

DOCKET NO. 17-7811

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

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. Whether the Court should grant the Petition to decide the continuing validity of Section 10(a)(4) of the Federal Arbitration Act when no court has called into question the validity of Section 10(a)(4) as a basis for vacating an arbitration award?

II. Whether the Court should grant the Petition to resolve the circuit split on the manifest disregard of the law standard for vacating an arbitration award where the outcome of the question would not be dispositive in this case, the Court has previously declined to decide the question, and Petitioner is not aggrieved because her case was reviewed under both the statutory framework and the manifest disregard of the law standard?

PARTIES TO THE PROCEEDING

Petitioner Darlene Anoruo was the plaintiff-appellant below.

Respondent Tenet HealthSystem Hahnemann LLC was the defendant-appellee below. Respondent was incorrectly identified in the instant case caption as Tenet Health System, LLC, d/b/a Hahnemann University Hospital, and was incorrectly identified in the case caption below as Tenet HealthSystem Hahnemann d/b/a/ Hahnemann University Hospital.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Tenet HealthSystem Hahnemann LLC makes the following disclosure:

(1) Tenet HealthSystem Hahnemann LLC is owned through subsidiaries by Tenet Healthcare Corporation, a publicly traded company organized under the laws of Nevada.

(2) No other publicly held companies hold 10% or more shares in Tenet HealthSystem Hahnemann LLC.

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OPINION BELOW

The opinion of the United States Court of Appeals for the Third Circuit in the case below can be found at Anoruo v. Tenet HealthSystem Hahnemann, 697 Fed. Appx. 110 (3d Cir. 2017).

JURISDICTION

The United States District Court for the Eastern District of Pennsylvania (“District Court”) had subject matter jurisdiction over this action to confirm or vacate an arbitration award pursuant to 9 U.S.C. § 9, and 29 U.S.C. § 1331 based upon a federal question arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, and supplemental jurisdiction over Dr. Darlene Anoruo’s (“Dr. Anoruo” or “Petitioner”) state law claims, including those under the Pennsylvania Human Relations Act (“PHRA”), 43 P.S. § 951 *et seq.*, and those for breach of contract, pursuant to 29 U.S.C. § 1367.

The United States Court of Appeals for the Third Circuit had appellate jurisdiction pursuant to 9 U.S.C. § 16 and 28 U.S.C. § 1291 based on Dr. Anoruo’s appeal of a final decision and Order of the District Court granting Tenet HealthSystem Hahnemann LLC’s (“Hahnemann” or “Respondent”) motion to confirm the arbitration award and denying Dr. Anoruo’s motion to vacate the arbitration award.

The Court has jurisdiction pursuant to 28 U.S.C. § 1254(1) based upon Dr. Anoruo’s Petition for a Writ of Certiorari (“Petition”).

STATEMENT OF THE CASE

A. Dr. Anoruo's Employment With Hahnemann University Hospital

Dr. Anoruo was employed as a first year medical resident at Hahnemann University Hospital ("Hahnemann"). Prior to commencing employment, Dr. Anoruo countersigned an offer letter, which acknowledged her agreement to be bound by Hahnemann's arbitration policy. Contemporaneous with the start of her employment with Hahnemann, Dr. Anoruo executed a written arbitration agreement and an Employment Agreement, which also contained an arbitration clause. The term of Dr. Anoruo's Employment Agreement was for one year, commencing on June 23, 2008 and ending on June 22, 2009.

By letter dated February 24, 2009, Dr. Anoruo was informed that her contract would not be renewed at the end of the academic year. Dr. Anoruo had been repeatedly advised that she was not making satisfactory progress in the academic program and was not successfully completing a remediation plan which had been put in place to address her deficiencies. Dr. Anoruo elected not to file any internal appeal of her contract non-renewal. On June 15, 2009, approximately one week before the end of the academic year and corresponding expiration of her Employment Agreement term, Dr. Anoruo elected to resign, effective immediately.

B. Relevant Procedural History

1. Dr. Anoruo's EEOC Charge and Federal Lawsuit

On or about June 15, 2011, Dr. Anoruo filed a complaint in federal court, which was dismissed for failure to pay the filing fee. That same day, exactly two

years after her resignation, Dr. Anoruo first filed a Charge with the Equal Employment Opportunity Commission (“EEOC”). The EEOC conducted a full investigation, including an on-site visit. At the conclusion of its investigation, the EEOC issued a No Cause Determination Right to Sue Letter on April 29, 2013.

