IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

WAYNE H. BRYANT,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	1:17-CV-01469-RWS
CFRA HOLDINGS, LLC, and	:	
SEINV HOLDINGS, LLC,	:	
	:	
Defendants.	:	

ORDER

This case comes before the Court on Plaintiff Wayne H. Bryant's Application/Motion to Vacate or Modify Arbitration Award and for Related Relief [1]; Defendants CFRA Holdings, LLC and SEINV Holdings, LLC's Motion to Dismiss Plaintiff's Amended Complaint [10]; and Plaintiff's Request for Oral Argument/Evidentiary Hearing [16]. After reviewing the record, the Court enters the following Order.

Background

Plaintiff Wayne H. Bryant is unhappy with the outcome of an arbitration. The arbitration was against his former employer, CFRA Holdings and its managing member SEINV Holdings, and involved several claims stemming

from Mr. Bryant's departure from CFRA. (Verified Appl. / Mot. to Vacate or Modify Arbitration Award & for Related Relief ("Mot. to Vacate"), Dkt. [1] ¶¶ 14–16.) Chief among them, Mr. Bryant challenged the valuation of his ownership in CFRA. (Id. ¶ 15; see also Ex. 7, Mot. to Vacate ("Arbitration Award"), Dkt. [1-7] at 2.) Mr. Bryant was also a management member and partner in CFRA, meaning that, under the LLC agreement, when Mr. Bryant left the company, CFRA had to repurchase his shares at their Fair Market Value. (Ex. 3, Mot. to Vacate ("LLC Agreement"), Dkt. [1-7] § 10.16; Mot. to Vacate, Dkt. [1] ¶¶ 6, 15.) The task of calculating Fair Market Value was left to SEINV Holdings, and was required to be done in good faith and absent manifest error. (LLC Agreement, Dkt. [1-7] § 1.1.) To Mr. Bryant, it was not, and he challenged SEINV's valuation of his shares–just over 200 units–at -$32,000. (Mot. to Vacate, Dkt. [1] ¶ 14; Arbitration Award, Dkt. [1-7] at 2.)

The dispute was submitted to arbitration, as the parties had agreed such disputes would be. (See LLC Agreement, Dkt. [1-7] § 10.16.) The matter was arbitrated and an award was issued after a two-day evidentiary hearing. (Arbitration Award, Dkt. [1-7] at 2; see also Mot. to Vacate, Dkt. [1] ¶ 17.) In the end, the arbitrator found that the evidence presented did not support any

claim for relief against Defendants. (Arbitration Award, Dkt. [1-7] at 2.) Now, proceeding *pro se*, Mr. Bryant argues that the arbitration award should be vacated or modified on a number of grounds. Defendants disagree.

Discussion

I. Request for Oral Argument [16]

As a preliminary matter, the Court finds that oral argument is not necessary to resolve the issues currently pending before it. Accordingly, Mr. Bryant's request for oral argument is **DENIED**.

II. Defendants' Motion to Dismiss [10]

On May 15, 2017, Mr. Bryant filed an Amended Complaint for Breach of Contract and Related Relief. Defendants then moved to dismiss that filing for lack of subject matter jurisdiction and for failure to state a claim. (See Defs.' Mot. to Dismiss Pl.'s Am. Compl. for Breach of Contract & Related Relief ("Mot. to Dismiss Am. Compl."), Dkt. [10]). Though Mr. Bryant was entitled to amend his Motion to Vacate, see Bonar v. Dean Witter Reynolds, Inc., 835 F.2d 1378, 1382 (11th Cir. 1988), upon closer examination, it appears that Mr. Bryant's May 15 filing is merely a submission of supplemental authority–indeed, over 50 pages of legal articles and state court opinions–as

well as notice to the Court regarding the form of service of process on Defendant SEINV. Mr. Bryant acknowledges as much in his Response to Defendants' Motion to Dismiss, clarifying that he did not intend to create any new claims, but merely support his original position. (See Plaintive (sic) Resp. to Defs. Filing on May 30, 2017, Dkt. [12] at 2.) Accordingly, Defendants' Motion to Dismiss is **DENIED as moot**.[1]

