UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

LARRY GILMAN, *et al.*	)	
Plaintiffs,	)	
vs.	)	3:12-cv-00114-SEB-MPB
MANNON L. WALTERS, *et al.*	)	
Defendants.	)	

ORDER

This cause is before the Court on Plaintiffs' Motion to Confirm Arbitration Award [Docket No. 191], filed November 20, 2015, and Defendant Mannon Walters, LLC's Motion to Vacate Arbitration Award [Docket No. 200], filed on February 1, 2016. For the reasons detailed below, Plaintiff's Motion to Confirm is GRANTED and Defendant's Motion to Vacate is DENIED.

Background

This case has a protracted and complex factual and procedural history. We have previously recounted the detailed litigation history giving rise to the pending motions. See Dkt No. 128. To properly address the pending motions, we provide an abbreviated version of the facts.

Plaintiffs are investors in one or more of five Limited Partnerships ("LPs") engaged in the oil and gas industry.[1] On January 7, 2012, they filed a consolidated arbitration demand with the American Arbitration Association ("AAA") pursuant to identical arbitration clauses contained in each of the five Limited Partnership Agreements ("LPAs"). On January 27, 2012, Plaintiffs filed the instant lawsuit in order to "toll state statute of limitations and seek a declaratory judgment that the matters contained [in their Complaint] should be properly decided by arbitration." Compl. ¶ 55.

In the arbitration proceeding, Plaintiffs were instructed by the AAA claims administrator to file separate demands for each contract containing an arbitration clause. On November 27, 2013, we granted Defendants' motion to compel arbitration and ordered Plaintiffs to comply with the AAA claim administrator's instructions, holding that it was within the AAA's purview to determine such issues of consolidation. On December 19, 2013, Plaintiffs complied by filing five separate arbitration demands, thereby creating five distinct arbitration proceedings. Plaintiffs also filed their objection to the AAA's directive to sever their original Demand. Defendants in each arbitration also filed an objection to the AAA's jurisdiction. Following the selection of the arbitration panels and completion of preliminary hearings in four of the five arbitrations, Howard Suskin, the AAA-appointed arbitrator in the 2005A1 LP Case, granted Plaintiffs' Objection to Sever and allowed Plaintiffs thirty days to file a "Consolidated Amended

[1] Plaintiffs in this action were "Claimants" in the AAA arbitration, and Defendants were "Respondents" in the arbitration. For simplicity and clarity, we refer to Plaintiffs/Claimants simply as Plaintiffs and Defendants/Respondents as Defendants in this Order.

Statement of Claim" (hereinafter referred to as the "Amended Demand") instructing Plaintiffs to "plead with specificity…the factual and legal bases upon which AAA has jurisdiction over each [potential Defendant]." Dkt. 118-1 at 2.

On April 16, 2014, in a timely fashion, Plaintiffs filed their Amended Demand in the 2005A1 LP Case, adding all parties and non-parties from the other four pending arbitrations. The Amended Demand included the following fourteen requests for relief:

> **Count I**: **Declaratory Judgment**. Seeking determination of: (1) Plaintiffs' right to obtain a Participant's List (contact information of all Investors/Limited Partners in the Mannon LPs); (2) Plaintiffs' right to obtain an audit of the LPs' books and records; and (3) Plaintiffs' right to determine if all Investors had been converted from General Partners to Limited Partners.
>
> **Count II: Temporary Injunctive Relief**. Seeking to prevent Mannon L. Walters, LLC ("Walters") from wasting, using, or disposing of the Co-Limited Partnerships' assets and to maintain the status quo until the case is resolved.
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> **Count III: Breach of Contract**. Alleging breach of Sections 4.02(c)(3)(a) and 4.03(b)(7) of each Limited Partnership Agreement.
>
> **Count IV: Breach of Expressed Covenant of Good Faith and Fair Dealing**. Alleging breach of Section 4.03(d)(16) of the 2006A Limited Partnership Agreement.
>
> **Count V: Breach of Implied Covenant of Good Faith and Fair Dealing**. Alleging breach of the duties created by the relationships formed by each Limited Partnership Agreement.
>
> **Count VI: Breach of Fiduciary Duty**. Alleging breach of Section 3.06(a) of each Limited Partnership Agreement.
>
> **Count VII: Negligence & Gross Negligence**. Alleging that as Managing General Partner of the LPs, Walters was grossly

negligent in failing to exercise due care in the management of the Limited Partnership assets.

Count VIII: Unjust Enrichment. Alleging that Walters was unjustly enriched because Plaintiffs "paid Walters large amounts of cash for their investment units" in the Limited Partnerships and did not receive the benefit of their bargain.

