No. 21-7521

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Paul E Piecznski — PETITIONER
(Your Name)

vs.

Commonvealth of PA, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Appeals CT Third Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Paul E Piecznski
(Your Name)

1078 Wyoming Ave # 122
(Address)

Wyoming, PA, 18644
(City, State, Zip Code)

(570) 874-5171
(Phone Number)

QUESTION(S) PRESENTED

The Federal Arbitration Act Title 9 section 12 bars vacating or modifying an award after three months. Is the petition or motion, when seeking confirmation to confirm a "time bared" arbitration award, a miscellaneous filing or civil action complaint filing?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

COMMONWEALTH OF PENNSYLVANIA, et, al

STEFANIE J. SALVANTIS, acting District Attorney et, al

MICHAEL T. VOUGH, acting Judge et,al

DAVID W. LUPAS, acting Judge et, al

RELATED CASES

Pieczynski v. Commonwealth of Pennsylvania, et, al, No. 3:20 cv 1502, U. S. District Court for Middle District of Pennsylvania. Decision April 19, 2021

Pieczynski v. Commonwealth of Pennsylvania, et, al, No. 21-1960, United States Court of Appeals for the Third Circuit, Decision Dec. 2, 2021

TABLE OF CONTENTS

INDEX TO APPENDICES

CASES **TABLE OF AUTHORITIES** **Pages**

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix D to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[x] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was December 2, 2021.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: January 4, 2022, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution

Article I page 10

Section 10, clause 1.The Contract Clause appears in the United States Constitution,. The clause prohibits a State from passing any law that "impairs the obligation of contracts" or "makes any Thing but gold and silver coin a tender in payment of debts".

Article IV page 24

Section 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Federal Arbitration Act

Section 6. Any application to the court hereunder shall be made and heard in the Making and hearing of motions, except as otherwise herein expressly provided.
Page 19, 23

Section 9. If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.
Page 9, 18, 22

Section 10. (a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—
(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 postpone the hearing, upon sufficient cause shown, or 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, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(b)If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

(c)The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

Sec. 10 Page 9, 18

Section 11. In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration—

(a)Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

(b)Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

(c)Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

Sec. 11 Page 18

Section 12. **Page 6, 18, 19, 20, 21, 24**

Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

18 USC §242 Deprivation of rights under color of law **Page 10, 16**

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

42 USC §1983 Civil action for deprivation of rights **Page 10, 16**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution

Article I page 10

Section 10, clause 1.The Contract Clause appears in the United States Constitution,. The clause prohibits a State from passing any law that "impairs the obligation of contracts" or "makes any Thing but gold and silver coin a tender in payment of debts".

Article IV page 24

Section 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Federal Arbitration Act

Section 6. Any application to the court hereunder shall be made and heard in the Making and hearing of motions, except as otherwise herein expressly provided.
Page 19, 23

Section 9. If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.
Page 9, 18, 22

Section 10. (a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—
(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 postpone the hearing, upon sufficient cause shown, or 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, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(b)If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

(c)The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

Sec. 10 Page 9, 18

Section 11. In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration—

(a)Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

(b)Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

(c)Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties. **Sec. 11 Page 18**

Section 12. **Page 6, 18, 19, 20, 21, 24**

Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

18 USC §242 Deprivation of rights under color of law **Page 10, 16**

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

42 USC §1983 Civil action for deprivation of rights **Page 10, 16**

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

The matter being brought to the Supreme Court is to determine the proper filing in the district courts to petition or motion for a confirmation of a "time bared" arbitration award under the Federal Arbitration Act, here in F.A.A., Title 9 section 12. The Petitioner, in the United States Middle District Court of Pennsylvania, filed a Motion for Confirmation of a time bared Award as a miscellaneous case in August of 2020. The District Court assigned case 3:20 MC 449. Several weeks later the Court changed its mind and referred to the filing as a Complaint and said fees should be paid for a Complaint. The District Court used phrases such as, "filed his Complaint," "with his Complaint," "the face of the Complaint," etc. In an eleven page Report and Recommendation the word "Complaint" shows up sixteen times. The Petitioner informed the Court that no one was complaining and further the Respondent would be time bared and that there is no dispute to litigate.

