court can vacate the award if the arbitrator "refused to hear evidence material to the case"

Arbitrator Beverly Baker was appointed to the case on August 29, 2017. Once appointed, during a telephone management conference call on October 6, 2017, the arbitrator refused to hear evidence pertinent and material to the controversy and made an arbitrary ruling on significant issues 5-7 of Claimant's Arbitration case that no breach occurred and she was going to hear the case and stated when questioned on two occasions that she did not have to hear any evidence.

Later Arbitrator Baker recused herself and Arbitrator Patricia Renovitch was appointed as her replacement. Counsel for Claimant asked Arbitrator Renovitch to allow us to present evidence on our claims as Arbitrator Baker had refused to allow us too. Arbitrator Renovitch declined to revisit Arbitrator's Baker's ruling and refused to hear Claimants evidence also.

Neither arbitrator can claim a defense that Claimant's evidence was not pertinent or material because they did not review any of it, nor did either read the actual arbitration agreement. Nor, can AIG claim that the evidence we wanted to present was not pertinent or material. In protest of Claimant wanting to present evidence for the breach, AIG tried to anticipate what our argument presented and never saw or heard what Claimant actually intended to present.

For the claims concerning the breach, evidence presented by Claimant would have included upper management knowledge of the contest manipulations. Claimant made every effort to avail himself of the company policy, Claimant was turned down at every attempt to discuss his complaint with the senior personnel involving both the Service Manager and Service Agent positions (Tr. p. 172). There were witnesses Claimant wanted to produce who were party to conversations and had information concerning what senior management said and did regarding the contest and job positions Claimant wanted to address by utilizing the open-door policy.

Both arbitrators could have simply allowed Claimant to present their physical evidence and produce our witnesses at the beginning of the hearing concerning the breach, documented the senior management awareness and proceeded on with the trial if either found the evidence immaterial concerning the breach. Claimant would have had the testimony on record about upper management's awareness and condoning of the discriminatory practices that took place.

Again, the Arbitrator could have made a quick ruling as to its pertinence and moved on, therefore upholding the law by giving the Claimant fair judicial process. The trial date was eventually set for three days, September 5-7, 2018.

At the time of the Arbitrator's misconduct concerning hearing of evidence, there was no way the Claimant could have predicted AIG's refusals and delays to provide senior management contact information as well as delays, refusals, and spoliation of company reports to deter discovery of just how far up the chain the discrimination practice flowed. The failure to allow us to present this evidence at the onset of the arbitration process which exposed senior management's knowledge of the discrimination proved to be critically detrimental to the Claimant's right to have due process and a fair hearing

B. The Arbitrator showed partiality and misconduct when she failed to honor the legal judicial procedural process of trial by not enforcing motions and sanctions that unfairly aided AIG in its fraud by the act of spoliation and therefore assisting in its defense against punitive damages:

FAA 9 U.S.C. § 10(a)(1)(3), provides that the Court can vacate the award of the arbitrator "where there was evident partiality or corruption in any arbitrator", "or of any other misbehavior by which their rights of any party have been prejudiced)

"Spoliation" refers to "the destruction or significant alteration of evidence, or the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation. *Pinkney v. Winn-Dixie Stores, Inc.* (S.D. Ga., 2015)

Claimant cites the doctrine of continuity to prove spoliation "which states that evidence proven to exist is presumed to continue to exist until the occurrence of some intervening act—and reasons that the [reports] would not have ceased to exist without some intervening,

purposeful act of Defendant to destroy the evidence." *Pinkney v. Winn-Dixie Stores, Inc.* (S.D. Ga., 2015)

For the Court to impose spoliation sanctions, Claimant must prove (1) the spoliation has prejudiced Claimant; (2) this prejudice cannot be cured; (3) the reports are highly probative; and (4) Defendant acted in bad faith, based on circumstantial evidence. *Pinkney v. Winn-Dixie Stores, Inc.* (S.D. Ga., 2015). Claimant asserts that this has been proven and ignored by the Arbitrator, thereby giving unfair advantage to the Defendant. Thus, the Arbitration award must be vacated.

