DOCKET NO.______________________________

IN THE SUPREME COURT OF THE UNITED STATES

DARLENE ANORUO

Petitioner,

v.

TENET HEALTH SYSTEM, LLC,
D/B/A/ HAHNEMANN UNIVERSITY HOSPITAL
Respondent

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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pro se

QUESTIONS PRESENTED

I. When Arbitrators exceed their powers or so imperfectly execute them that a mutual, final, and definite award upon the subject matter submitted was not made, does this remain a valid reason to vacate the Arbitration award?

II. Is "Manifest Disregard of the Law" a reason to overturn an Arbitration award, or is "manifest disregard of the law" an obsolete reason when it comes to overturning an Arbitration award?

PARTIES TO THE PROCEEDING

Parties to the proceeding are Petitioner, Darlene Anoruo; Respondent, Tenet Health System, LLC, D/B/A Hahnemann University Hospital, and the American Arbitration Association (AAA).

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

CASES **Page**

STATUTES

OTHER AUTHORITIES

I Darlene Anoruo respectfully prays that a Writ of Certiorari be granted to review the judgment below.

OPINIONS BELOW

On September 19, 2017, The United States Court of Appeals for the Third Circuit entered its judgment and opinion affirming the District Court. A copy of that opinion is attached at Appendix A. Oral arguments were not made. April 4, 2017, an order to confirm the Arbitrator's award was entered without an explanation. A copy of that order is attached at Appendix B. On April 7, 2017, The Arbitrator entered an award denying my request to toll the statute of limitations (if necessary). A copy of the award is attached at Appendix C. The Arbitration hearing proceedings were not recorded. I do not see where the opinions of the lower courts in my case have been published.

JURISDICTION

On September 19, 2017, The United States Court of Appeals for the Third Circuit entered its judgment and opinion affirming the District Court judgment. (Appendix A). This petition has been timely filed within 90 days of that order.
The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

Basis for Jurisdiction in the District Court

On April 7, 2017, The Arbitrator entered an award denying my request to toll the statute of limitations (if necessary). A motion to vacate the Arbitration award was filed in the District Court within 30 days.

Basis for Jurisdiction in Arbitration

The complaint was said to be untimely. If the complaint was untimely, there are sufficient reasons to toll the statute of limitations. Some of the reasons for tolling the statute of limitations are written in the Statement of the Case.

CONSTITUTIONAL/ STATUTORY PROVISIONS

Federal Arbitration Act, 9 U.S.C.§ 10

> Federal Arbitration Act, 9 U.S.C.§ 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.
> https://www.gpo.gov/fdsys/pkg/USCODE.../USCODE-2011-title9-chap1-sec10.pdf

Manifest Disregard of the Law:

> The Court recognized that it might be understood as judicial shorthand for the statutory grounds listed in section 10 of the FAA. *Id.* (citing circuit court decisions to show "manifest disregard" might refer either to "the § 10 grounds collectively" or to the specific provisions authorizing vacatur where arbitrators are "guilty of misconduct" or "exceeded their powers").
>
> the Supreme Court noted that, as a basis for vacating arbitration awards, "manifest disregard" originated in language from one of the Court's own earlier decisions. *See* 552 U.S. at 584–85 (discussing *Wilko v. Swan*, 346 U.S. 427, 436 (1953)

STATEMENT OF THE CASE

I, Petitioner Darlene Anoruo, am an African American woman. On March 31, 2006, I passed the first part of my 3 part medical boards, the United States Medical Licensing Examination (USMLE). On August 31, 2007, I passed the second part of my USMLE. On May 31, 2008, I graduated from medical school as a doctor. On June 16, 2008, I began work as a resident physician at Hahnemann University Hospital (Hahnemann), Respondent.

Faculty and staff of the Family Medicine Department, subjected me to disparate treatment and a continual, severe, hostile work environment. Respondent also breached many contracts with me. This treatment was different from any individual not of my race.