The District Court ignored and dismissed without prejudice. Petitioner appealed to the Third Circuit. Although the Third Circuit made statements that do support the Petitioners' claim, the Third Circuit upheld the opinion of the District Court. A Rehearing was denied.

The Petitioner, in the District Court, submitted a 1) notarized Declaration to Petition for Confirmation of the Award. The Declaration explained some of the details of the arbitration and Award. Also submitted was a 2) Declaration from the Arbitrators, which also explained the arbitration, reason for the findings, the details of every dollar

awarded and justification. Also submitted 3) Notice and Memorandum of Law by Affidavit justifying the right to arbitration by the people. 4) A Show Cause for Failure to Confirm. The Show Cause walks the Court point by point to conclude that the Court is required to confirm. 5) The Award and the 6) Agreement to Arbitration and 7) two Orders were also provided.

The matters that instigated the arbitration originated in the Pennsylvania Luzerne County State Court. These matters in the Luzerne County Court don't need to be spoken of since the U.S. Supreme Court said that belongs to the arbitrators. The Respondents time to move on the Award expired around the time of November 30, 2019. However, it appears that the federal District Court is going into the Award. Inferences are made to the credibility of the arbitration and the damages awarded. A reason to justify this assumption is that Petitioner submitted a second time barred arbitration award to the same District Court. The District Court said both arbitration confirmations were similar and said the second Petition also needed to be a civil action filing.

However, the District Court showed its hand by citing Clark v Conahan 737 F. Supp. 2d 239 (M.D. Pa. 2010). There is a citation in Clark that states judges have absolute immunity when performing judicial acts. The irony is that the case was in front of the same Middle District Court of PA and Conahan a Luzerne County judge, from the same court house as the Respondents, ended up in prison. Bewildering! Conahan was sadly involved in the renowned "kids for cash" scandal.

The pre-arbitration and arbitration circumstances should not be an issue in this Petition to the Supreme Court. However, the District Court has addressed and insinuated a stigma of illegitimacy surrounds the matter. The Petitioner could say with absolute certainty that the District Court did not spend nearly three years monitoring the circumstances that surrounded the instigating matter down at the county level, nor was the Court involved with the arbitration. The District Court is either unfamiliar or hostile toward the arbitration confirmation process or playing defense attorney for the Respondents. Remarks made in the Report and Recommendation present the appearance that the District Court wants to re-litigate the matter and essentially void a final and binding award. If the Respondents, who are learnt in law didn't move to defend themselves, by what means does the District Court get to assume the authority to defend the wrong doer? Or by what means does the Court get to declare the Respondents innocent of any wrong doing? Petitioner fears that succumbing to a complaint filing will open to door to what would amount to unlawful challenges to the findings by the arbitrators and extent litigation for many more months if not years down the line. It's been nearly six years since the first charge against the Petitioner.

This compels the Petitioner to address the lengthy footnote on page two in the Report and Recommendation. Petitioner will address the footnote in four separate parts. The first point in the footnote the District Court said;

> "The subject of the arbitration is not entirely clear from the face of the Complaint. It appears Plaintiff is attempting to dispute two State Court criminal proceedings against him in which he entered guilty pleas...."

The answer is there is a running challenge to jurisdiction. The Respondents have not and could not prove their jurisdiction and predicating authority. The Petitioner did not address himself as "Plaintiff" or file a "Complaint" but rather a Motion to Confirm an Arbitration Award. Absent a complaining party it is not up to the Court to go into the Award. The Petitioners' Declaration and the Arbitrators Declaration explains enough for the Court to understand although the Arbitrators are under no obligation to explain. The following cited in Henry Schein v. Archer and White Sales, U.S. Supreme Court No. 17-1272 Jan. 8, 2019.