Count IX: Fraudulent Misrepresentation. Alleging that Walters made certain warranties and representations to induce Plaintiffs to invest in the Limited Partnerships which it knew or should have known were not true at the time and/or that Walters had no intention of performing in accordance with the stated representation.

Count X: Negligent Misrepresentation. Alleging that Walters made numerous misrepresentations to Plaintiffs in the course of inducing their investments and purchase of interests without exercising reasonable care.

Count XI: Conversion and Theft. Alleging that Walters charged Plaintiffs fees for certain services that were not being performed and others that far exceeded industry standards for the associated services, and that Walters had wrongfully converted Plaintiffs' mineral rights, oil, gas, and other assets to itself.

Count XII: Failure to Register/ Violations of Federal Securities and State Blue Sky Laws. Alleging that Walters failed to register or secure a registration exemption for certain integrated public offerings in violation of Section 5 of the Securities Act of 1933.

Count XIII: Deceptive Trade/ Violation of Federal Securities Laws and State Blue Sky Laws. Alleging that Walters issued securities in the form of an investment program without exemptions or registrations required by law; that Walters engaged in a pattern of such violations; that Walters did not disclose such violations to Plaintiffs; that Walters made material omissions and misrepresentations in its Offerings; and that Plaintiffs would not have invested in the Limited Partnerships had they been informed truthfully.

> **Count XIV: Violation of the Racketeer Influenced and Corrupt Organizations Act.** Alleging that Mannon Walters and Ivy Morris, individually, engaged in a pattern and practice of committing mail and wire fraud in violation of 18 U.S.C. § 1962(c), and that Mannon Walters, LLC was engaged in the mail and wire fraud as an "association-in-fact."

Dkt. 118-4 at 27–53.

On April 19, 2014, Defendant Mannon L. Walters, LLC ("Mannon Oil") filed an objection to Arbitrator Suskin's April 14, 2014 Order permitting Plaintiffs to file their Amended Demand, contending that the Order entailed an exercise of jurisdiction over cases for which he had not been appointed the arbitrator and that the AAA lacked jurisdiction to decide all of the claims encompassed in all of the cases. On May 15, 2014, Arbitrator Suskin denied the motion, ruling in relevant part:

> It is undisputed that the arbitration clauses in each of the five limited partnership agreements provide for arbitration under the AAA Commercial Rules, and thus there is not any basis to contend that the AAA lacks jurisdiction over Claimants' claims.
>
> . . .
>
> The Order merely allowed Claimants to file an Amended Consolidated Statement of Claim in which they asserted, in this proceeding, all their claims against Respondents. The Order did not purport to consolidate this arbitration with any other cases.
>
> . . .
>
> With respect to Respondent's remaining objections, I have reviewed again the arbitration clauses at issue and the case law presented by the parties. The broad wording of the LPA's arbitration clause ("Any controversy or claim arising out of or

> relating to the Agreement") encompasses each of Claimants' claims as currently pleaded and therefore the objections are overruled.

Dkt. 118-5 at 1–4 (internal cites omitted).

Immediately following Arbitrator Suskin's issuance of his Order overruling Mannon Oil's objections, Mannon Oil filed its Answering Statement to the Amended Demand noting a "continuing objection" to AAA jurisdiction and arguing that a court must decide issues of arbitrability and that a majority of claims asserted against it were not arbitrable because they fell outside the scope of the LPA's arbitration clause.

On May 30, 2014, following a telephonic pre-hearing conference during which Mannon Oil stated that it intended to file jurisdictional objections with the Court, Arbitrator Suskin imposed a stay of its consideration of the jurisdictional objections interposed by other defendants, pending a resolution of the jurisdiction claims by this Court. Dkt. 120-9.[2] Within days, on June 2, 2014, Defendants filed a Motion to Stay Arbitration requesting that we stay the 2005A1 LP Case pending a determination of which claims in the Amended Demand are included within the scope of the LPA's arbitration clause and thus subject to AAA jurisdiction.[3]

[2] In his May 30, 2014 Order, Arbitrator Suskin also granted the Defendants' request that a three-member arbitration panel adjudicate the claims raised in the 2005A1 LP Case. Hereafter, references to "the Arbitrator" refer to Arbitrator Suskin and references to "the Panel" refer to the three-member arbitration panel, of which Arbitrator Suskin served as the Chair.

[3] Defendants' motion also requested a ruling as to whether certain non-signatories were bound by the arbitration clause in the 2005A1 LPA and whether any claims in the Amended Demand come within its scope. See Dkt. 128.

