

MAY 22 2020

No. 19-1419

SUPREME COURT OF THE UNITED STATES

Michael A. Henry-Bey,

Petitioner,

vs.

Castro, et al.,

Respondents.

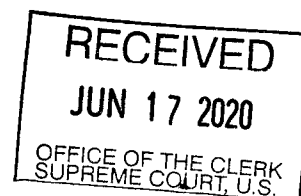
On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit in Case No. 20-1125.

**PETITION FOR A WRIT OF CERTIORARI WITH
APPENDIX IN SUPPORT.**

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Dated: 5-22-2020

ORIGINAL



I. Question Presented for Review:

Whether the court had federal question jurisdiction to hear the petitioner's appeal, and if not, should the court have transferred the appeal to the court having the proper jurisdiction to hear the appeal?

II. Parties to Proceeding and Related Cases

The petitioner certifies that the following parties have an interest in the outcome of this case:

- (1.) Petitioner/Plaintiff, Michael Anthony Henry-Bey, in propria persona, sui juris.
- (2.) Respondent, Hector Castro, represented by attorney Peter M. Arnold.
- (3.) Respondent, Carmela Bautisa, represented by attorney Peter M. Arnold.
- (4.) Respondent, BANK OF AMERICA HOME LOANS
- (5.) Respondent, THE BANK OF NEW YORK MELLON
- (6.) Respondent, MAXIM PROPERTIES.
- (7.) Respondent, NATIONSTAR MORTGAGE, LLC
- (8.) Respondent, SHERWOOD LAKES HOMEOWNERS ASSOCIATION, INC., Represented by the law firm of Gaebe, Mullen, Antonelli & Dimatteo.
- (9.) Trial Judge, U.S. District Judge, Robin L. Rosenburg, for the Southern District of Florida.
- (10.) Trial Judge, Howard Coates Jr, Circuit Judge for the 15th Judicial Circuit, Palm Beach, Florida.

Related Cases:

- (1.) Henry-Bey vs. Castro, et al., Case No. 50-2019-CA 009698, The Circuit Court of the 15th Judicial Circuit for Palm Beach, Florida. Judgment entered 05/05/2020.
- (2.) Henry-Bey vs. Castro, et al., Case No. 9:19-cv-81281-RLR, U.S. District Court, Southern District of Florida. Judgment entered on 10/09/2019.
- (3.) Henry-Bey vs. Castro, et al., Case No. 20-1125, The United States Court of Appeals for the Federal Circuit. Judgment entered on 03/26/2020.

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V. Petition for Writ of Certiorari.

The petitioner, Michael Anthony Henry-Bey, in propria persona, sui juris, respectfully petitions this Honorable Court for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit.

VI. Opinions Below.

This cause of action stems from a Show Cause Order issued by the United States Court of Appeals for the Federal Circuit, on December 13, 2019, which required the parties to show cause by demonstrating jurisdiction to hear action within 30 days (see Appendix A).

On March 2, 2020, the United States Court of Appeals for the Federal Circuit issued a judgment dismissing the petitioner's appeal, and that judgment is attached as Appendix B.

On March 9, 2020, the petitioner filed a Motion to Vacate the Judgment of Dismissal, which was construed as a Motion for Rehearing and denied by Order of the court, on March 26, 2020 (see Appendix C).

VII. Jurisdiction.

Mr. Bey's Motion for Rehearing was denied on March 26, 2020. Mr. Bey invokes this Court's jurisdiction under 28 U.S.C. Section 1257, having timely filed this petition for a writ of certiorari within ninety days of the judgment of the United States Court of Appeals for the Federal Circuit.

VIII. Constitutional Provisions Involved.

United States Constitution, Amendment I:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

United States Constitution, Amendment V:

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”

United States Constitution, Amendment XIV:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

IX. Statement of the Case.

The petitioner asserts that a Final Arbitration Award Final (“Final Judgment”) was rendered by SITCOMM ARBITRATION ASSOCIATION (SAA) on June 13, 2019, in favor of the petitioner against respondents: THE BANK OF NEW YORK MELLON; NATIONSTAR MORTGAGE, LLC; BANK OF AMERICA HOME LOANS; SHERWOOD LAKES HOMEOWNERS ASSOCIATION, INC.; and MAXIM PROPERTIES for \$540,000 US dollars, per respondent, times (X) 5 respondents, which equals a grand total amount of \$2,700,000 US dollars.