> A court has "'no business weighing the merits of the grievance'" Because the "'agreement is to submit all grievances to arbitration Not merely those which the court will deem meritorious.'" Id., at 650 (quoting Steelworkers v. American Mfg. Co., 363 U.S. 564, 568 (1960).

The Petitioner did not file a Complaint and neither did the Respondents. The Respondents were well aware of the of the agreement/contract and the damages sought in arbitration. Respondents lacked grounds allowed by the F.A.A. Title 9 §9 and §10 to challenge the Award. The Respondents are known as acting judges but more accurately serve as administrators and acting district attorney and should know the law unlike an acting truck driver or acting plumber most likely would not be familiar with the law. The District Court should not assume the role of defense attorney for the Respondents. The Respondents are the accuser in the instigating matter and jurisdiction and predicating authority were challenged. Respondents went silent. In no world can the accusers plead the fifth.

Had the Respondents had immunity they would have objected at the

restatement of contract Counter Offer and eventually if needed, moved to vacate the Award. Is the District Court implying the Respondents were not smart enough to do that? Or is the District Court saying the Respondents are beyond reproach and the Petitioner is the wrong doer? Where is that evidence? Or maybe the District Court is saying, hey we got your back colleague's.

The two cases in the State Court have CUSIP numbers evidencing the administrative rather than the judicial nature of the court. The Respondents violated their oaths, violated constitutional Rights under color of law, forced a political status by mandating an attorney and operated with deficient jurisdiction. Violations fall under 18 USC §242 and 42 USC §1983 which allows for any proper proceeding for redress. Arbitration is a congressionally approved proceeding. But regardless of all, arbitration is an agreement/contract not a law suit. The right to contract is unlimited, U. S. Constitution Article 1 sec. 10, and can occur by parties mutually agreeing or tacitly assenting. Respondents didn't challenge or object. The Respondents may not want a public trial.

Petitioner did plead guilty in two different alleged criminal proceedings at the State Court level. Both instances were in-material and there was no damage to property or person. The guilty plea came after two and a half years in the court system. Cases were lowered to misdemeanors. The penalty offered for the first case was $25.00 fine no probation. The acting Judge raised the fine to One Hundred Dollars. The second case was no fine, four month's probation with no probation costs and pay $113.00 for a lab fee. Lab fee not performed on Petitioner. In both cases pay some court costs which

was described by the Public Defender as a small amount. This was two different cases with two different acting judges scheduled at the same time with the same Public Defender.

The Petitioner appealed both matters although there is the appearance that one could not get a more favorable outcome. The feeble penalties, should justify the statement that "something is rotten in Denmark." The District Court is obviously not privy to the circumstances surrounding the proceedings that the District Court references.

The Petitioner went to appeal without an attorney. Eventually, under a restatement of contract rescinded the appeal in lieu of arbitration and noticed all parties. During the transition the Appellate Court inquired as to what happened to the attorney. One acting Judge, in an Order to the Appeals Court, said in Petitioners "Notice to Rescind Appeal in Lieu of Arbitration" Petitioner does not want an attorney. This matter was eventually closed at the Pennsylvania appellate and county court level after the arbitration Award was filed into the cases.

Regarding the second case the acting Judge went ahead and appointed an attorney to continue the appeal. To this day the Petitioner never met that attorney, never spoke with the attorney or emailed or texted the attorney. The Petitioner couldn't pick out the attorney in a line-up.

Apparently the attorney reopened the appeal on the grounds the Petitioner, or more accurately described as the attorney's imaginary appellant, did not like the sentencing. The attorney than failed to submit to the Appellate Court a brief to

support the attorneys' imaginary grounds for the appeal. Instead the attorney asked to be dismissed from the case. This is evidence how the bar card union is manipulating the people's lives. There is a case record of all this and this is the same "kids for cash" court house. Is this a fair statement to make one might ask?

