

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No. CV 17-01292-RGK (RAOx) Date May 31, 2017

Title *Tradewinds Ltd. v. Grupo Dolphin Discovery et al.*

Present: The Honorable R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE

Sharon L. Williams

Not Reported

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

**Proceedings:** (IN CHAMBERS) Order Re: Petition to Confirm Arbitration Award (DE 1)

**I. INTRODUCTION**

On February 16, 2017, Tradewinds Ltd. (“Tradewinds” or “Petitioner”) filed a petition to confirm an arbitration award that was issued on October 11, 2016 against Grupo Dolphin Discovery (“GDD”) and Controladora Dolphin, S.A. de C.V. (“Respondents”).<sup>1</sup>

For the following reasons, the Court **GRANTS** Tradewinds’ Petition to Confirm Arbitration Award.

**II. FACTUAL BACKGROUND**

Tradewinds Ltd. is a Belizean limited liability company in the investment banking and finance industry. Grupo Dolphin Discovery (“GDD”) is a Mexican corporation that operates dolphin theme parks around the world, allowing visitors to swim and interact with the friendly aquatic mammals.

GDD decided in 2014 to seek \$10 million in financing to open a new dolphin theme park. On September 23, 2014, GDD entered into a contract (“the Contract”) with Tradewinds Ltd., whereby Tradewinds would seek out investors willing to enter into a debt or equity investment transaction with GDD to raise the desired funds. Under the Contract, Tradewinds was to be paid a finder’s fee of 2.5% of the value of any transaction entered into by an investor that Tradewinds found for GDD.

Tradewinds assigned one of its consultants, Gene Geiger, to find investors for GDD. Geiger was an experienced investment banker, however, he was barred by the SEC from acting as a broker or dealer of securities in 2004 because he had previously engaged in the fraudulent sales of securities. It is undisputed that neither Tradewinds nor Geiger were registered as brokers or dealers with either the SEC or the State of California.

<sup>1</sup> *Tradewinds Ltd., d/b/a Tradewinds Consulting, Ltd., v. Grupo Dolphin Discovery and Controladora Dolphin S.A. de C.V.*, American Arbitration Association-International Center for Dispute Resolution (“ICDR”) Case No. 01-15-0005-4100.

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Even though GDD was initially only seeking \$10 million in financing, Geiger encouraged GDD to seek more financing for additional dolphin parks. Eventually, GDD upped its desired financing to \$70-80 million.

Through Geiger's efforts, GDD was put in contact with investment bankers at Imperial Capital, LLC ("Imperial"). Together with Imperial, Geiger (on behalf of Tradewinds) identified two entities potentially interested in investing with GDD: MGG Investment Group ("MGG") and TCW Group ("TCW").

Soon thereafter, however, GDD signed a contract with Imperial that was very similar to the one GDD entered into with Tradewinds, whereby Imperial would get a commission for finding investors for GDD. After signing the contract with Imperial, GDD instructed Imperial to cut Tradewinds out of the investor search.

Eventually, on October 9, 2015, MGG and TCW agreed to lend \$115 million to GDD. After the transaction closed, GDD paid Imperial's finder's fee, but refused to pay Tradewinds for its part in finding the investors.

Tradewinds thus took GDD to arbitration pursuant to the arbitration provision in the Contract. At arbitration, Tradewinds argued that GDD had breached its contractual duty to pay Tradewinds a finder's fee upon completion of the transaction entered into with investors that Tradewinds had identified for GDD. GDD countered that Tradewinds was not entitled to any money because Geiger and Tradewinds were not registered as brokers or dealers with the SEC, and that therefore the Contract was void.

After considering the parties' arguments, the arbitration panel ("the Panel") eventually found that Tradewinds was the "procuring cause of the October 9, 2015 Transaction" with MGG and TCW, and that therefore Tradewinds was entitled to the 2.5% commission called for in the Contract. (Final Award 18:g, ECF No. 1-2.) As for GDD's counter-argument, the Panel found that there was insufficient evidence adduced at arbitration to conclude that the debt transaction constituted a sale of "securities" under federal and California law, and that in any case, Tradewinds and Geiger did not act as brokers or dealers, but rather as finders (thereby falling under a carve-out from the SEC's broker/dealer registration requirements).

