NO. 20-55

In The

SUPREME COURT OF THE UNITED STATES

WILLIAM A. ANDERSON,

Petitioner,

v.

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

Respondent.

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

REPLY BRIEF IN SUPPORT OF CERTIORARI

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INTRODUCTION AND SUMMARY OF ARGUMENT

AIG's brief in opposition does not try to challenge the core contention of Anderson's petition: That prior to her final ruling, Arbitrator Patricia Renovitch was made aware of fabricated false evidence identified as testimony from a witness as well as other misbehaviors she was committing via her Interim Award. That testimony was non-existent throughout the entire arbitration process and she went on to intentionally use that fabricated false evidence to rule against a claim of the Petitioner, thereby committing behavioral misconduct by violating his due process rights worthy of vacatur under 9 U.S.C. § 10(a). Petitioner has not asked the Court to upset an arbitrator's fact-finding. Petitioner has clearly stated multiple times that he has not argued that the arbitrator made evidentiary and procedural errors covered by the very broad fact-finder and clear error protection afforded to arbitrators. Petitioner instead has maintained that the arbitrator's deliberate actions were multiple acts of behavioral misconduct and violation of constitutional due process law to protect AIG from punishment.

In its Brief in Opposition, AIG misrepresents what Petitioner presented in the Petition for a Writ of Certiorari, Petitioner did not concede that there was no circuit split on the issues on appeal because it is not the issues on appeal that the Petitioner spoke of. What the Petitioner clearly spoke on was concerning Supreme Court established precedent for the issue of punitive damages and that the circuits are not split on those guidelines; guidelines which the Eleventh Circuit allowed the arbitrator to thwart in order to protect AIG from punishment. AIG goes on to state

that the Petition does not cite a single case from this Court concerning the issues raised on appeal. This case's issues are novel and will establish a precedent that will affect the judicial system nationwide, if not worldwide for many years to come.

Despite AIG's contention that petitioner is trying to get certiorari granted on error, that is not the case. Certiorari is appropriate because petitioner's objections are both constitutional and exceptionally unique and not based on fact-finding or fact-finder error and the relevance of this novel case and its effect on the public goes well beyond just this particular case.

ARGUMENT

I. AIG AND THE LOWER COURTS FAIL TO REFUTE THE MOST SUBSTANTIAL CONSTITUTIONAL DUE PROCESS VIOLATION OF THE ARBITRATOR

In their opposition brief and in every other reply brief by AIG, including orders from the U.S. District Court for Southern Georgia and the Eleventh Circuit Court, they continually circumvent and ultimately fail to refute the most substantial reason for finding that the Arbitrator was guilty of misbehavior within the scope of misconduct allowed under 9 U.S.C. § 10(a). In particular, that falsified, fabricated, non-existent testimonial evidence was used to create a bias favoring the defendant and detrimental to the plaintiff were revealed in the Arbitrators Interim Award issued on December 5, 2018. This and other assertions were brought to the attention of that Arbitrator in writing in a Request for Reconsideration on January 10, 2019. That same Arbitrator, who deliberately disregarded those assertions, went on to use that false, non-existent, fabricated evidence against the Plaintiff's

position in her Final Award nearly 2 weeks later on January, 22 2019. Some of the other misbehaviors of the Arbitrator were presented to this court and they simply compound the overall misconduct the Arbitrator exhibited to allow AIG to go unpunished for racial discrimination and retaliation.

In its opposition brief, AIG spoke to the broad difference afforded to arbitrators. The petitioner is fully aware of the broad difference afforded arbitrators as well as the broad relief from evidential and fact-finding errors. In contrast to what the Respondent claims, Petitioner does not seek to undermine the role the federal courts play in reviewing arbitration proceedings. The petitioner is pointing out a violation of constitutional due process as well as other acts of misconduct that falls well within the realm of vacating an arbitrator's Final Award under 9 U.S.C. § 10(a)(3); especially in this case when an officer of the court knowingly uses false evidence that was non-existent and fabricated.