Consider this second point the District Court makes in the Report and Recommendation in the page two footnote. The District Court referring to LAMG International Arbitration stated; "This firm has been criticized by at least one other court." Petitioner doesn't know what this means but assumes it's an effort to discredit the arbitration. Could the Petitioner say many federal judges broke the law? Could the Petitioner say thousands of U. S. judges break the law or their oaths? To support these claims see the following articles. Reuters June 20, 2020 reporting thousands of U. S. judges break the law or oaths and keep their seats. www.reuters.com/investigatigates/special-report/usa-judges-misconduct. The Wall Street Journal Sept. 28, 2021 finding 131 federal judges violated the law? https://www.wsj.com/articles/131-federal-judges-broke-the-law. Or how about the afore mentioned national scandal "kids for cash." Does this present a stigma of illegitimacy that reflect on the judges and the courts?

Does the following have an appearance of illegitimacy? Both acting Judges refused to allow the dismissal of the Public Defender. The acting Judge in the case mentioned above allowed the attorney to be standby at the pretrial hearing. Days before the pretrial hearing the Assistant District Attorney, herein ADA, was informed the arresting police officer had left town about a year and a half previous. The ADA said he was moving forward anyway. At the pretrial hearing the ADA said he has

witnesses subpoenaed. The following day at trial the officer was not present. Few days later the Petitioner did a FOIA request to the police station. The response was the police officer left July 5, 2017, a year and a half before trial and never returned to clean up unfinished police business. No subpoenas were in the discovery. ADA pulled fraud on the court.

The FOIA response and the court transcripts were presented to the acting Judge to prove the ADA had committed fraud on the court. The acting Judge did not vacate the case. Instead justice was obstructed, and constitutional Rights violated under color of law.

The third point in the page two footnote the Court states, "Here, the order accompanying the arbitration award states; "[Defendants] are estopped from maintaining and /or bringing forth any action against the Claimant, the Claimant's heirs, and/or the Claimant's properties permanently"... . Maybe the Arbitrators should have added three more words, "concerning this matter." However, the statement is not much different than an arbitration award for Bradley Christopher Stark that was turned into a Public Law 114-31 December 3, 2016. It reads in part: "the parties and beneficiaries that are natural persons, along with their immediate family, are extended absolute immunity from all criminal, civil and administrative laws of the United States of America...". This was signed by the President of the United States.

The District Court addresses two sentences in the Award to be concerned about but is totally silent about the findings of the Arbitrators. Added to that the District Court is not privy to the events and background surrounding the circumstances

that justify the Award.

A restatement of contract Proof of Claim evidences that the Petitioner is a natural person and the Respondents had no jurisdiction and predicating authority to move on Petitioner. It didn't exist then, it doesn't exist today and it won't exist tomorrow making the Arbitrator statement more accurate than not. Without a complaining party the Court should not even consider the matters inside the arbitration. "An arbitrator's award should not be vacated for errors of law and fact committed by the arbitrator and the courts should not attempt to mold the award to conform to their sense of justice." Aftor v. Geico Insurance Co., 110 AD3d 1062, 974 NYS2d95 (2nd Dept., 2013). Cited by Supreme Court in Henry Schein v. Archer and White, Jan. 8, 2019.

The fourth point on page two footnote says in part: "and orders Defendant's to pay Plaintiff....". The District Court doesn't know that three times the Petitioner was jailed. Once for four days for failing to show for the hearings. The notice of the hearings came after the hearings. At the release hearing the ADA took blame for the tardiness of the notice. I don't believe it needs to be explained how an incident like this can damage the Petitioner, family members, job, employer and coworkers and have long lasting effects and some permanent effects. Not to mention the inability to settle the matter for years, affecting the ability to achieve gainful employment. And then the kicker, years later offer to settle for a twenty-five dollar fine and no probation and the second case with no fine, four months' probation with no probation cost. At the time court fees were speculative.