III. Motion to Vacate [1]

The Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, *et seq.*, governs judicial review of an arbitration award and imposes a "heavy presumption" in favor of confirmation. Riccard v. Prudential Ins. Co., 307 F.3d 1277, 1288 (11th Cir. 2002) (citing Gianelli Money Purchase Plan & Tr. v. ADM Inv'r Servs., Inc., 146 F.3d 1309, 1312 (11th Cir. 1998)). As such, a court's review is narrowly limited: "federal courts should defer to an arbitrator's decision whenever possible." Johnson v. Directory Assistants Inc., 797 F.3d 1294, 1299 (11th Cir. 2015) (quoting Frazier v. CitiFinancial Corp., LLC, 604 F.3d 1313,

[1] Defendants also request, in the alterative, to strike Mr. Bryant's "Amended Complaint" from the record if Mr. Bryant intended only to proceed under his original Motion to Vacate. (See Mot. to Dismiss Am. Compl., Dkt. [10] at 8.) However, the Court finds no reason to strike the record in light of its holding below.

1321 (11th Cir.2010)); Riccard, 307 F.3d at 1288 ("[A] court's confirmation of an arbitration award is usually routine or summary."). "The party challenging the arbitration award bears the burden of asserting sufficient grounds to vacate the award." Aldred v. Avis Rent-A-Car, 247 F. App'x 167, 169 (11th Cir. 2007).

Here, Mr. Bryant challenges six aspects of the arbitration award. He argues that the award should be vacated or modified because (1) the Arbitrator "imperfectly executed his powers" to the point that "a mutual, final, and definite award upon the subject matter was not made;" (2) there was a "material mistake" in the calculation and determination of the award; (3) the award is "arbitrary and capricious;" (4) enforcing the award would be against public policy; (5) the arbitrator "manifestly disregarded the law;" and (6) the award lacks sufficient reasoning to justify its outcome. (Mot. to Vacate, Dkt. [1] ¶¶ 19–20.)

At face value, these allegations fail to rise to the level of plausible claims for relief and are, instead, just conclusory assertions that cannot serve as grounds, in and of themselves, to vacate or modify the arbitration award. The party seeking vacatur or modification of an award must provide plausible

grounds for doing so. See Wiand v. Schneiderman, 778 F.3d 917, 926 (11th Cir. 2015); see also Akpele v. Pac. Life Ins. Co., No. 1:12-cv-02170-WSD, 2015 WL 687735, at *3 (N.D. Ga. Feb. 18, 2015). In his Motion to Vacate, however, Mr. Bryant has basically just recited several of the grounds for vacatur and modification listed in Sections 10 and 11 of the FAA. These do not suffice as plausible grounds to disturb the arbitration award. See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (explaining that factual allegations must raise the right to relief above the speculative level); Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (Legal conclusions and "threadbare recitals of the elements of the cause of action, supported by mere conclusory statements, do not suffice."). Nonetheless, recognizing that Mr. Bryant is proceeding *pro se* and has provided some supporting factual allegations, at least in his supplemental filings, the Court will address his arguments to determine whether vacatur or modification of the award is warranted under the FAA.

A. Vacatur–9 U.S.C. § 10

Section 10(a) of the FAA provides the four statutory grounds for vacatur: (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 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). "[T]he grounds for vacatur listed in [Section] 10(a) are exclusive." Johnson, 797 F.3d at 1299. And "[t]he burden is on the party requesting vacatur of the award to prove one of these four [statutory grounds]." Riccard, 307 F.3d at 1289 (11th Cir. 2002).

Mr. Bryant does not allege that the award was "procured by corruption, fraud, or undue means," 9 U.S.C. § 10(a)(1), that an actual conflict exists or that the arbitrator displayed evident partiality, 9 U.S.C. § 10(a)(2), or that Mr. Bryant was unfairly prejudiced by the manner in which the arbitrator conducted the proceeding, 9 U.S.C. § 10(a)(3).[2] Mr. Bryant's allegations suggest only that

[2] In the event Mr. Bryant suggests that the arbitrator violated Section 10(a)(3) of the FAA because he failed to consider or give equal weight to the evidence

the award ran afoul of Section 10(a)(4)–that the arbitrator "so imperfectly executed his powers that a mutual, final, and definite award upon the subject matter was not made." (Mot. to Vacate, Dkt. [1] ¶ 19.)