Small examples of the abuse are: all of my evaluations that involved the Family Medicine faculty in any way were greatly compromised. They were tampered with, and or falsified. The Family Medicine Program Director went into my personnel file and changed my already pass evaluation to a fail and then wrote a comment on it. I was placed on an unjustified remediation plan. I was required to perform additional tasks that other non-African American residents were not required to perform, such as cleaning behind other residents' messy rooms

I went to see Ms. Olivia Rhinehart, Director of Graduate Medical Education. I informed her of the unjust treatment I was receiving from the Program Director. Ms. Rhinehart informed me that "it is hard for African American women to make it through residency programs at Hahnemann."

On June 12, 2009, I visited Dr. Jay Yanoff, Ed. D. Chief Graduate Medical Education (GME) Officer-Designated Institutional Official (DIO). I informed him of what I was going through and that I was thinking about filing a grievance. He discouraged me from filing, by telling me, "It is hard for residents to win those cases when the Program Director uses academics as the reason for not keeping a resident." I continued to tell Dr. Yanoff about the discriminatory, hostile, abuse that I was being subjected to by the Family Medicine attending doctors. Dr. Yanoff asked, "do you know what you sound like saying that?!" I then informed him that I was not the only resident physician who noticed their mistreatment of me. I further informed him that one of the resident physicians had come to me and inquired about their mistreatment. Dr. Yanoff asked if that resident is willing to testify of this. I told him the resident could not testify because the resident is still a part of the residency program. Dr. Yanoff said something to the effect of, well then. As I continued to tell Dr. Jay Yanoff what I was being subjected to, he interrupted me and said, "why don't you go on with your life?!" On June 15, 2009, I was forced to constructively terminate my position as resident physician for Hahnemann University Hospital.

Despite Respondent's repeated and egregious discriminate against me, and their continual violations to deny my credentials, nine months after being forced from Hahnemann, I passed the final part (3 out of 3) of my USMLE. This is significant, because, it is well understood in the medical field that such passing evidences my readiness to practice medicine without the safeguard of an attending doctor. Although, I have the medical skills and knowledge, Hahnemann continue to deny me the credentials I earned that would enable me to continue my medical career.

On October 7, 2010, I submitted a letter to Hahnemann's Family Medicine Program Director. I reminded him of some of the mistreatment I received in the program. I made him aware that I would be filing a discrimination charge against him. Finally, I requested a Certificate of Completion of my first year of residency.

On October 14, 2010, Dr. Yanoff responded to my letter. He wrote,

> "you do not meet the requirements for the award of such a certificate. First, you did not pass all of your rotations during the academic year. Second, you did not complete the entire year. You started the program on June 23, 2008 and resigned on June 15, 2009. In GME Policy 26 of the 2008-2009 House Staff Manual, it notes: 'If a house staff member does not complete the program for any reason, the Office of GME will provide a letter of verification of the time spent in the program and PGY level (not a certificate).'

Although it is printed in Hahnemann University Hospital House Staff Manual 2008-2009, and Dr. Yanoff wrote that GME will provide a "Letter of Verification" of the time spent in the program and PGY level, the Office of GME never provided it. Hahnemann continues to this day to deny me the required credentials I need and earned. Withholding such a pertinent document clearly shows that I continue to be subjected to racial discrimination.

On June 15, 2011, I filed an EEOC complaint. On that same day, I filed a claim in the United States District Court for the Eastern District of Pennsylvania. On July 8, 2011, my claim in the United States District Court for the Eastern District of Pennsylvania was dismissed by the Court without prejudice, stating on the basis that I failed to pay the filing fee. On April 29, 2013, I was issued a "Notice of Suit Rights" by EEOC. On July 26, 2013, Attorney Rebecca Thomas, from the Pearce Law Firm, filed Title VII, Pennsylvania Human Relations Commission, §1981 claim, and Breach of Contract claims, in the Eastern District of Pennsylvania. Attorney Thomas later withdrew my claim from the U.S. District Court for the Eastern District of Pennsylvania. On February 18, 2014, she submitted my claim before the American Arbitration Association (AAA).

Arbitration hearings were conducted on November 5 and 9, 2015, and February 12, 26, and 29, 2016. During the hearing, I provided verbal argument as well as gave the Arbitrator and Respondent a binder of my arguments to toll the statute of limitation (if untimely). These arguments are based on equitable tolling, continuing violation doctrine, breach of contract, and equitable estoppel. I cited precedential rulings to support my argument. In that binder, in which the Arbitrator concedes to receiving, is also my argument of how my not receiving my "Letter of Verification" tolls the statute of limitation for me (if my filing is untimely).