A schedule of fees and a list of damages sought in arbitration was provided before arbitration and are actually recorded in both cases in the State Court. Every dollar sought was reasonable and justified and the amount was not challenged by the Respondents. In the Trezevant v. City of Tampa 741-f2d-336 (11th Circuit 1984), Trezevant received damages for only twenty-three minutes in jail. The Petitioner asked for approximately twenty five per cent less than the amount justified in Trezevant.

The issues explained are just some of the problems in the two matters. The District Court wouldn't be familiar with even one problem. This is a classic example why the courts are forbidden to go into the award.

Further, on page ten of the Report and Recommendation the District Court makes two points that are in conflict with one another. See below where point one calls it a "Complaint" and point two calls it a "Motion." The Petitioner never referred to himself as "Plaintiff" and never used the word "Complaint." This evidences the confusion or hostility of the Court towards arbitration.

1) "Plaintiff's Complaint (Doc, 1) be DISMISSED without prejudice pursuant to Rule 41 of the Federal Rules of Civil Procedure for the failure to pay the required filing fee or seek leave to proceed in forma pauperis."

2) "Plaintiff's Motion to Confirm Common Law Arbitration Award (Doc. 6) be DENIED as MOOT.

The Federal Arbitration Act trumps the rules of civil procedure. Also, the rules may change and something correct today may be wrong tomorrow. The District

Court acknowledged that there is an effort to confirm an arbitration Award going on. The State Court closed the cases and dropped everything as Petitioner did not pay any fines, court cost or serve probation. So how does the District Court call the arbitration confirmation moot? It presents the appearance the Court is granting immunity where none should exist ignoring the laws of the land 18 USC §242 Deprivation of rights under color of law and 42 USC §1983 Civil action for deprivation of rights. The District Court is committing a bias, deliberate and prejudicial maleficence by creating a dispute where none exist and demanding a civil action complaint.

The courts are mandated by the law and U. S. Supreme Court rulings to look for ways to confirm the Award. The Claimant in Intellisystem, LLC v. McHenry, No. 2:19-cv-01359 (E.D. Pa. June 26, 2019) attempted to get confirmation by way of a Motion for Default Judgment. The Court considered the merits of the Motion and entered an Order confirming the Award and legal fees.

The Middle District Court instead of attempting to manipulate the Motion into a Complaint should have considered the merits and confirmed the Award. Arbitration awards are presumed to be correct, and the burden is on the party requesting vacatur to rebut this presumption by refuting "every rational basis upon which the arbitrator could have relied." Robbins, 954 F.2d at 684; Schmidt v. Finberg, 942 F.2d 1571, 1574-75 (11th Cir. 1991). No complaint exists without the Respondents filing one unless the District Court is allowed to instigate a dispute and create a complaint.

REASONS FOR GRANTING THE PETITION

The premise of the question to the Supreme Court is to make sure that arbitrary decisions and rules of the court do not trump the law of the land. A particular answer by the Supreme Court will curtail much confusion. That answer can assist in maintaining the intent and mandate of the Federal Arbitration Act. That answer by the Supreme Court would help curtail the appearance of hostility by courts towards arbitration. That answer will bring uniformity across the courts and remove an arbitrary decision by a court clerk or judge. That answer will provide swifter justice and curtail frivolous drawn out court proceedings that arbitration was attempting to avoid. That answer would not disadvantage anyone since consideration is contained within the F.A.A. That answer would curtail the dismissal of a confirmation because of a procedural error. That answer would prevent needless litigation and frivolous attacks as in Teamsters. Here is one example: Teamsters Local v. UPS No. 19-3150 (3d Cir. 2020), is a Third Circuit case cited in this instant matter. Seven months into the Award UPS moved to prevent Teamsters from confirming the Award. UPS argued that there isn't a cause of action to justify granting the court jurisdiction to confirm the Award. Using absurdity to demonstrate the ludicrousness of the argument. Suppose DNA evidence proves the innocence of someone in jail for murder. But no court could entertain releasing that someone because in order to have jurisdiction to do so, that someone, would need to commit a murder or at least be charged with murder again. What isn't taken into account in the argument is that the F.A.A. mandates the confirmation and mandates the time bar for parties to move to modify or vacate the

