

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 15-11128
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

August 4, 2016

Lyle W. Cayce
Clerk

TOMMY L. PARKER,

Plaintiff–Appellant,

v.

ETB MANAGEMENT, L.L.C. ET AL.,

Defendant–Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:14-CV-68

Before JOLLY, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Plaintiff–Appellant Tommy L. Parker, appearing pro se, filed suit against his former employer, Defendant–Appellee ETB Management, L.L.C. (“ETB”), alleging age discrimination and retaliation in violation of the Age Discrimination in Employment Act. ROA.8–9, 202. The district court found that Parker had signed a binding arbitration agreement with ETB and

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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compelled the parties to attend arbitration. ROA.203, 205. The arbitrator analyzed documentary evidence, heard witness testimony, and reviewed post-hearing briefing. ROA.304. The arbitrator ruled against Parker on both his age discrimination and retaliation claims. ROA.268–69. The district court then granted ETB’s motion to confirm the arbitration award and denied Parker’s motion to vacate the award. ROA.303–06. Parker filed a second motion to vacate, and the district court issued a warning against Parker, threatening sanctions if he continued to file frivolous claims. ROA.374. Parker filed four additional motions to vacate based on similar arguments, and the district court twice imposed sanctions against Parker for filing repeated claims “without a proper legal basis.” ROA.389–90, 408. Parker now appeals the district court’s confirmation of the arbitration award.

“We review a district court’s confirmation of an award de novo, but the review of the underlying award is exceedingly deferential.” *Rain CII Carbon, LLC v. ConocoPhillips Co.*, 674 F.3d 469, 472 (5th Cir. 2012) (quoting *Apache Bohai Corp. LDC v. Texaco China BV*, 480 F.3d 397, 401 (5th Cir. 2007)). In order to maintain “arbitration’s essential virtue of resolving disputes straightaway,” we engage in a “limited review” of arbitration decisions. *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 588 (2008). We do not vacate an award for a “mere mistake of fact or law,” *Rain CII Carbon*, 674 F.3d at 472 (quoting *Apache*, 480 F.3d at 401), and we have “no business weighing the merits of the grievance” or “considering whether there is equity in a particular claim,” *United Paperworkers Int’l Union v. Misco, Inc.*, 484 U.S. 29, 37 (1987) (quoting *United Steelworkers v. Am. Mfg. Co.*, 363 U.S. 564, 568 (1960)). Rather, we may only vacate an award when it violates one of four grounds specified in the Federal Arbitration Act (“FAA”): (1) “where the award was procured by corruption, fraud, or undue means,” (2) “where there was evident partiality or corruption in the arbitrators,” (3) “where the arbitrators were

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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.” 9 U.S.C. § 10(a)(1)–(4).

Parker argues the arbitrator’s decision was “procured by corruption” and that the arbitrator acted with “evidence of partiality or corruption” in violation of the FAA. Parker Br. 11.¹ To support his claim, Parker argues the arbitrator ignored conflicting statements given by Defendant’s witnesses regarding the events that immediately preceded his firing. Parker Br. 7–10. Construing Parker’s pro se briefs liberally, Parker appears to argue that the credibility of Defendant’s witnesses was so poor that there was no factual basis to support the arbitrator’s findings, and therefore the arbitrator acted with partiality or corruption. Parker Br. 12.

Parker’s argument invites us to reconsider the merits of his claim and to question the credibility determinations of the arbitrator. We decline to do so, as our review of arbitration decisions is “limited” and “exceedingly deferential.” *See Hall St.*, 552 U.S. at 588. Aside from rearguing the merits of his claim, Parker fails to advance any credible argument to show the arbitrator acted with corruption in violation of the FAA. Accordingly, we AFFIRM the district court’s confirmation of the arbitration award.

¹ Page numbers for Parker’s brief refer to the ECF page numbers and not to the printed page numbers on the physical brief.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

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August 04, 2016

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 15-11128 Tommy Parker v. ETB Mgmt, L.L.C., et al
USDC No. 5:14-CV-68

Enclosed is a copy of the court's decision. The court has entered judgment under FED R. APP. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED R. APP. P. 39 through 41, and 5TH Cir. R.s 35, 39, and 41 govern costs, rehearings, and mandates. 5TH Cir. R.s 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order. Please read carefully the Internal Operating Procedures (IOP's) following FED R. APP. P. 40 and 5TH CIR. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

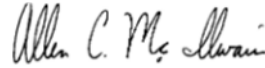
Direct Criminal Appeals. 5TH CIR. R. 41 provides that a motion for a stay of mandate under FED R. APP. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under FED R. APP. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, and advise them of the time limits for filing for rehearing and certiorari. Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk



By: Allen C. McIlwain
Allen C. McIlwain, Deputy Clerk

Enclosure(s)

Mr. Michael Chase Hales
Mr. Tommy L. Parker
Mr. Shawn David Twing