Issues and causes raised by Claimant were ignored by the arbitrator. Accordingly, the arbitrator failed to exercise honest judgment and the arbitrary and capricious award should be vacated. FAA 9.U.S.C.§ 10(a)(2)(3).

C. The Arbitrator violated neutrality and showed partiality by implementing a defense on behalf of the Defendant in her own words, further showing manifest disregard for the law by ignoring law that stated she was not free to reinterpret the parties" dispute and frame it in his own terms.

FAA 9.U.S.C.§ 10(a)(1)(2)(3)(4); O.C.GA § 9-9-13(1)(2)(3)(5),

Arbitrator Renovitch asserted a defense which Defendant never pled. This is a clear overstepping of her authority because "[t]he power and authority of the arbitrator[] in an arbitration proceeding is dependent on the provisions of the arbitration agreement under which the arbitrators[] were appointed. *Szuts v. Dean Witter Reynolds, Inc.*, 931 F.2d 830 (11th Cir., 1991). "An arbitrator is not free to reinterpret the parties' dispute and frame it in his own terms." *Int'l Bhd. of Elec. Workers v. Verizon Fla., LLC*, 803 F.3d 1241 (11th Cir., 2015). By asserting this defense on Defendant's behalf, Arbitrator Renovitch was reinterpreting the terms of the

arbitration agreement. A good faith defense cannot be awarded to the Defendant when evidence ignored by the Arbitrator clearly shows that senior management was steeped in avoidance to include withholding evidence. Good faith is both a company policy and company actions. The Arbitrator pointed out in her own words on page 22 of her Interim award that AIG made no attempt to rectify any of the discriminatory practices that were brought to their attention (Exhibit 11, Interim Award p. 22, para 4). AIG refused to address any of these matters in good faith. For the contractual agreement entered in by Arbitrator Renovitch to rule by preponderance of evidence, Claimant asserts that we provided multiple testimonial witnesses and documented written evidence concerning senior management involvement or denial. AIG provided zero testimony or evidence to their defense, let alone good faith efforts.

D. The Arbitrator Exceeded her authority, or so imperfectly executed them that mutual, final, and definite award upon the subject matter was not made. She further Acted in an Arbitrary and Capricious Manner and thus Committed a Gross Mistake in her Award.

Arbitrator Renovitch contractually agreed with all parties to rule by preponderance of evidence. However, Arbitrator Renovitch changed this position during her Final Award determination therefore creating a prejudice to the detriment of the Claimant and favor of the Defendant. Arbitrator Renovitch was made aware of false evidence being utilized prior to her Final ruling, but refused to relinquish her position of using it to the detriment of the Claimant.

Based on the forgoing, the award in question was obtained by undue and unfair means and should be vacated. On its face, the arbitrator's award demonstrates a failure to exercise honest, unbiased judgment and as such constitutes a gross mistake and so unfair as to be manifestly unreasonable.

The Arbitrator found AIG guilty of discriminatorily promoting a white male into a position over three blacks of which he earned hundreds and hundreds of thousands of dollars, yet only awarded the winning Claimant $10,500 from a company with a net worth of nearly $500 Billion dollars. The Claimant spent out of pocket over $21,000 in retainer fees, disposition fees, flights, hotels, copying, filing fees, etc. The Arbitrator's award leaves the winning Claimant at a financial detriment of over a -$10,000. Claimant testified to turning down a state job offer that included retirement benefits and a fully paid Doctorate Degree Program based on the reliance of senior management promises and agreements to his ultimate detriment. Claimant fulfilled his part of the agreement. However, the Defendant reneged and violated Claimant's rights to fair employment and to this very day, seven years later, that state position has never become available again for the Claimant.