award, that being three months F.A.A. 9 §12. Third Circuit did arrive at the correct decision that Teamsters has the right to have the award confirmed.

UPS being time bared the Third Circuit should not even have addressed the argument from UPS. He who snoozes loses and the Court ends up aiding a wrong doer and interfering with the intent and mandate of the law. Opinions, decisions, and arguments need to cease at the three month mark according to the law. It is hard to see a disadvantage to this since three months is plenty of time to move. It appears to be a scheme by the courts to maintain control over matters.

The F.A.A. is an anomaly causing confusion in the courts. To make matters worse the courts are not familiar with confirming arbitration awards. At times the courts are mandating a civil action complaint filing invoking civil action rules and requiring service on the other parties. In turn the parties respond and a dispute is created. This renders the term" final and binding" as toothless and continues to string along the matter. The more times to respond the more opportunities to make a rule violation and the arbitration confirmation gets thrown out for procedural errors. "Confirming an arbitration award under § 9 is not to be confused with litigating a dispute over the validity or accuracy of that award under § 10 or §11," Teamsters Local v. UPS No. 19-3150 (3d Cir. 2020) page 12.

It appears the courts don't understand "time bar" and are unable to distinguish between a filing, a process and a dispute. It ends up being a denial of due process and a disenfranchisement from the law.

The Federal Arbitration Act allows for any party in an arbitration to seek to

confirm, modify or vacate an award. The F.A.A. Title 9 § 12 time bars the parties from moving to modify or vacate the award after three months. Title 9 § 6 makes it unambiguously clear that the process to confirm an arbitration award is a motion process. Clarification is needed as to the type of filing because the district courts are engrafting their own rules, essentially nullifying the statutory requirements in Title 9. For example: the district court in Los Angeles California states, on their website (https://www.cacd.uscourts.gov/e-filing), that all arbitrations are civil action filings, while a Nashville Tennessee district court in Rodrick v. Kauffman, 455 F. Supp. 3d 546 (2020), explains how a confirmation of an award could be a miscellaneous filing. An arbitration confirmation in the Southern District Court of California is filed under miscellaneous case number 21 MC 1720 on December 14, 2021 and still maintains that number as of this writing. South Carolina District Court (www.scd.uscourts.gov/Filing/misc.asp) rules say a miscellaneous case can be converted to a civil action upon complaint. In this instant matter from Pennsylvania, a Motion for Confirmation was filed as miscellaneous number 3:20 MC 449 and weeks later the District Court changed its' mind and changed it to a civil action and said Petitioner filed a complaint. Petitioner informed the Court there was no complaining going on and everyone is time bared from complaining. Court ignored and dismissed the complaint, as the Court called it, without prejudice for failure to pay civil action fee. The Third Circuit upheld the findings and denied a petition for rehearing.

The Petitioner filed a second time bared Award into the same District Court. The Court again said it is a civil action. Petitioner is not complaining and the parties

are time bared from any challenge to the Award. Again the Court dismissed without prejudice saying Petitioner refused to pay the civil action fee or file in forma pauperis. Respondents did not move to vacate the Award which was served in October, 2019. In this matter the Respondents are still moving on the Petitioner ignoring the Award.

Petitioning or motioning for a confirmation of a time bared award, is not a complaint. When the award is time bared any challenge or dispute to the award is moot and prohibited under the F.A.A. Title 9 §12.

> Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. U.S.C. Title 9 §12.