On 09/18/2019, the petitioner filed a “Petition to Confirm Final Arbitration Award (D.E. 1), in the United States District Court, Southern District of Florida, case number 9:19-cv-81281-RLR.

On 10/09/2019, US District Judge Robin L. Rosenberg entered an Order Striking the petitioner’s Petition to Confirm Final Arbitration award (D.E. 8), which was a mistake made by the trial court since Arbitration Awards can’t be stricken, because they can only be vacated by a court of law. Title 9 U.S.C. § 9, which provides that a “court must grant such an order unless the award is vacated, modified, or corrected.”

The petitioner was entitled to confirmation of the Final Award and entry of an Judgment for the return of his property/home, in accordance with the Final Award and pursuant to 9 U.S.C. § 9, which provides that a “court must grant such an order unless the award is vacated, modified, or corrected.” The statute is unambiguous. As the Supreme Court has explained, “[t]here is nothing malleable

about ‘must grant,’ which unequivocally tells courts to grant confirmation in all cases, except when one of the ‘prescribed’ exceptions applies.” *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 587 (2008); also see Florida Statutes 682.02(1) “An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.” “Confirmation of an arbitration award is generally a “summary proceeding that merely makes what is already a final arbitration award a judgment of the court.” *Florasynt, Inc. v. Pickholz*, 750 F.2d 171, 176 (2d Cir. 1984). The fact that the petitioner’s AWARD has never been vacated (but rather Stricken by the trial court), is a clear mistake that warrants reversal and remand back to the US District Court.

On 11/06/2019, the petitioner appealed the decision of the trial court striking his Petition to Confirm Final Arbitration Award by filing a Notice of Appeal in the United States Court of Appeals for the Federal Circuit.

On 12/13/2019, the Federal Circuit issued an Order to Show Cause (10), which gave the parties (30) days to file a response to the said Show Cause Order by demonstrating jurisdiction to hear the petitioner’s appeal. (see Appendix A).

On December 23, 2019, the petitioner filed a Response to Show Cause Order. None of the Appellees complied with the said Show Cause Order by filing a timely response, therefore, the petitioner was entitled to judgment due to non-compliance, resulting in default judgment, due to the appellees’ acquiescence.

On 01/16/2020, the petitioner filed a Notice of Non-Compliance (D.E. 14), to notify the Federal Circuit that appellees were in non-compliance with the court's Show Cause Order by failing to file a timely response to the said order. The petitioner requested for Summary judgment to be entered in the petitioner's favor, due to the law of presumption stemming from appellees' acquiescence regarding the matter of jurisdiction.

On March 2, 2020, the United States Court of Appeals for the Federal Circuit issued a judgment dismissing the petitioner's appeal, and that judgment is attached as Appendix B.

On March 9, 2020, the petitioner filed a Motion to Vacate the Judgment of Dismissal, which was construed as a Motion for Rehearing and denied by Order of the court, on March 26, 2020 (see Appendix C).

POINT 1: THE TUCKER ACT GAVE THE FEDERAL CIRCUIT JURISDICTION TO HEAR THE PETITIONER'S APPEAL.

The petitioner filed his appeal in the United States Court of Appeals for the Federal Circuit, because this court has the jurisdiction to hear governmental contracts in excess of \$10,000 dollars, since the Final Arbitration Award (Exhibit A of the Petitioner's Petition to Confirm Final Arbitration Award, filed in L.T. court as D.E. 1) is a contract with the UNITED STATES (via, its registered and/or licensed agents) for damages in excess of \$10,000 dollars; which invokes the Tucker Act for Jurisdictional purposes, according to Title 28, U.S.C Section 1491, and according to the Award (see Exhibit A (D.E. 1), point 16, page 5), which states in pertinent part:

“jurisdiction for the Final Award may be had under the Tucker Act in the U.S. Court of Claims as the exclusive jurisdiction for said Court of Claims for damages against the UNITED STATES under contracts in excess of \$10,000, since the matter is against an institution registered and licensed with the UNITED STATES, during the time of its conduct is construed as one and the same as a matter of law; the Federal Court of Claims would be at the election of the Claimant, a chosen proper jurisdiction to have the matter determined under Common law.”