Dr. Anoruo, through her then-counsel, commenced a second litigation against Hahnemann by filing a three-count complaint in the District Court on July 29, 2013 (“Complaint”). Dr. Anoruo’s Complaint asserted three counts: (1) racial discrimination in violation of Title VII; (2) racial discrimination in violation of the Pennsylvania Human Relations Act; and (3) breach of contract. By letter dated August 14, 2013, counsel for Hahnemann notified Dr. Anoruo’s counsel of her written agreement to arbitrate all claims against Hahnemann. Dr. Anoruo, through her counsel, entered into a stipulation to stay her federal court litigation and to submit her claims to arbitration in accordance with the arbitration agreement.

2. Arbitration Proceedings

Shortly before the scheduled arbitration hearing dates, Dr. Anoruo’s attorney withdrew from her representation of Dr. Anoruo. As a result of the withdrawal of Dr. Anoruo’s counsel, the scheduled arbitration hearing dates were canceled and the proceedings were stayed in order for Dr. Anoruo to obtain new counsel. After the passage of several months, Dr. Anoruo indicated that she could not obtain new counsel and elected to proceed *pro se*.

Hahnemann moved for summary judgment on August 21, 2015, on the basis that all of Dr. Anoruo’s claims were time-barred. By order dated September 24,

2015, the Arbitrator entered an Interim Award in which he deferred deciding the statute of limitations issues until his Final Award, giving Dr. Anoruo an opportunity to present her evidence and make her arguments regarding both the statute of limitations issues and merits of her case at the hearing. Five days of hearings were held on November 5 and 9, 2015 and February 12, 26 and 29, 2016.

On April 7, 2016 an Award was issued by the Arbitrator, ruling in favor of Hahnemann and against Dr. Anoruo on all claims (“Arbitration Award”). See Petition, Appendix C (Arbitration Award). The Arbitrator’s Award contained detailed factual findings and concluded that the statute of limitations began to run on the date of the latest alleged discriminatory act – June 15, 2009, the date Dr. Anoruo resigned. Id. (Arbitration Award ¶ 35). Thus, Dr. Anoruo had until April 11, 2010 to file her charge with the EEOC. Id. The Arbitrator further found that Dr. Anoruo failed to file her Charge with the EEOC within the statute of limitations, and “there was no contrary evidence, despite cautions to that effect to *pro se* Claimant to offer whatever she had, that provided a legally sufficient ground to allow the Arbitrator to find a tolling of the applicable statutes of limitations.” Id.

3. Motion to Vacate and Cross-Motion to Confirm

Following the issuance of the Arbitration Award, Dr. Anoruo filed a Motion to Vacate the Award in the Eastern District of Pennsylvania (“District Court”) on May 9, 2017. Hahnemann filed a Response to the Motion to Vacate and a Cross-Motion to Confirm the Arbitration Award. The District Court entered an Order on April 5,

2017, denying Dr. Anoruo's Motion to Vacate and granting Hahnemann's Motion to Confirm. Petition, Appendix B.

4. Appeal to the Third Circuit Court of Appeals

Dr. Anoruo filed an appeal of the District Court's order with the United States Court of Appeals for the Third Circuit. On September 19, 2017, the Third Circuit issued an opinion affirming the Arbitration Award. See Anoruo v. Tenet HealthSystem Hahnemann, 697 Fed. Appx. 110 (3d Cir. 2017). The court noted that its review of the Award was "extremely deferential" and that Section 10 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 10, "sets out narrow and exclusive circumstances under which a court may vacate an arbitration award." Anoruo, 697 Fed. Appx. at 111 (citing Hall Street Assocs. LLC v. Mattel, Inc., 552 U.S. 576, 586-87 (2008)). The Third Circuit noted the four bases for vacating an arbitration award under Section 10 of the FAA, and concluded that Dr. Anoruo "failed to show that the arbitration award should have been vacated on any of these bases." Id. Specifically, the court found "no indication of any corruption, partiality, or misconduct in the record." Id. Likewise, the court found "no indication that the arbitrator exceeded his powers or otherwise disregarded the applicable law." Id. The court further noted that, although it had not decided whether "manifest disregard of the law" remains a viable independent reason for vacating an arbitration award after Hall Street, it nonetheless concluded that "there is no indication in the record that the arbitrator disregarded the applicable law in this case." Id. at 111 n.1.