AIG, the federal courts, and the Eleventh circuit could easily destroy Petitioner's most substantial claim with one fluid motion by simply pointing out in the record the testimonial evidence the Arbitrator claimed Tom Gallo testified; of which she used to deny one of Petitioner's claims. Petitioner's argument would be demolished, instead AIG wants to convince this honorable court to not do factual judicial review of the Interim Award and simply take the lower courts' word and lump this misconduct under the broad protection of fact-finding error afforded to Arbitrators as the Eleventh Circuit Court has done.

In its opposition brief, AIG continually refers to the fact-finding and clear error defense that the lower courts attempt to establish to cover most of the Arbitrator's misconduct accusations. AIG further attempts to convince this honorable court as to how any claims associated with fact-finding does not satisfy any of the grounds under 9 U.S.C. § 10(a). If it was simply a fact-finding issue, that may very well be true and it would be in the best interest for the defendant that the circuit court and district court find that the false, non-existent fabricated evidence that was utilized would fall under fact-finder error. However, that contention is flawed in that the fact-finding and clear error protection is normally applied after the Arbitrator's Final Award is issued and the parties discover the discrepancies for the first time. This was most damning and fatal to the arbitrator because once that false evidence utilization was brought to the arbitrator's attention prior to her Final Award and she disregarded the discovery, it was no longer fact-finder error, but instead it was a deliberate due process violation and therefore an act of misconduct.

The Arbitrator was fully aware that she was making a ruling based on false, non-existent, fabricated evidence and that utilization was not in error. AIG has had multiple opportunities to point to the testimonial evidence in the record to prove that it exists, but they did not because they could not. AIG would instead want this honorable court to continually call it fact-finder's error when in fact it was pointed out to both the Arbitrator and the defendant as fabricated false evidence well in advance of the Arbitrator's Final Award and AIG knew the fabrication helped their weak case so they said nothing.

Although this is a Civil Proceeding, fabricated evidence is clearly identified as a constitutional violation in Criminal Proceedings under multiple Constitutional Amendments. This case will be considered unique in that Arbitrator Renovitch was made aware of fabricated evidence in time to avoid using it in her ruling and did not, instead continued on with it in an act of deliberate misconduct.

In opposition, AIG regurgitates the eleventh circuit's contending that Petitioner's claim of false evidence being used was not preserved because it had not been brought up before the District Court is totally without Merit. The case record clearly shows it was brought up to the Arbitrator in the Request for Reconsideration and then to the District Court in the motion to vacate. In fact, the District Court clearly acknowledged the false evidence claim in its published order on March, 19 2019. Pet. App. B-17. AIG and the lower court's desperate attempt to isolate and focus on the word "collected" as a preservation error is extremely unavailing.

AIG claims in its Brief in Opposition that petitioner failed to cite any cases pertaining to established Supreme Court guidelines concerning punitive damages and therefore those guidelines are not relevant as Petitioner referred to their utilization in the Third Circuit. Petitioner disagrees; in fact it was the Arbitrator and the District Court who brought up and identified the Supreme Courts holding to those established precedents. The lower courts problem is that the guidelines they outlined where met by the Petitioner and blatantly misapplied by the Arbitrator and subsequently misconstrued by the courts to defend the Arbitrator's deliberate misapplication of those guidelines to protect AIG from punishment.

Again, in its Brief in Opposition, AIG attempts to misguide this court when they claim that the arbitrator actually determined that Petitioner had not met his prima facie burden of establishing the requisite malice. That is not true. Plaintiff properly argued that his request for punitive damages should have been allowed if the Arbitrator had followed Supreme Court held precedents as those guidelines were clear and that all the circuits were in agreement with those guidelines. See. *Kolstad v. Am. Dental Ass'n,* 527 U.S. 526, 536-37 (1999). In the Interim Award, Plaintiff identified to the lower courts where the Arbitrator in her award rendering had established that the Plaintiff had established a prima facie burden and found the respondent Guilty of Racial Discrimination with reckless indifference. See. *Ash v. Tyson Foods, Inc.*, 664 F.3d 883, 900 (11th Cir. 2011). The arbitrator went on to proclaim that AIG was put on notice of the discrimination described in detail and they had the opportunity and ability to investigate and remedy the discriminatory act, but AIG took no action. Pet. App. D-22.