During the hearing, I argued that I was not issued a "Letter of Verification," according to Hahnemann's policy. I informed the Arbitrator and showed proof that on October 14, 2010, Dr. Jay Yanoff wrote me stating I would receive a letter of Verification, but, I did not receive one. I emphasized that my not receiving the "Letter of Verification," tolls the Statute of Limitations. I showed the part of my sworn deposition where Respondent, showed me the "Letter of Verification" and asked if I had ever seen it. My response under oath was no. I also emphasized that Respondent questioning me about the letter during my deposition is a clear indication that he knows that I should have been issued this important document. (Respondent is also aware that by not issuing me the "Letter of Verification," it tolls the statute of limitation).

Although, all of the above was said and done during the hearing, the Arbitrator did not mention anything in his Arbitration award about my "Letter of Verification." He addressed the "Certificate of Completion of my first year of residency", but he did not address the "Letter of Verification". The Arbitrator exceeded his powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter, submitted was not made 9 U.S.C. § 10(a)(4). Respondent concedes that the Arbitrator's award can be vacated based upon FAA 9 U.S.C. § 10(a)(4).

In order for an award to be final, it "must resolve all the issues submitted to arbitration, and...it must resolve them definitively enough so that the rights and obligations of the two parties, with respect to the issues submitted, do not stand in need of further adjudication." Rocket Jewelry Box, Inc. v. Noble Gift Packaging, Inc., 157 F.3d 174 (2d Cir. 1998) All of the issues submitted to arbitration in my case are not resolved. The issues are still in need of further adjudication.

On the last page, at number 36, of the Arbitrator's award, he wrote:

> As to a substantive §1981 Civil Rights Act based discrimination claim, again the Arbitrator needs to look at the latest date of any adverse employment action, here June 15, 2009, i.e. the date of Claimant's resignation alleged as her "constructive discharge", as the start date for any application of a four year §1981 statute of limitations. Claimant's July 26, 2013 Court filing by her counsel appears as the date that Claimant through her counsel at Pearce law firm first raised her §1981 claim (none was pleaded in the earlier dismissed pro se Complaint). That July 26, 2013 filing would be approximately five weeks beyond the running of the four year statute of limitations on a §1981 claim, so there again, with no legally cognizable evidence to support a tolling, the Arbitrator is Statute of Limitations bound and without jurisdiction to decide any possible substantive §1981 claim on its merits.

The Arbitrator did not address the last date of adverse employment action which is October 14, 2010 (and is still occurring), when Dr. Yanoff promised the "Letter of Verification" according to Hahnemann's policy, but did not send it. The Arbitrator did not address that October 14, 2010 is the potential start date for the application of the four year statute of limitations, for my §1981 claim. The Arbitrator did not address that the July 26, 2013 Court filing through my counsel at Pearce Law Firm was not beyond the four year statute of limitations. The Arbitrator did not address that from October 14, 2010 (The time Dr. Yanoff promised the "Letter of Verification") through July 26, 2013, (the time my attorney filed the complaint) is a total of 33 months and 12 days, well within the four year Statute of Limitations. The Arbitrator did not address the "Letter of Verification" at all in his Arbitration award.

> In considering whether the arbitrators' award was final, the district court noted two possible standards by which finality might be judged in this circuit. The first formula states that 'an arbitral determination is not final unless it conclusively decides every point required by and included in the submission of the parties.' Trade Transp., Inc., v. Natural Petroleum Charterers Inc. 931 F.2d 191, 195 (2d

> Cir.1991). The second articulation deems an award final 'if it resolve[s] all issues submitted to arbitration, and determine[s] each issue fully so that no further litigation is necessary to finalize the obligations of the parties.' ConnTech, 102 F.3d at 686 (alterations in original; internal quotation omitted).