CONCLUSION

Most disturbing is that the Arbitrator was afforded multiple opportunities to correct her misconduct and biased actions before her decision and final ruling were put on record. Claimant's RFR stated to Arbitrator Renovitch, after he pointed out the obvious errors, that he could understand how her misunderstanding about the false dates used in evidence and her mixing up of the documents could have led her to inadvertently aiding AIG in avoiding punitive damages. Arbitrator Renovitch responded to the opportunities to correct her mistakes in her Final Award by stating that she declined to modify the Interim Award because the issue raised in Claimant's request was fully considered and properly resolved in the Interim Award (Exhibit 19, Final Award). That statement alone admits that she fully recognized that there was no "misunderstanding" about her errors and there was no "inadvertently" aiding of AIG, it can only be intentional in an attempt to avoid awarding punitive damages. The record establishes that

Arbitrator Renovitch refused to hear evidence pertinent and material to the controversy. That Arbitrator Renovitch failed to enforce judicial procedures and exceeded her powers by violating neutrality and displayed partiality by implementing a defense on behalf of the Defendant to the detriment of the Claimant. That Arbitrator Renovitch showed partiality, misconduct and so imperfectly executed her powers by ignoring multiple spoliation requests against the Defendant which prejudiced the rights of the Claimant to procure evidence to his detriment. AIG in its closing arguments produced, in defiance to the Arbitrator's agreement, an affirmative position that Defendant had an exceedingly light burden with the ability to implement a single nondiscriminatory reason for their action, while stating Claimant needed a "substantial" burden (Exhibit 18, p. 2-3). Arbitrator Renovitch violated her contractual agreement to rule by preponderance of evidence and adopted AIG's exceedingly light assertion to the detriment of the Claimant.

For a fair and neutral minded Judge, Arbitrator, Jury, or average citizen, the final decisions by Arbitrator Renovitch concerning the second and third claim would have been impossible to reach based on the concept of preponderance of evidence. Although lesser charges, those two claims would have warranted pecuniary awards and punitive damages also. And most certainly that same pooling of a fair and neutral minded group would more than likely not have ignored the need to apply punitive damages based on the bad faith and dishonesty displayed on multiple levels, by a company of nearly a 500 Billion dollar net worth.

RELIEF REQUESTED

Finally, the arbitrator acted in an arbitrary and capricious manner and thus committed a gross mistake in her award. These actions impeded Claimants right to a fair and impartial

hearing. Based on the foregoing, Claimant requests that this Court vacate the Arbitrator's award in partial concerning the refusal to award punitive damages and award the Claimant punitive damages for the successfully won Section 1981 and Title VII race discrimination claim awarding the max allowed for Title VII capped at $300,000 and an amount in excess of that for the uncapped Section 1981 Race discrimination claim. Or in the alternative vacate in partial and allow the Claimant to appear before a new Arbitrator to determine if punitive damages are warranted. Or in the alternative to vacate in whole and allow the Court to determine the breach under basic contract law concerning the valid employment contract and if so, allow this case to return to the federal court to be heard under the case that Claimant is currently asking the Court to re-instate to the trial docket of this court. Or in the alternative to vacate in whole and allow the case to go before a new Arbitrator as Claimant has been so biased by the original Arbitrator that only a new one would be warranted in any future proceedings in partial or whole.

Respectfully submitted this 20th day of February, 2019

William A. Anderson
Claimant, Pro Se

Claimant's Address: 19 Finn Court
Savannah, GA 31419

APPENDIX F

IN ARBITRATION

WILLIAM ANDERSON	)	
Claimant	)	
v.	)	**Arbitration Case 01-17-0003-8997**
	)	
AMERICAN GENERAL LIFE INSURANCE	)	
DBA AIG LIFE AND RETIREMENT	)	
	)	
Defendant	)	