On November 20, 2014, we denied Defendants' motion, stating in pertinent part as follows:

> The arbitration provision's incorporation of the AAA Rules is a clear and unmistakable expression of intent by the contracting parties to leave the questions of arbitrability to an arbitrator. Accordingly, as a signatory to all five LPAs, Defendant Mannon Oil has clearly indicated its intent to confer on the arbitrator the authority to determine his own jurisdiction, including the power to resolve any "objections with respect to the existence, scope or validity of the arbitration agreement." AAA Commercial Arb. R. 7(a). Thus, Mannon Oil cannot now disavow its prior agreement to arbitrate issues of arbitrability, including the determination of which claims alleged in the Amended Demand fall within the scope of the arbitration agreement as well as whether it is bound by the arbitration clause in the 2005A1 LPA as managing partner of the Other Four Cases.
>
> . . .
>
> Thus, all issues raised by Defendant Mannon Oil in the instant motion are within the proper legal and factual purview of the arbitrator's powers and responsibilities.

Dkt. 128 at 10, 21.

Thereafter, the Panel of three arbitrators conducted a hearing of the 2005A1 LP case, and on November 18, 2015, issued their Award, stating in part, that:

> In deliberating over and preparing the award in this case, the panel has carefully reviewed the current pleadings, all pre- and post-hearing briefs, the expert reports, exhibits used during the hearing, and the post-hearing papers on attorneys' fees and costs. We have carefully considered the evidence submitted during the hearing and the arguments on both liability and on damages, including the objections to the nature of damages

evidence and Respondent's arguments that Claimants' damages model would overcompensate them.

. . .

The parties did not agree on the form of award desired. Respondent filed a Notice for Reasoned Rulings, while Claimants did not want a reasoned award. After deliberating on this issue, and in the face of disagreement between the parties on the form of the award, the Panel determined that a simple award is most appropriate. By Order dated July 14, 2015, the Panel denied Respondents' request for a reasoned award. Accordingly, we enter the simple award below.

. . .

1. Claimants listed below are awarded damages and prejudgment interest against Respondent Mannon L. Walters LLC (n/k/a Mannon Oil, LLC) in the following amounts:

   [Total Damages: $2,635,884. Total Prejudgment Interest: $2,588,510. Total Sum: $5,224,394]

2. Claimants are awarded against Respondent Mannon L. Walters LLC (n/k/a Mannon Oil, LLC) attorneys fees in the amount of $2,081,487.50 and expenses in the amount of $187,932.81. The fee award is not based upon any statement made by Respondent's counsel at the hearing; we do not find that the evidence supports the arguments that Respondent sought fees orally at the hearing. The fee award is based on applicable law and the exhibits in the case.

3. All claims by Mannon L. Walters LLC (n/k/a Mannon Oil, LLC) against Claimants are denied.

4. This Award does not adjudicate any claims against or by any individual or entity respondent other than Mannon L. Walters LLC (n/k/a Mannon Oil, LLC), including any alter ego or similar claim that might attach responsibility to others for conduct of Mannon L.

> Walters LLC (n/k/a Mannon Oil, LLC). In accordance with the Order of the U.S. District Court for the Southern District of Indiana dated November 20, 2014, in *Gilman v. Walters*, No. 3:12-cv-00114-SEB-WGH (S.D. Ind.), only claims against and by Mannon Oil, LLC (n/k/a Mannon Oil, LLC) were adjudicated in this proceeding. Nothing in the Award precludes any Claimant from pursuing claims against any other individual or entity besides Mannon Oil, LLC (n/k/a Mannon Oil, LLC).
>
> The above sums are to be paid on or before 30 days from the date of this Award.
>
> This Award is in full settlement of all claims and counterclaims submitted to this Arbitration against and by Mannon L. Walters LLC (n/k/a Mannon Oil, LLC). All claims not expressly granted herein against or by Mannon L. Walters LLC (n/k/a Mannon Oil, LLC) are hereby denied.

Dkt. 191-2.

On November 20, 2015, Plaintiffs filed their Motion to Confirm Arbitration Award [Docket No. 191], pursuant to 9 U.S.C. § 9. In response, on February 1, 2016, Defendant Mannon Oil filed its Objection to Plaintiffs' Motion to Confirm [Docket No. 203] and also filed a Motion to Vacate Arbitration Award [Docket No. 200], pursuant to 9 U.S.C. § 10(a). These motions were fully briefed by March 10, 2016, and are now ripe for decision.