There is another violation the Arbitrator made which justifies vacating his award. He manifestly disregarded the law. "Manifest disregard of the law addresses itself to situations in which it is evident from the record that the arbitrator knew the applicable law, and yet chose to ignore it." Popkave v. John Hancock Distribs. LLC, 768 F. Supp.2d 785

> Similarly said, "Manifest disregard of the law" encompasses situations in which it is evident from the record that the arbitrator recognized the applicable law, and yet chose to ignore it. Conntech Dev. Co. v. University of Connecticut Educ. Props., 102 F.3d 677, 687 (2d Cir. 1996); Merrill Lynch, Pierce, Fenner, & Smith v. Jaros, 70 F.3d 418, 421 (6th Cir. 1995); Advest, Inc. v. McCarthy, 914 F.2d 6, 9 (1st Cir. 1990); O.R. Securities, Inc. v. Professional Planning Assoc., Inc., 857 F.2d 742, 747 (11th Cir. 1988); Stroh Container, 783 F.2d at 750. Aetna Cas. & Surety Co. v. Dravo Corp., No. 97-149, 1997
>
> The law must be known by the arbitrators and its applicability must have been pointed out by one of the parties. Duferco, 333 F.3d at 389-90. According to the Sixth Circuit, an arbitrator acts with manifest disregard if "(1) the applicable legal principle is clearly defined and not subject to reasonable debate; and (2) the arbitrators refused to heed that legal principle." Merrill Lynch Pierce Fenner & Smith., Inc. v. Jaros, 70 F.3d 418, 421 (6th Cir. 1995.) Arbitration Update: More on Judicial Review of Arbitration Awards Michael R. Palumbo 5.1.09

The Arbitrator did not apply Hahnemann University Hospital's policy and procedure. The Arbitrator refused to apply well-defined, clear, applicable legal principles, or he ignored them altogether. He disregarded well-established and controlling law that was given to him.

My case is a perfect example of the Arbitrator manifestly disregarding the law, because: (1) The Arbitrator knows the relevant principle, which is I need to receive my "Letter of Verification" according to Hahnemann's policy. (2) The Arbitrator appreciates that this principle controls the outcome of the disputed issue which is, tolling the Statue of limitation. I argued and discussed in depth during the hearing, that my not receiving my "Letter of Verification" tolls the statute of limitation. As mentioned, I placed the argument in a binder and gave it to the Arbitrator also. He concedes that he received it. (3) The Arbitrator willfully flouts the governing law by refusing to apply it. He did not address the subject matter submitted to him (my "Letter of Verification") in his Arbitration award.

> We must therefore continue to bear the responsibility to vacate arbitration awards in the rare instances in which the arbitrator knew of the relevant legal principle, appreciated that this principle controlled the outcome of the disputed issue and nonetheless willfully flouted the governing law by refusing to apply it. (Cite omitted) At that point the arbitrators have "failed to interpret the contract at all (cite omitted), for parties do not agree in advance to submit to arbitration that is carried out in manifest disregard of the law. Put another way, the arbitrators have thereby "exceeded their powers, or so imperfectly exceuted them that a mutual, final and definite award upon the subject matter was not made. (Cite Omitted.). Arbitration Update: More on Judicial Review of Arbitration Awards Michael R. Palumbo 5.1.09

Respondent agrees that manifest disregard of the law is a reason to vacate the Arbitrator's award. The Arbitrator's manifest disregard of the law, and him exceeding his powers, or so imperfectly executing them that a mutual, final, and definite award upon the subject matter submitted not being made, (FAA 9 U.S.C. § 10(a)(4)), has prejudiced my rights. It has prevented me from receiving a fair hearing.

The Arbitrator committed violations that are reasons for his award to be vacated. I filed a motion to vacate the Arbitration award in the United States District Court Eastern District of Pennsylvania. I presented the evidence that the Arbitrator did not address all of the issues that were submitted to him. I gave the evidence that he manifestly disregarded the law. The District Court denied my motion. It did not write an opinion, and it did not addressed my "Letter of Verification". I then appealed to the United States Court of Appeals for the Third Circuit. I again gave evidence that showed how the Arbitrator did not address my "Letter of Verification". I also gave proof that he "manifestly disregarded the law". The Third Circuit Court addressed the "Certificate of Completion of my first year of residency" in its opinion. But, it did not address the extremely important subject matter of my "Letter of Verification." I am now appealing to the United States Court of Supreme.

Reasons For Granting the Writ of Certiorari

I.