CLAIMANT'S FORMAL REQUEST FOR RECONSIDERATION

COMES NOW, William Anderson, Claimant in the above referenced arbitration who asks that the Arbitrator Renovitch ("Arbitrator") reconsider her interim decision as to punitive damages as to his successful Section 1981 and Title VII racial discrimination claims with respect to the Service manager promotion as follows:

Claimant argued in his proposed order and other inclusions:

"Hardwick testimony indicated that Gallo, Watson, and Benson worked together on at least one occasion to push business through to benefit Watson during the contest. When agents write business, it is sent for approval to the home office where underwriting reviews and approves the business and it becomes issued and reflected as net sales or denied. Only a general manager like Gallo could call or cause the administrative staff to contact underwriting and find out information about why or when business pending would be approved. [Tr. p. 320:10-19].

However, only a Regional level manager like Benton can get underwriting to push the business through quicker. [Tr. p. 320:20-25, p. 321:1-2].

Gallo asked Hardwick to fax a request to push through business for Watson during the contest. [Tr. p. 323:1-11]. Hardwick testified: "Now, I do recall an occasion...he [Watson] had this big policy that he needed to be issued, pushed through in order for him to meet his goal. So, Mr. Gallo had me to fax it to the home office. That way it will go to underwriting quicker because we had a special number--fax number that we could send business through to underwriting. And when they got it, I know that he [Gallo] called Mr. Benton, and when it gets to underwriting, to call him and see if he [Benton] can get it pushed through, see what was the holdup so [sic] that he could go ahead and push the business through." [Tr p. 331:17-25, p.332:1-8]. Wonda Gibson's testimony of hearing the Regional manager saying how he'd be up there and "he's" going to hit the button to get it [new business] pushed through [tr. p. 361:1-3]. Dale Morris' trail testimony of a former RVP named Ron Callahan, who would often manipulate business by pushing it through or delaying its issue. [Tr. p 387:11-14, p 388:1-4]

Gallo testified in his deposition that Benton had contacted him, after he [Benton] had been contacted by AIG prior to his [Gallo] deposition about the lawsuit, Gallo dep. p. 40. Also, the Claimant submits again the evidence elicited during Gallo's deposition at Ex. 1 where Gallo communicated to Curtis Benton that he knew that Roy Watson would get his NFYP up "with what we have in underwriting being issued." Gallo testified that he sent it to Benton. Gallo dep. pp. 71-72. Gallo was untruthful about being able to determine when new business was going to be issued. Gallo dep. pp. 64-66. And, Gallo denied pushing through business, Gallo dep. pp. 105. Which we can consider true as only the RVP, Mr. Benton could have pushed the business through based on evidence and testimonies.

Further, Claimant respectfully submits that the arbitrator overlooked Claimant's testimony that he tried to avail himself of the "open door policy" and contacted Curtis Benton, who refused to see him. Anderson Tr. p. 172

Q. So once you were told you were not going
to be appointed to the position of Roy Watson, what
did you do?
A. At that time I sent an e-mail demanding to
use an open door policy and speak with Curtis Benton.
Q. Were you able to meet with him?
A. No, I was not.
Q. And then what did you do?
A. I tried to speak to Scott German. I
was trying to go up the chain of command to speak to
someone about what had been done to me that I thought
was unfavorable and not right. And I was rejected in
every attempt to utilize that --

Even with a Stay in Federal Court that is current to date, the previous arbitrator, Baker, refused to permit evidence as to whether AIG breached the arbitration agreement by refusing to hear evidence on whether Claimant was denied his ability to utilize the "open door policy." Respectfully, the Arbitrator in the instant case, decided not to revisit that determination.