Legal Analysis

Pursuant to the Federal Arbitration Act ("FAA"), a court must confirm an arbitration award "unless the award is vacated, modified or corrected as prescribed in

sections 10 and 11 of this title." 9 U.S.C. § 9. Defendant Mannon Oil, LLC ("Mannon Oil") has moved for an order vacating the Award pursuant to 9 U.S.C. § 10. Thus, we first address whether such an order is warranted here; if not, we must confirm the Award.

The scope of judicial review of an arbitration award is extremely limited. The FAA authorizes a court to vacate an award in only four circumstances:

> **(1)** where the award was procured by corruption, fraud, or undue means;
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> **(2)** where there was evident partiality or corruption in the arbitrators, or either of them;
>
> **(3)** where the arbitrators were 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); *see also Hall Street Associates, LLC v. Mattel, Inc.*, 552 U.S. 576, 584 –89 (2008) (holding that this list is exclusive and cannot be expanded by parties or the court).

Here, Mannon Oil contends that the Court should vacate the Award under subsection 10(a)(4) because "[t]he Panel exceeded its authority and administered its own brand of justice by arbitrating claims arising out of the self-contained Subscription Agreements which include an 'exclusive' judicial resolution dispute provision or an

integration clause and which do not incorporate the LPA or its arbitration provision." Def.'s Br. at 3.

The Subscription Agreements referenced by Mannon Oil pertain to the agreements pursuant to which Plaintiffs purchased their "Limited Partnership Units," i.e., their ownership interests in the five Limited Partnerships at issue. According to Mannon Oil, the "only possible" way for the Panel to have reached its final Award of damages, prejudgment interest, and attorneys' fees and costs, was to have included Plaintiffs' state securities fraud claims, which arose only under the Subscription Agreements since those agreements were the vehicle for Plaintiffs' purchases of their interests in the Limited Partnerships. See Def.'s Br. at 9 (concluding that "the only possible basis for the Award was relief under I.C. 23-19-5-9(a) and the Subscription Agreements on Count XIII of the [Amended Demand]".) Mannon Oil further contends that each Subscription Agreement contains either an integration or judicial dispute resolution clause, which places disputes arising out of those agreements beyond the scope of the LPA's arbitration clause. Mannon Oil proffers evidence that shows that the Award for each Plaintiff was equal to the respective Plaintiff's investment in the Limited Partnership(s) plus ten percent interest from the year of that Plaintiff's investment to the present. Mannon Oil argues that the most likely, if not exclusive, basis for an award of attorneys' fees was Indiana's securities fraud statute.

Plaintiffs rejoin that Mannon Oil, in making these arguments, relies on "pure speculation" and "conjecture," given that the Panel issued a *simple* Award which was

silent as to the rationale for the damages award. The Award did not to disclose the grounds on which it reached its decision, or the specific claims. See Pls.'s Br. at 11 (listing Counts 3 through 14 of the Amended Demand as possible bases for the Award).

Whatever the precise basis was for the Panel's award of damages, it is wholly irrelevant to resolution of the issue before us.[4] Mannon Oil has argued that the Panel acted beyond its authority in resolving Plaintiffs' securities fraud claims related to the Subscription Agreements. The Panel's Award stipulated that it was "in full settlement of all claims and counterclaims submitted to th[e] Arbitration," nothing more. See Dkt. 191-2. As Defendant concedes, Plaintiffs included claims of securities fraud as part of this arbitration by including them in their Amended Demand, as well as their pre- and post-hearing briefing and opening statement. See Def.'s Br. at 5; Dkt. 118-4, Count XIII. Whether the damages were awarded based on those specific claims or others is beside the point, given that the Panel expressly stated that it had resolved *all* the claims presented to it. Thus, irrespective of the particular claim(s) on which the Panel based its award of damages, it is clear that the securities fraud claims were included in the Panel's decision.[5]

[4] Notwithstanding Defendant's largely undeveloped argument in the final paragraph of its brief, which asserts that *if* the Panel in fact based its Award on Indiana's securities fraud statute (as Mannon Oil contends that it did), *then* the Panel misapplied that statute, given that the Plaintiffs failed to satisfy a required statutory condition precedent to seeking actual damages and in any event, the law sets the amount of prejudgment interest at 8% unless the security at issue provides for a higher rate. See Def.'s Br. at 15–16. We agree with Plaintiffs with regard to this argument: Defendant's arguments are primarily speculation and conjecture. The Panel's issuance of a simple Award leaves us without a basis for determining which of the fourteen claims provided for its awarded damages.