I. The United States Supreme Court should grant the Writ of Certiorari to confirm whether or not when Arbitrators exceed their powers or so imperfectly execute them that a mutual, final, and definite award upon the subject matter submitted was not made (FAA 9 U.S.C. § 10(a)(4)), if their Arbitration award can continue to be vacated.

9 U.S.C.§ 10 has long been recognized as Part of the Federal Arbitration Act (FAA). The lower courts did not vacate the Arbitration award when presented with evidence to do so. Their decision is in direct conflict with the Federal Arbitration Act. This departure from following the Federal Arbitration Act is far from the accepted and usual course of judicial proceedings. U.S. Sup. Ct. Rule 10.

The lower Courts cannot be allowed to set the precedence of not following established laws and statutes. Doing so will devastate our nation and cause the legal system to become a travesty of justice. The lower courts not only went contrary to FAA 9 U.S.C. § 10(a)(4), but, It went contrary to what other Circuit courts have ruled and written concerning Arbitrators exceeding their powers or so imperfectly executing them that a mutual, final definite award upon the subject matter was not made. U.S. Sup. Ct. Rule 10. Trade Transp., Inc., v. Natural Petroleum Charterers Inc. 931 F.2d 191, 195 (2d Cir.1991); ConnTech, 102 F.3d at 686; Rocket Jewelry Box, Inc. v. Noble Gift Packaging, Inc., 157 F.3d 174 (2d Cir. 1998).

This Court should grant certiorari in this case, because, the exercise of this Court's supervisory power is needed. This Court can take authority and establish with lower courts whether or not the Arbitration award can continue to be vacated based upon FAA 9 U.S.C. § 10(a)(4). In so doing, the lower courts would have to adhere to this Court's rule. Departure from the Federal Arbitration Act 9 U.S.C. § 10(a)(4) by lower courts will be stopped.

II

The United States Supreme Court should grant the Writ of Certiorari to decide whether the lower courts should continue to use "manifest disregard of the law" as a reason to vacate an Arbitration award, or whether "manifest disregard of the law" is no longer a legitimate reason to vacate an Arbitration award.

There is a split within the Circuit Courts regarding "manifest disregard of the law". This split is subject to a deeper divide between Circuit courts. This important issue should be resolved by this Court. U.S. Sup. Ct. Rule 10.

The Seventh, Eighth, and Eleventh Circuits Courts have decided that "manifest disregard of the law" is not a valid basis for appeal. The Second, Fourth, Sixth, and Ninth Circuit Courts holds that Arbitrators who manifestly disregard the law have "exceeded their powers" under section 10(a)(4). Their Arbitration awards can be vacated. *See Schafer v. Multiband Corp.*, 551 F. App'x 814, 819 n.1 (6th Cir. 2014); *Wachovia Sec., LLC v. Brand*, 671 F.3d 472, 480 (4th Cir. 2012); *Comedy Club, Inc. v. Improv W. Assocs.*, 553 F.3d 1277, 1290 (9th Cir. 2009); *Stolt-Nielsen SA v. AnimalFeeds Int'l Corp.*, 548 F.3d 85, 95 (2d Cir. 2008), *overruled on other grounds*, 559 U.S. 662 (2010).

The Sixth Circuit Court firmly believes that Circuit Courts should follow the precedence in which the Honorable Supreme Court has set. It writes:

> "In light of the Supreme Court's hesitation to reject the "manifest disregard" doctrine in all circumstances, we believe it would be imprudent to cease employing such a universally recognized principle. Accordingly, this Court will follow its well-established precedent...." Coffee Beanery, Ltd. v. WW, LLC, 300 Fed Appx. 415 (6 Cir. 2008). Arbitration Update: More on Judicial Review of Arbitration Awards Michael R. Palumbo 5.1.09

The thought of Arbitrators continuing to administer their own brand of law while disregarding already establish policies and law, with lower courts allowing it, can bring devastating consequences to the entire American people. This Court should grant certiorari in this case because this important issue, is subject to a deeper divide of authority in the lower courts. This Court can mitigate such divide. Court. U.S. Sup. Ct. Rule 10.

CONCLUSION

The petition for a Writ of Certiorari should be granted.

Respectfully Submitted,

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