### **III. JUDICIAL STANDARD**

Under the Federal Arbitration Act ("FAA"), federal courts have only very limited authority to review arbitration decisions "because broad judicial review would diminish the benefits of arbitration." *Lifescan, Inc. v. Premier Diabetic Servs.*, 363 F.3d 1010, 1012 (9th Cir. 2004). A district court may deny confirmation of an arbitration award "only in very unusual circumstances." *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 942 (1995). Under § 10 of the FAA, an arbitration award may only be vacated if: (1) "the award was procured by corruption, fraud, or undue means"; (2) "there was evident partiality" on behalf of the arbitrators; (3) "the arbitrators were guilty of misconduct"; or (4) "the arbitrators exceeded their powers." 9 U.S.C. § 10(a); *Hall St. Assocs., LLC v. Mattel, Inc.*, 552 U.S. 576, 584 (2008). An

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arbitrator is deemed to have exceeded his powers if he acts in “manifest disregard of the law.” *Comedy Club, Inc. v. Improv W. Assocs.*, 553 F.3d 1277, 1290 (9th Cir. 2016). In the Ninth Circuit, an arbitrator has manifestly disregarded the law when it is clear that he recognized, but ignored, some “well defined, explicit, and clearly applicable” law. *Wawock v. CSI Elec. Contractors, Inc.*, 649 F. App’x. 556, 557 (9th Cir. 2016).

**IV. DISCUSSION**

GDD asks the Court not to confirm the Panel’s final award because the Panel manifestly disregarded the law in concluding that Geiger and Tradewinds were *not* acting as unregistered brokers or dealers in violation of federal and California law. GDD argues that the Court should instead find that the underlying Contract is void, and that Tradewinds is not entitled to any money.

As discussed above, “[a]lthough the words ‘manifest disregard for law’ do not appear in the FAA, they have come to serve as a judicial gloss on the standard for vacatur set forth in FAA § 10(a)(4).” *Johnson v. Wells Fargo Home Mortg., Inc.*, 635 F.3d 401, 414 (9th Cir. 2011). To rise to the level of manifest disregard for the law, the record must clearly show that the arbitrator recognized the applicable law and then ignored it. *Comedy Club*, 553 F.3d at 1290. Moreover, the law that the arbitrator allegedly ignored “must be well defined, explicit, and clearly applicable.” *Collins v. D.R. Horton, Inc.*, 505 F.3d 874, 879 (9th Cir. 2007) (emphasis omitted). “[A]rbitrators ‘exceed their powers’ . . . not when they merely interpret or apply the governing law incorrectly, but when the award is ‘completely irrational.’” *Kyocera Corp. v. Prudential-Bache Trade Servs., Inc.*, 341 F.3d 987, 997 (9th Cir. 2003) (en banc) (citations omitted).

After considering the parties’ arguments, as well as the findings and reasoning laid out in the Panel’s final award decision, the Court determines that there was no manifest disregard of the law. Applying Federal and California law, the Panel first found insufficient evidence to prove that the debt transaction constituted a “securities” transaction, which would require brokers or dealers associated with the transaction to register with the SEC. Second, the Panel found that based on its analysis, even if the debt sold constituted a security, Tradewinds and Geiger were nonetheless entitled to a finder’s fee pursuant to a judicial carve-out to the broker/dealer registration requirement, citing Paul Anka, SEC No-Action Letter (July 24, 1991), and *SEC v. Kramer*, 778 F.Supp.2d 1320 (M.D. Fla. 2011).

The Court finds that the Panel applied the law consistently with its clear statement of the law, and that the Panel adequately considered and rejected GDD’s arguments relating to Tradewinds not being a registered broker/dealer. While the Court may have come to a different outcome if it were applying the *Kramer* factors to the facts of this case, the Court cannot say that the Panel recognized and then ignored the applicable law. Rather than manifestly disregarding the law, the Panel here simply came to a different conclusion than GDD after applying the law to the facts. This cannot form the basis for overturning an arbitration award given the broad deference that is to be afforded to arbitration awards pursuant to the Federal Arbitration Act.

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**V. CONCLUSION**

For the foregoing reasons, the Court hereby **GRANTS** Tradewinds' Petition to Confirm the Final Arbitration Award. If GDD wishes for the Court to enter a separate judgement in addition to this Order, it should submit a proposed judgment consistent with this Order within 7 days of the date of this Order.

**IT IS SO ORDERED.**

Initials of Preparer

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