POINT 2: IF THE FEDERAL CIRCUIT LACKED THE JURISDICTION TO HEAR THE APPEAL, THE COURT SHOULD HAVE TRANSFERRED THE APPEAL, IN ORDER TO PROVIDE THE PETITIONER WITH ACCESS TO THE COURTS.

If the Federal Circuit lacked the jurisdiction to hear the appeal, the court should have transferred the appeal, in order to provide the petitioner with access to the courts, because the Federal Arbitration Act, 9 U.S.C., Section 16(a)(1)(d), makes it clear that an appeal may be taken from an Order confirming or denying confirmation of an Award.

In addition, if the Federal Circuit did not have jurisdiction to hear the petitioner’s appeal, the court should have cured the want of jurisdiction by transferring the appeal, in accordance with 28 U.S.C. Section 1631- Transfer to Cure Want of Jurisdiction, which states as follows: *“Whenever a civil action is filed in a court as defined in Section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court (or, for cases within*

the jurisdiction of the United States Tax Court, to that court) in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.”

X. REASONS FOR GRANTING THE WRIT.

A. To avoid erroneous deprivations of access to the courts, when the law is clear that arbitration awards are appealable in federal courts.

This Writ should be granted because the said federal laws are in place to ensure that Judges do not exceed their jurisdiction, and these laws are in place to ensure that the people will receive meaningful Access to the Courts. However, most importantly, these laws are also in place to ensure that Law & Order is fair and effective for the people. If people did not comply with the written laws, there would be no Order and this very same principle applies to the courts, because when courts are in non-compliance with the written law, the order or judgment that was issued is null and void.

This means that when the Federal Circuit failed to comply with the written federal laws mentioned herein, the court effectively denied the petitioner with Access to the Courts, because his appeal was dismissed for a want of jurisdiction, when the court had federal question jurisdiction to hear the appeal, and if the court did not have jurisdiction to hear appeal, federal law required the court to transfer the appeal to cure the want of jurisdiction.

The petitioner suffered prejudice due to the denial of Access to the Courts, because his appeal was unjustly dismissed when it should have been heard under the Tucker Act, or either transferred to cure the want of jurisdiction, in accordance with 28 U.S.C. Section 1631- Transfer to Cure Want of Jurisdiction. The petitioner had no chance of winning his appeal, because the court completely ignored well-established written federal laws, which effectively denied the petitioner, "Access to the Courts," in violation of the 1st, 5th, and 14th Amendments of the US constitution. A reasonable probability exists, that if the court would have complied with the said written federal laws, the outcome of the proceedings would have been different, because the appeal would have been heard under the Tucker Act or either transferred to the court having proper jurisdiction.

The fundamental constitutional right of, "Access to the Courts," is protected and secured by the U.S. Constitution, to wit: the 1st Amendment right to petition the government for a redress of grievances," the 5th Amendment right to Due Process of Law, and the 14th Amendment right of Equal Protection of the laws.

"The right to sue and defend in the courts is the alternative of force. In an organized society, it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship." (See *Chambers v. Baltimore & Ohio Railroad Co.*, 207 U.S. 142, 148 (1907)).

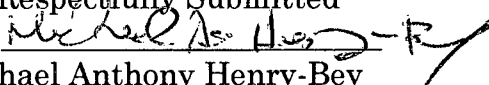
"The right to sue and defend in the courts is one of the highest and most essential privileges of citizenship and must be allowed by each State to the citizens

of all other States to the same extent that it is allowed to its own citizens.” (See Chambers v. Baltimore & O.R.R., 207 U.S. 142, 148 (1907); McKnett v. St. Louis & S.F. Ry., 292 U.S. 230, 233 (1934). “The constitutional requirement is satisfied if the nonresident is given access to the courts of the State upon terms which, in themselves, are reasonable and adequate for the enforcing of any rights he may have, even though they may not be technically the same as those accorded to resident citizens.” (See Canadian Northern Ry. v. Eggen, 252 U.S. 553 (1920).

“The right of access to the courts is basic to our system of government, and it is well established today that it is one of the fundamental rights protected by the Constitution.” (See Ryland v. Shapiro, 708 F.2d 967, 971 (5th Cir. 1983).

XI. CONCLUSION.

For the foregoing reasons, the petitioner respectfully requests that this Court issues a writ of certiorari to review the judgment of the United States Court of Appeals for the Federal Circuit.

Respectfully Submitted
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