On December 18, 2017, Dr. Anoruo filed the instant Petition for Writ of Certiorari with the Court. The Petition was docketed on February 16, 2018.

REASONS FOR DENYING THE PETITION

The Petition should be denied in view of the fact that the Court has repeatedly been asked to resolve the circuit split on the issue of manifest disregard, and the Court has repeatedly declined those requests. Furthermore, resolution of the circuit split is irrelevant to the outcome of this case. Moreover, as a practical matter, Dr. Anoruo cannot claim to have been aggrieved by the standard of review utilized by the Third Circuit, because she has already received what she seeks from this Court: review under both the strict statutory framework and the manifest disregard standard. Petitioner's request for certiorari effectively seeks to have the Court act as an error correcting court as it does not raise any question of law ripe for determination by the Court.

A. There Is No Debate About The Continuing Validity Of Section 10(a)(4) Of The FAA As A Basis For Vacating An Arbitration Award.

Petitioner's first Question Presented argues that the Court should grant certiorari to decide whether Section 10(a)(4) of the FAA, which provides that a court may vacate an arbitration award "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," 9 U.S.C. § 10(a)(4), "remain[s] a valid reason to vacate the Arbitration Award." Petition at ii, 10. There is, quite simply, no need for the Court to decide this question because the continuing validity of

Section 10(a)(4) has not been called into question. Petitioner has not cited to any case, and Respondent is not aware of any case, which calls into question whether an arbitration award can be vacated pursuant to Section 10(a)(4).

Petitioner apparently asserts that the courts below did not apply Section 10(a)(4) simply because they did not vacate the Arbitration Award. Contrary to Petitioner's argument, however, the courts did not refuse to apply Section 10(a)(4) to Dr. Anoruo's case. Instead, the courts considered all the grounds for vacating the Arbitration Award – including Section 10(a)(4) – and concluded that none of them provided a basis for vacating the Award. The Third Circuit, in particular, expressly considered Section 10(a)(4) and concluded that the Arbitration Award neither exceeded the Arbitrator's powers nor was so imperfectly executed that a mutual, final, and definite award upon the subject matter submitted was not made. See Anoruo, 697 Fed. Appx. at 111-12.

Thus, because there is no question about the continuing validity of Section 10(a)(4) as a grounds for vacatur, the Petition should be denied.

B. Resolution Of The Circuit Split On The Manifest Disregard Standard Would Have No Impact On The Outcome Of This Case.

Following the Court's decision in Hall Street, a split of authority among the courts of appeals developed on the issue of whether manifest disregard of the law remained an independent ground to vacate an arbitration award, or whether it was simply a "judicial gloss" on the statutory grounds set forth in Section 10 of the FAA. Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 559 U.S. 662, 672 n.3 (2010).

Petitioner argues that the Court should grant certiorari to resolve the circuit split on this issue. Resolving the circuit split on this question, however, would be not be dispositive of the instant case.

Although the Third Circuit acknowledged that it “ha[s] not ruled on whether a court may also still vacate an award for ‘manifest disregard of the law’ after Hall [Street],” the court nonetheless considered the manifest disregard standard and concluded that the arbitrator did not manifestly disregard the applicable law in Dr. Anoruo’s case. Anoruo, 697 Fed. Appx. at 111-12 & n.1. The court considered each of the four grounds for vacating an award enumerated in Section 10 of the FAA, as well as the manifest disregard standard, and concluded that none of them provided a basis for vacating the Arbitration Award in this case. Thus, any resolution of the circuit split in this case would essentially be an advisory opinion as it would not affect the outcome of this case.

Where the resolution of a circuit split is irrelevant to the ultimate outcome of the case before the Court, certiorari should not be granted. See, e.g., The Monrosa v. Carbon Black Export, Inc., 359 U.S. 180, 184 (1959) (“While this Court decides questions of public importance, it decides them in the context of meaningful litigation. Its function in resolving conflicts among the Courts of Appeals is judicial, not simply administrative or managerial. Resolution here of the [question presented] can await a day when the issue is posed less abstractly.”). The Court’s commitment to dispositive judgments has, in fact, led the Court to decline to resolve this very circuit split in previous cases where resolution of the question would not

have affected the outcome of the case. See, e.g., Stolt-Nielsen, 559 U.S. at 672 n.3 (2010) (declining to decide whether manifest disregard of the law survives as an independent ground for vacatur after Hall Street where, if applicable, the manifest disregard standard would be satisfied).