After stating how AIG was put on notice and took no action, Arbitrator Renovitch went on to state in direct contradiction to her own finding that:

> 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. *Id.* at D-26.

The Supreme Court's holdings on punitive damages are not that vague or sticky, AIG was put on notice so they knew about Gallo's discriminatory treatment against the blacks and did nothing. The guidelines do not say that any particular person in upper management had to act with the same reckless indifference as the offender, only that higher management countenanced or approved his behavior. At this point, the Supreme Court's held precedence clearly required that AIG needed to have asserted an affirmative good faith defense towards Gallo's behavior in order to avoid punitive damages. They had not, but the Arbitrator asserted a punitive damage defense on AIG's behalf.

AIG and the lower courts are ignoring the fact that the arbitrator's ruling found AIG guilty under both 42 U.S.C.A. § 1981 and Title VII for racial discrimination and that the plaintiff met that burden. She found that Tom Gallo, who was a part of senior management, acted with reckless indifference and explained in her findings that when AIG leadership was put on notice, they did nothing to correct the Discrimination when they became aware. See. *Miller v. Kenworth of Dothan,* Inc., 277 F.3d 1269, 1280 (11th Cir. 2002)

After seeing the Interim Award and realizing the misconduct the Arbitrator was attempting, Petitioner submitted a Request for Reconsideration to give her an opportunity to relent from such a course of action. In the request for reconsideration the Petitioner addressed in detail the utilization of false evidence and directly challenged the good faith defense the Arbitrator asserted on AIG's behalf; pointed out multiple pieces of ignored evidence submitted in writing, emails,

and testimony where Senior Management signed off on the contest's manipulated numbers and more. Knowing that the Petitioner had met all Supreme Court guidelines, and being made aware of the fabricated evidence and other issues, the arbitrator still refused to act on those red flags and issued her Final Award denying punitive damages and protecting AIG. Therefore, just as cited in the Petition for Certiorari concerning her ruling in *Spriggs v. Mercedes Benz USA, LLC*, CV 213-051 (S.D. Ga. Apr. 26, 2016), the District Court should have known that the arbitrator, had in fact, established that the petitioner met the burden of substantial evidence warranting punitive damages, but instead took actions to protect AIG. This is another clear example of the arbitrator's misconduct bias of finding a reason to help AIG get away with racial discrimination without punishment or reprimand.

AIG in its Brief of Opposition claims that Petitioner is suggesting that the arbitrator entered into a binding contract (or, at a minimum, an enforceable promise) to apply a "preponderance of evidence" standard. That is true. The recorded trial itself details what she agreed to and then changed her position in her Interim Award without notifying the petitioner and that change was a bias which favored AIG. In the Request for Reconsideration stemming from that Interim Award, the Petitioner identified in detail the use of fabricated evidence and also the ignoring of overwhelming evidence presented by the Petitioner for the other claims.

Again, the most damning violation being the Petitioner asking the arbitrator to reconsider utilizing that fabricated evidence as a non-discriminatory reason to deny one of the Petitioners claims. Even when faced with all the other

Again, although this is a civil proceeding, in criminal proceedings the Court has said that the use of fabricated evidence is a practice that the Constitution "cannot tolerate," *Miller v. Pate*, 386 U.S. 1, 7 (1967). It should not be tolerated in civil arbitration proceedings either.

The other two questions in the petition notwithstanding, the question looming: is **intentionally** utilizing fabricated evidence by an officer of the court considered misconduct; especially when in arbitration situations where the arbitrator is made aware of that fabricated evidence prior to their final ruling? In that scenario, is this constitutional violation protected under the broad protection afforded to arbitrators from fact-finding error once their Final Awards have been issued or does a party presenting itself before an arbitrator forfeit the fundamental rights of constitutional justice?

CONCLUSION

For the foregoing reasons, and those discussed in the petition for writ of certiorari, the petition should be granted.

Respectfully submitted,

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