1. Whether the arbitrator exceeded his powers

Section 10(a)(4) empowers a court to vacate an arbitration award if the arbitrator exceeded his power, but "only when [the arbitrator] strays from interpretation and application of the agreement and effectively dispenses his own brand of industrial justice . . . ." Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 559 U.S. 662, 671 (2010). "It is not enough . . . to show that the [arbitrator] committed an error—or even a serious error." Id. "[A]s long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority," the Court may not disturb his decision. United Paperworkers Int'l Union, AFL–CIO v. Misco, Inc., 484 U.S. 29, 38

---

proffered by Mr. Bryant, that argument falls short. "[T]he FAA permits arbitration to proceed with only a summary hearing and with restricted inquiry into the factual issues, and the arbitrator need only give each party the *opportunity* to present its arguments and evidence." Dorward v. Macy's Inc., 588 F. App'x 951 (11th Cir. 2014) (internal quotations and citation omitted). Going well beyond that nominal requirement, the arbitration award here states that the arbitrator reached his decision "[a]fter a full evidentiary hearing . . . at which the parties presented substantial evidence . . . ." (Arbitration Award, Dkt. [1-7] at 2.)

(1987).

Mr. Bryant has not demonstrated that the arbitrator decided an issue not submitted by the parties or granted relief not authorized by the arbitration agreement. To the contrary, the arbitration agreement provides that "any dispute, alleged breach, interpretation, challenge or disagreement whatsoever arising out of this Agreement . . . shall be resolved by final and binding arbitration before a single arbitrator," and that "arbitration shall be the exclusive remedy" in such an instance. (LLC Agreement, Dkt. [1-3] § 10.16 (emphasis added).)

Clearly, Mr. Bryant disagrees with the arbitrator's award. And he takes particular issue with the arbitrator's finding that SEINV's calculation of the Fair Market Value of Mr. Bryant's shares was not manifest error and complied with the requirements of the LLC agreement. In that regard, Mr. Bryant's argument appears to be twofold: first, in order to reach the Managing Member's valuation, he must have relied upon earlier contracts, which are, themselves, based on invalid or inapplicable notes;[3] and second, in determining

[3] For the purposes of this Order, the Court need not delve into the details of Mr. Bryant's prior agreements with CFRA. It is sufficient to say that Mr. Bryant executed an amended agreement regarding his ownership in CFRA, which he

the fair market value of Mr. Bryant's ownership, SEINV impermissibly devalued Mr. Bryant's shares, thereby treating him differently than other members in violation of the LLC agreement. However, an "incorrect legal conclusion is not grounds for vacating or modifying the award." White Springs Agric. Chems., Inc. v. Glawson Invs. Corp., 660 F.3d 1277, 1280 (11th Cir. 2011). And to the extent Mr. Bryant contests the arbitrator's interpretation of the applicable law–for example, that regarding novation or minority shareholders' rights–"the FAA does not empower [the Court] to review these allegations of legal error." Id. at 1281.

"[T]he sole question for [the Court] is whether the arbitrator (even arguably) interpreted the parties' contract, not whether he got its meaning right or wrong." Oxford Health Plans LLC v. Sutter, 569 U.S. 564, 568 (2013); see also Wiand, 778 F.3d at 926 (" When reviewing an arbitration award . . . we may revisit neither the legal merits of the award nor the factual determinations upon which it relies." (citing United Paperworkers, 484 U.S. at 39 (prohibiting

---

contends was inaccurate because it was predicated on Mr. Bryant still owing money on an earlier note, which he had already paid off, as well as certain documents that predated CFRA's conversion from a corporation to an LLC. (See Mot. to Vacate, Dkt. [1] ¶ 11.)

judicial review despite the arbitrator having made "improvident, even silly" decisions))). It is only where the arbitrator goes beyond interpretation and modifies the contract's clear and unambiguous terms that judicial recourse is proper. See Original Appalachian Artworks, Inc. v. JAKKS Pac., Inc., No. 17-11513, 2017 WL 5508498, at *6 (11th Cir. Nov. 17, 2017) (explaining a two-part inquiry under 9 U.S.C. § 10(a)(4) in which the threshold question for the Court is whether the relevant language in the contract is ambiguous and, thus, open to interpretation; only if it is need the Court decide whether the arbitrator arguably interpreted that language).

Here, the clauses at issue are clear and unambiguous. Section 7.5 of the LLC agreement requires that, upon termination from CFRA, the company must repurchase any vested Units (or shares) in the company from the withdrawing member at their Fair Market Value on the date of termination. (LLC Agreement, Dkt. [1-3] § 7.5.) Section 1.1 of the LLC agreement defines a Unit's "Fair Market Value" as

> determined by the Managing Member in its good faith judgment in such manner as it deems reasonable and using all factors, information and data deemed to be pertinent, including, without limitation, lack of voting or other rights, minority ownership and the lack of marketability of the Units. The Managing Member's

> determination of Fair Market Value shall, absent manifest error, be binding on all Members.