If filing a complaint is time bared then there can be no dispute. Here is what the United States Courts website states in part: "A federal civil case involves a legal dispute between two or more parties. A civil action begins when a party to a dispute files a complaint...". Using the United States Courts definition of civil action, it stand to reason that one cannot file a complaint if there is no dispute allowed, thus no civil action.

The United States Middle District Court in Tennessee, Nashville Division in Rodrick v. Kauffman denied Rodrick a Miscellaneous filing because Rodrick's motion started a new case. The Court said, "Mr. Rodrick's motion neither appears to be related to any pending case or proceeding nor falls within the list of miscellaneous matters set forth above." One can conclude if the award is related to a pending case it can be filed as a miscellaneous rather than a civil action. The Nashville District Court goes on to say, "a motion to vacate or confirm an arbitration award in a post-arbitration

proceeding is arguably analogous to a complaint or a counterclaim in a civil case..".

This latter statement by the Nashville District Court doesn't seem to comport. It is erroneous to claim a motion to vacate is the same as a motion for confirmation. If the matter of the award is pre time bared the motion to vacate would most likely involve a dispute resulting in a complaint and a civil action. However, if the matter is post time bared no dispute is allowed by mandate of the F.A.A. Title 9 § 12. Vacating is complaining, confirming is seeking a courts imprimatur.

Third Circuit Court relied on Rodrick to embrace an erroneous position that vacating and confirming are the same action while overlooking a valid point made in Rodrick. The Rodrick Court admitted that a confirmation of an award can be a miscellaneous filing if related to a pending case or similar to items listed under the miscellaneous category. The point here is that a confirmation can be a miscellaneous filing.

The Rodrick Court listed some of the proceedings that would receive a miscellaneous number such as a "registration of a judgment from another district." Since an arbitration award is a judgment from another venue, it would be less erroneous and a more accurate analogy to equate both judgments justifying a miscellaneous filing. Arbitrium est judicium - An award is a judgment.

The arbitration in this instant matter involved two State proceedings. One case was closed and the other remained open putting the confirmation in the category of pending cases as explained in Rodrick. Somewhere along the line the State Court closed the second case. However, the surety still needs the funds returned and the

two proceedings quashed as ordered in the Award. Money damages have not been paid either. Maybe this leaves the case still in the pending category. A particular U. S. Supreme Court decision would remove this quandary. Can a case than be closed to continue to manipulate proceedings? Regardless, the time bar still prohibits filing a complaint and is the issue before the Supreme Court. The rules of the court should not function to complicate and hinder the intent, mandate and adherence to the law.

In this instant matter the Third Circuit relied on its own ruling in Teamsters. The Opinion repeatedly makes a point to stress the summary proceeding provided by 9 U.S.C. §9 are different than other proceedings. The following are from the Third Circuit's Opinion in Teamsters page 12 in part says the following:

> Contempt proceedings and a trial over the underlying dispute are clearly very different than the summary proceeding provided for by § 9.

The Third Circuit, in the same Opinion on page 14 Teamsters says:

> In the interest of further explaining the path forward, we analogize the confirmation of arbitration awards to other summary proceedings in which a district court enters orders without the parties filing complaints and appearing before it to litigate a matter in full.
>
> They may be "conducted without formal pleadings, on short notice, without summons and complaints,...

The Third Circuit Opinion page 15 and 16 in Teamsters in part says the following:

> Here the FAA provides for confirmation proceedings to be summary proceedings akin to the entry of consent decrees by requiring that the parties "apply" for confirmation rather than file a complaint. 9 U.S.C. §9". "An 'application' is merely a 'motion,'" or a request for the court to make a particular ruling or enter a particular order, and not a formal law suitor "action." McCarthy, 322 F.3d at 657 (citations omitted). This distinction applies to the FAA with equal force, as the statute specifically

provides for an "application" for confirmation.