For this reason, certiorari should be denied in this case.

C. The Court Has Previously Declined To Decide Whether Manifest Disregard Remains An Independent Basis for Vacatur After Hall Street.

Petitioner argues that the Court should decide this “important issue.” Petition at 11. However, this is not the first time the Court has been asked to resolve this circuit split. In the decade since Hall Street was decided, the Court has been asked on multiple occasions to grant certiorari to resolve the split and, in each instance, has declined to do so. See, e.g., Gibson v. American Cyanamid Co., 760 F.3d 600 (7th Cir. 2014), cert. denied, 135 S. Ct. 2311 (2015); Schafer v. Multiband Corp., 551 Fed. Appx. 814 (6th Cir. 2014), cert. denied, 134 S. Ct. 2845 (2014). The same result is appropriate here, and the request for certiorari should be denied.

D. This Case Presents A Poor Vehicle For Resolving The Circuit Split Concerning The Manifest Disregard Of The Law Standard.

Even if the Court desires to resolve the circuit split on the validity of the manifest disregard standard, this case presents a poor vehicle for answering the question. At the very least, the Court should await a case in which the court below has thoroughly analyzed the manifest disregard of the law standard and created precedent on the question. The decision by the Third Circuit below contains no

extensive discussion or analysis of the manifest disregard standard, and neither party substantially briefed the question of its continuing validity. Moreover, the decision below is an unpublished, non-precedential opinion and the Third Circuit has yet to take a definitive position concerning the continuing validity of the manifest disregard of the law standard. See Anoruo, 697 Fed. Appx. at 111 n.1.

This case also presents a poor vehicle for review since the resolution of the split would not alter the outcome in this case. The Third Circuit considered the manifest disregard standard as well as the enumerated grounds for vacatur in Section 10 of the FAA, and concluded that none of them provided a basis for the vacating the Award in this case. Thus, the Arbitration Award would not be vacated regardless of how the Court resolves the manifest disregard question.

For this reason, the Court should not grant certiorari.

E. The Case Below Was Correctly Decided.

Lastly, the Court should not grant certiorari in this case because the case has been correctly decided at all previous stages of the litigation. The Arbitrator made specific findings as to the dates of the pertinent events, including the dates of the filing of Dr. Anoruo's initial *pro se* federal court complaint, her second federal court Complaint, her administrative charge filed with the EEOC, and her resignation. Dr. Anoruo's employment with Hahnemann ended on June 15, 2009, the date she resigned. Petition at 3. She did not file a charge with the EEOC until two years later, on June 15, 2011, the same date she filed her first federal court action. Petition at 4. Petitioner's discrimination claims are thus barred by the statute of

limitations, which required Dr. Anoruo to file a charge with the EEOC within 300 days of her resignation. Moreover, the Arbitrator further found that, even if Dr. Anoruo had asserted claims under 42 U.S.C. § 1981 on July 26, 2013, when she filed her second Complaint, that claim would have been filed approximately six weeks after the four-year statute of limitations had expired. Dr. Anoruo's Complaint was also filed beyond the four-year statute of limitations for her state law breach of contract claim. See 42 Pa.C.S. § 5525. Thus, all asserted claims raised in Dr. Anoruo's Complaint, as well as any potential claims, were time-barred.

The Arbitrator also found that the last alleged discriminatory act occurred on June 15, 2009, the date Dr. Anoruo submitted her written resignation, which she alleged to be a constructive discharge. The Arbitrator's Award is thus fully consistent with applicable law. See Green v. Brennan, __ U.S. __, 136 S.Ct. 1769 (2016) (statute of limitations in a constructive discharge case begins to run on the date of resignation). Although Dr. Anoruo presented various arguments to the Arbitrator about why the statute of limitations should be tolled, the Arbitrator concluded that none of the evidence Dr. Anoruo presented "provided a legally sufficient ground to allow the Arbitrator to find a tolling of the applicable statutes of limitations." Petition, Appendix C (Arbitration Award ¶ 35).

Therefore, because the case has been correctly decided, there is no need for the Court to grant the Petition for Certiorari to correct any error.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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