

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
Case No.: 16-20107-CV-14341-DLG

JPAY, INC.,

Plaintiff,

v.

OUMER SALIM,

Defendant.

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ORDER

**THIS CAUSE** came before the Court upon Plaintiff JPay, Inc.'s Renewed Application to Vacate Arbitration Award [D.E. 50], Defendant Oumer Salim's Response in Opposition [D.E. 52], and JPay, Inc.'s Reply [D.E. 53].

**THE COURT** having considered the motions, and being otherwise fully advised in the premises, denies JPay's renewed application for the reasons set forth below.

**I. Background**

Plaintiff JPay, Inc. ("JPay") is a provider of corrections-related services in more than thirty states across the country, as well as a provider of Video Visits for individuals in community corrections. Defendant Oumer Salim ("Salim") purchased Video Visits through JPay to communicate with an inmate in Noble Correctional Institution in Ohio.

On December 1, 2015, Salim filed a Demand for Class Arbitration ("Demand") of a business dispute before the American Arbitration Association ("AAA"). Salim requested that the matter proceed as a class action arbitration in accordance with the version of JPay's Video Visitation Terms of Service ("Terms of Service" or "Agreement") in effect at the time of the filing of his demand on December 1, 2015. [D.E. 1-2]. Two weeks after Salim filed his Demand, JPay revised its Terms of Service to include a "Dispute Resolution" section that outlined new arbitration procedures including: that all disputes be resolved through arbitration administered by JAMS, pursuant to JAMS rules; that all disputes be arbitrated on an individual basis; express waiver of any participation in a class action lawsuit; and that enforceability of class action waiver be "determined exclusively in the Federal District Court for the Southern District of Florida and not by JAMS or any Arbitrator". [D.E. 1-4, p. 12].

On January 7, 2016, this action was removed from the Miami-Dade Circuit Court. In its Complaint, JPay requested a declaration and injunctive relief that the purported class action arbitration filed by Salim is unlawful. [D.E. 1-4]. Also, JPay moved the court to declare that JPay never consented to class arbitration and to compel bilateral arbitration consistent with the parties' Agreement. [D.E. 1-4, p. 7 at ¶22]. Finally,

JPay requested an order staying the class arbitration pending before the AAA. [D.E. 1-4].

In response, Salim opposed JPay's motion to stay his counterclaim, and moved to compel arbitration and stay the entire proceedings, pursuant to Federal Arbitration Act, 9 U.S.C. §§ 3 and 4. [D.E. 16].

On May 24, 2016, this Court denied JPay's Motion to Stay Counterclaim and granted Defendant Oumer Salim's Motion to Compel Arbitration and Stay Proceedings. [D.E. 39]. The Court compelled arbitration in this matter consistent with the terms of the December 1, 2015 version of the Agreement and ordered the arbitrators to determine whether class arbitration was available. The arbitrators found it was.

JPay believes the arbitrators are wrong and appealed the Court's Order compelling arbitration to the Eleventh Circuit Court of Appeals. [D.E. 40]. To protect its appellate rights, and because the Eleventh Circuit indicated JPay's first appeal was premature, JPay filed an Application to Vacate Arbitration Award with this Court. [D.E. 46]. Subsequently, this Court denied JPay's Application without prejudice on March 14, 2017 because this Court was without jurisdiction to rule on JPay's Application while the appeal was still pending before the Eleventh Circuit. [D.E. 49].

On March 24, 2017, the Eleventh Circuit Court of Appeals dismissed JPay's appeal for lack of appellate jurisdiction. [D.E. 51]. On the same day, JPay filed a Renewed Application to Vacate Arbitration Award, again claiming "that the arbitrators exceeded their powers." [D.E. 50 at 4].

Defendant Oumer Salim filed a Response in Opposition to JPay's Renewed Application [D.E. 52] on April 6 2017. Salim agrees with the arbitration award, claiming that the arbitrators had the authority to construe the parties' contract and determine that the agreement permitted class arbitration. [D.E. 52 at 4]. JPay's Renewed Application to Vacate Arbitration Award is now ripe before the Court.

## **II. Discussion**

Our review of the arbitration award is bound by Federal Arbitration Act ("FAA") and "[i]t is well settled that judicial review of an arbitration award is narrowly limited." Davis v. Prudential Sec., Inc., 59 F.3d 1186, 1190 (11th Cir. 1995). The FAA lays out four grounds for a court to vacate an arbitration award, "(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 ... 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)(2002). JPay claims that the arbitrators were not authorized to make a determination on class arbitration, and therefore exceeded their powers pursuant to 9 U.S.C § 10(a)(4).

"[A]n arbitrator exceeds his or her power under [subsection (a)(4)] when he or she goes beyond the authority granted by the parties or the operative documents and decides an issue not pertinent to the resolution of the issue submitted to arbitration." Schnurmacher Holding, Inc. v. Noriega, So.2d 1327, 1329 (Fla. 1989). In the arbitration award, the AAA determined, by the context of the parties' arbitration clause and the governing law when the agreement was signed, that the parties' intended "to permit a potential class determination of the parties' disputes...." [D.E. 50-1 at 16].

This Court has already decided, in the Order compelling arbitration [D.E. 39], that the parties' agreement delegates the question of arbitrability to the arbitrators, including the availability of class arbitration. [D.E. 39 at 10]. The next matter at issue is whether the arbitrators exceeded their scope during their analysis. An arbitral decision must stand as long as the arbitrators are "arguably construing or applying the contract...regardless of a court's view of its (de)merits." Oxford Health Plans LLC v. Sutter, 133 S.Ct. 2064, 2068 (2013).

Here, the AAA acknowledged that the issue of the dispute was to determine whether class arbitration was available and that their duty was to interpret the language of the contract to resolve that issue. [D.E. 50-1 at 2, 4]. The AAA maintained this duty by referring to the plain language of the arbitration clause and the applicable case law in their determination. See id. at 6. Since the arbitrators arguably construed the parties' agreement, the Court ends its inquiry. See Directv, LLC v. Arndt, 546 F.App'x 836, 840 (11th Cir 2013)(relying on S. Commc'ns Servs., Inc. v Thomas, 720 F.3d 1352, 1359 (11th Cir. 2013)).

After careful review, the Court finds that: (1) the AAA conducted a thorough analysis of the parties' agreement and therefore did not exceed their authority, granted by the parties' in their arbitration clause, and (2) the issue regarding class arbitration was pertinent to this dispute's resolution.

### **III. Conclusion**

Based on the foregoing, it is

**ORDERED and ADJUDGED** that the AAA's Arbitration Award [D.E. 50-1] is **AFFIRMED**. It is further

**ORDERED and ADJUDGED** that Plaintiff JPay, Inc.'s Application to Vacate Arbitration Award [D.E. 46] is **DENIED**.

DONE AND ORDERED in Chambers at Miami, Florida this 20<sup>th</sup> day  
of June, 2017.

A handwritten signature in black ink, appearing to read 'D.L. Graham', written over a horizontal line.

DONALD L. GRAHAM  
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record