> Moreover, courts do not resolve these applications for relief using procedures for ordinary civil actions because the FAA provides for applications to be made and heard as motions rather than the filing of a complaint. 9 U.S.C. §6... ... As the FAA expressly provides for an "application" for confirmation, does not instruct parties to file a complaint, and does not instruct the district court to carry on a formal judicial proceeding, §9 indeed calls for a summary proceeding.

The Circuit Court is saying the matter is not resolved by using procedures for ordinary civil actions. Some confusion may lie with the term "summary proceeding." "Summary" is not a filing, it is a description for a process. The process to confirm a time bared award is minimal. The Third Circuit described the process as being "truncated." In Teamsters page 17 the Circuit Court say this:

> By a truncated summary proceeding, the FAA directs district courts to give their imprimatur to arbitration awards by converting them into enforceable judgments of the court.

I don't think there could be any misunderstanding that the Circuit Court is saying it is not a "Complaint." But also, there could be no mistake that the District Court believes the confirmation is a complaint. The District Court said he filed a "Complaint to Confirm" and the Court "dismissed the Complaint." And again sixteen times in ten pages the word "complaint" appears in the eleven page Report and Recommendation. But somehow the Circuit Court put two and two together to get eleventeen and upheld the District Courts opinion that the confirmation is a civil action complaint.

"The Claimant has the absolute right to confirmation of an unchallenged arbitration award by summary motion process" Florasynth, Inc. v. Pickholz. 750 F.

2d 171, 175,-76 (2d Cir. 1984). "Summary" is an abbreviated process or some may say truncated. A "motion" is just a request to a judge to make a decision about something. A civil action is filed when there is a dispute and someone has a complaint about something. It requires a judicial proceeding. The purpose of time bar is to bring finality to a matter and bar any dispute. The award only needs a resolution through the judicial system that relies on a review of the documents and the courts imprimatur. A Miscellaneous filing is "always" a minimal proceeding. A Complaint filing, although could be summary, can often be a more involved proceeding. If "time bar" in Title 9 §12 always applies than the "always" in Miscellaneous and "always" in §12 are a perfect match. A match that requires the U. S. Supreme Court to officiate that marriage.

It could easily be determined that confirmation of an award can always be a miscellaneous filing and if a complaint occurs, according to District Court South Carolina rules, it can be converted to a civil action filing. In the Utah State Courts website confirming or vacating an arbitration is a miscellaneous filing. https://le.utah.gov/xcode/Title78A/Chapter2/C78A-2-P3_1800010118000101.pdf. Utah fee schedule bottom of page six top of page seven states:

> (p) The fee for filing an award of arbitration for confirmation, modification, or vacation under Title 78B, Chapter 11, Utah Uniform Arbitration Act, that is not part of an action before the court is $35.

The F.A.A. allows for state courts to confirm awards. Can reliance on Article IV section 1 of the U. S. Constitution, Full faith and credit invoke the Utah Rules and require a miscellaneous filing, after all it does not appear that the Utah Rule is in

the acting Judges named as defendants are protected by absolute immunity except for acts made in the absence of clear jurisdiction. Again, another erroneous assumption proffered by the Court. First they are Respondents not defendants. The Respondents could not prove their "jurisdiction." Besides, the Respondents were not sued or prosecuted, just contractually challenged. "I will accept your claims, and you win if you prove them, if not I win." There is no law suit or prosecution in that statement.

The District Court is insisting on a civil action filing fee and at the same time saying that the Respondents have immunity. Does paying the fee erase that belief? Can it be argued as to why one would want to pay a fee to have an arbitration confirmation dismissed? What is the reason for insisting on the fee? What does the Court see as happening next if the fee is paid? Thank you for the payment, goodbye?

In conclusion the Petitioner believes that a time bared award should be a miscellaneous filing and that would go a long way to remove the appearance of a scheme, maleficence, bias, disenfranchisement and probably a lot more that I am not smart enough to mention.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: March 30, 2022