[5] Indeed, with regard to Plaintiffs' federal securities claims under the Securities Act of 1933, the Panel stated explicitly that it had granted partial summary judgment to Defendants, finding that those claims were time-barred by the statute of limitations. See Dkt. 191-2 at 2. In granting summary judgment to Defendants on those securities claims, the Panel clearly exercised jurisdiction over them. Mannon Oil raises no objection to their adjudication, instead focusing exclusively on the state securities claims by arguing that

Regarding the specific issue before us as to whether the Panel acted in excess of its authority in resolving the securities fraud claims, we hold that it did not.

Our November 2014 Order denied Defendants' motion to stay the arbitration pending a judicial resolution of the questions of arbitrability and jurisdiction. There, we expressly held that the LPA's arbitration clause had granted to the arbitrator the authority to determine his own jurisdiction, including the power to resolve objections to the existence, scope, or validity of the arbitration agreement as well as to determine which claims alleged in the Amended Demand came within the scope of the arbitration clause. Dkt. 128 at 10 (citing AAA Commercial Arb. R. 7(a)). Mannon Oil's challenge to the Panel's resolution of Plaintiffs' securities fraud claims is primarily an attempt to appeal that decision.

The Supreme Court has ruled in cases such as these, where the parties have agreed to submit questions of arbitrability to the arbitrator, that the standard for judicial review of the arbitrator's decision is the same as with any other matter which the parties have agreed to arbitrate. *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995).[6] The

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adjudication of the state claims, which they believe resulted in the Panel's award of damages, was improper. It seems that Mannon Oil's real dispute is not with the Panel's assertion of jurisdiction over Plaintiffs' securities claims, but rather with the *outcome* of the state claims. As we stated in *Team Scandia v. Greco*¸ "The United States Supreme Court and the Seventh Circuit have repeatedly held that courts must not visit the merits of the arbitrator's decision and thus allow the disappointed party to bring his dispute into court by the back door, arguing that he is entitled to appellate review of the arbitrators' decision." 6 F. Supp. 2d 795, 800 (S. D. Ind. 1998) (internal quotes omitted).

[6] The Court continued, saying that in cases where the parties did *not* agree to submit questions of arbitrability to the arbitrator, "then the court should decide that question just as it would decide any other question that the parties did not submit to arbitration, namely, independently." *First Options*¸ 514 U.S. at 943. For this reason, Mannon Oil's reliance on the Seventh Circuit's decision in *Indus. Elect. Corp. v. iPower Distrib. Grp.*, 215 F.3 677 (7th Cir. 2000) is misplaced. There is no evidence that the parties in

arbitrator's the decision must be enforced "so long as it 'draws its essence from the contract,' even if the court believes that the arbitrator misconstrued its provisions." *United Food & Commercial Workers, Local 1546 v. Illinois Am. Water Co.*, 569 F.3d 750, 754 (7th Cir. 2009) (quoting *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 36 (1987)). "An arbitrator's decision draws its essence from the contract if it is based on the arbitrator's interpretation of the agreement, correct or incorrect though that interpretation may be….Thus, once we conclude that the arbitrator did in fact interpret the contract, our review is concluded." *Id.* (internal cites omitted.)

In the case before us, Arbitrator Suskin based his determination of the arbitrability of all the claims presented in Plaintiffs' Amended Demand on the language contained in the LPA's arbitration clause. In overruling Defendants' objection to his jurisdiction, he stated:

> I have reviewed again the arbitration clauses at issue and the case law presented by the parties. The broad wording of the LPA's arbitration clause ("Any controversy or claim arising out of or relating to the Agreement") encompasses each of Claimants' claims as currently pleaded and therefore the objections are overruled.

Dkt. 118-5 at 1–4 (internal cites omitted). The Seventh Circuit instructs that it is not the role of the Court to determine the correctness of that decision, only to ensure that

iPower had agreed to submit the question of arbitrability to an arbitrator; thus, the courts' review of the arbitrability of the parties' dispute was conducted under a substantially different standard than the one we apply here. *See Id.*

decision was based on the contract. *United Food*, 569 F.3d at 754. "[O]nce we conclude that the arbitrator did in fact interpret the contract, our review is concluded." *Id.* We shall not delve into a *post hoc* review of the intended breadth of the LPA's arbitration clause as it relates to Plaintiffs' investments in the Limited Partnerships. Arbitrator Suskin's determinations as to scope and arbitrability based on the provision's language are within his authority to decide, and decide he did. Accordingly, we accept his ruling(s) and CONFIRM the Award.

Conclusion

For the reasons detailed above, Defendant Mannon L. Walters, LLC's Motion to Vacate Arbitration Award [Docket No. 200] is DENIED. Plaintiffs' Motion to Confirm Arbitration Award [Docket No. 191] is GRANTED.

IT IS SO ORDERED.

9/22/2016

SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

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