Further, Claimant respectfully addresses that Rick Pickett was erroneously identified as having collected the service agent position #24 in May 2012 when Roy Watson was given the trial manager position. There is absolutely no mention of Rick Pickett servicing Agency #24 during the month of May 2012 in any deposition or trial testimony from either side. However, it appears that the Arbitrator based her interim decision primarily on this concept not present during the trial or via depositions. The actual pay statements provided by AIG clearly identify that Rick Pickett did not work or receive payment on that position until after 13 August 2012; a full week after claimant was identified as fully qualified to assume the position permanently. In

Mr. Gallo's deposition answers concerning the vacation of claimant, Gallo used the term, "I think; I'm assuming; I believe," even at one time saying "No, Okay" to claimant okaying Rick Pickett collecting on agency #24. [Gallo depo. p. 110:22-24; p. 111:1-24; p. 112:1-8]. Claimant's testimony was clear: he testified that he mentioned his desire to go on vacation to Mr. Gallo well after the discriminatory move had already been made.[Tr. p. 162:12-25] It is understandable that the misunderstanding about the white male collecting the position in May of 2012, when Roy became a trial manager, can give the appearance that he was rewarded the position temporarily for working hard on it prior to August 2012, however, physical evidence and testimony from both sides clearly prove that was not the case.

It should also be noted that collectable business being a reason for the return delay was not mentioned by AIG during its deposition interviews with its witnesses Thomas Gallo and Roy Watson, with Claimant, or in its request for dispositive motion on summary judgment. Evidence and testimony indicate that claimant only transferred a portion that was his personal business from Agency #79 to Agency #24 and not his entire book of business. Claimant's book of business was over $230,000 of non-collectible business and contained only a minuscule amount of ($1200) collectable business that was non-personal. Diane Hardwick testified that claimant had collectible business on his agency and that was correct; however, when pressed by AIG, she clearly stated several times that she could not verify that claimant had transferred the small amount of collectible, but only wanted his personal business returned.[Tr. p. 335:1-5, p. 336:17-24]. Claimant testified that only his personal business, which was all non-collectible, was requested to be transferred back to him and documented Policy Registers verified such [Tr. p. 434:18-25, p. 435:1-10]. Physical evidence also proves that the return was not conducted until after a retaliation claim was filed to EEOC and Thomas Gallo lied under oath about knowing of

the EEOC filing during that time. Although asked, AIG failed to provide any type of written policy or correspondence concerning collectable business, but wants to rely only upon Deborah Carter, who works in licensing and commissions and whose job description on the record does not cover policy registers. In Ms. Carter's brief testimony, she claimed familiarity with policy registers only. Counsel for the defendant asked her 3 quick questions: (1) had she reviewed claimant's policy register, (2) did the transfer have collectible on it, (3) would the transfer back therefore have collectible on it? (not did it have collectible on it). Ms. Carter answered yes to all three questions; however, AIG moved on in questioning and did nothing to corroborate its last minute, added on defense [Tr p. 480:1-10]. However, Ms. Daphne Luckett only called it a strategy and was careful to say "if" collectible business was included it could cause a long delay. [Tr. p. 505:13-15]. Claimant humbly suggests that Deborah Carter's statement alone did not provide a non-discriminatory reason for AIG's retaliatory behavior.

AIG first refused to produce, then answered they no longer maintained a document paramount to this case. The interim award brief seems to confuse the New Business Pending Reports with the Agent Compensation Reports (R600s). Claimant testified to the extreme significance of that New Business document during the trial and requested spoliation; however, the Arbitrator gave no attention to it. [Tr. p. 117:19-25, p. 118:1-22]. This is extremely important in that the R600's showed the final NFYP (i.e. 350 NFYP & 93% RPR), but the New Business Pending Reports that AIG failed to preserve would have shown details per policy submitted to the home office and the remarks section reflects exactly who, what, when, and how the NFYP number manipulations would have occurred towards the controlling of the NFYP. Claimant again requests granting consideration of its Spoliation request due to AIGs disposal of New Business Pending Reports that would have proven whether or not upper management,

successfully proven Section 1981 and Title Vii racial claims in an amount that would provide justice, make whole, and adequately deter a company the size of AIG from future behavior of this kind.

This 10th day of January, 2019.

William A. Anderson
19 Finn Court
Savannah, GA 31419
CLAIMANT