(Id. § 1.1.) This makes clear that the determination of Fair Market Value is left in the broad discretion of CFRA's managing member–in this case, SEINV. The question for the arbitrator, then, was whether SEINV's valuation of Mr. Bryant's shares was done in manifest error or bad faith. After examining the evidence, he concluded it was not. Whether correct or incorrect, this was clearly interpretation and application of the terms of the LLC agreement, not modification of them. That is all that is required. And so, the Court concludes that the arbitrator did not exceed his power in issuing the arbitration award.

2. Whether the arbitration award provides adequate reasoning

Mr. Bryant also asserts that the arbitrator failed to provide sufficient reasoning to justify the award. Because "arbitration is a creature of contract," parties are allowed to "contractually limit or alter the issues to be presented to the arbitrators, the scope of the award, and . . . the form of the award." Cat Charter, LLC v. Schurtenberger, 646 F.3d 836, 843 (11th Cir. 2011). Parties, then, might request an arbitrator to make "findings of fact and conclusions of law" or provide a "reasoned award." See id. at 844. But absent a request for a

specific form of award, the "arbitrator need not explain [his] decision" and instead provide only a "standard award" that simply announces the result. Id. at 843; see also United Steelworkers v. Enter. Wheel & Car Corp., 363 U.S. 593, 598 (1960) ("Arbitrators have no obligation to the court to give their reasons for an award."); Wiregrass Metal Trades Council AFL–CIO v. Shaw Envtl. & Infrastructure, Inc., 837 F.3d 1083, 1090 (11th Cir. 2016) ("Arbitrators usually are not required to include explanations, much less detailed ones, and they often do not.").

Here, the controlling agreement does not specify any form of award that an arbitrator must hand down. (See LLC Agreement, Dkt. [1-3] § 10.16.) Nor has Mr. Bryant provided any evidence showing that the parties requested the arbitrator to issue the award in a particular form. The arbitrator, therefore, was merely obligated to announce the result. He not only did so—concluding that the evidence presented by Mr. Bryant did not support any claim for relief alleged—but also explained as to Mr. Bryant's primary breach of contract claim:

> While Claimant presented evidence of other methods by which Fair Market Value could have been determined, with different purchase price results, the evidence does not support a conclusion

> that the Fair Market Value, as determined by the Managing Member, was determined, or that the Claimant's interest was purchased, in violation of the LLC Agreement. In fact, the evidence affirmatively shows that the Fair Market Value was determined in compliance with the factors and requirements outlined in the LLC Agreement and was absent manifest error.

(Arbitration Award, Dkt. [1-7] at 2.) "To be sure, the [arbitrator] could have provided more. But again, had the parties wished for a greater explanation, they could have requested that the [arbitrator] provide findings of fact and conclusions of law;" they did not, so the reasoning in the arbitration award is greater than what was required. Cat Charter, 646 F.3d at 845.

3. Mr. Bryant's remaining arguments

Finally, Mr. Bryant alleges that the award is arbitrary and capricious, that the arbitrator manifestly disregarded the law, and that enforcing the award would be against public policy. (Mot. to Vacate, Dkt. [1] ¶¶ 19–20.) However, the Eleventh Circuit has held, repeatedly, that these judicially-created grounds for vacatur are no longer valid. See Frazier, 604 F.3d at 1322 ("[A]rguments that the award was arbitrary and capricious, in violation of public policy, and made in manifest disregard for the law" no longer valid bases for vacatur.); Forward v. Macy's Inc., 588 F. App'x 951, 953 (11th Cir. 2014) (same);

Campbell's Foliage, Inc. v. Fed. Crop Ins. Corp., 562 F. App'x 828, 831 (11th Cir. 2014) (same). Instead, Mr. Bryant must prove "the existence of one or more of [the] four statutorily enumerated causes for reversal set forth in 9 U.S.C. § 10(a)(1)–(4). Wiand, 778 F.3d at 925. He has not. And so Mr. Bryant's Motion is hereby **DENIED** as to vacatur.

B. Modification–9 U.S.C. § 11

Section 11 of the FAA controls when an arbitration award may be corrected or modified:

> (a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.
>
> (b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.
>
> © Where the award is imperfect in matter of form not affecting the merits of the controversy.

9 U.S.C. § 11. Like vacatur, "this review is circumscribed, as arbitrators do not act as junior varsity trial courts where subsequent appellate review is readily available to the losing party." Cat Charter, 646 F.3d at 843 (internal quotations and citation omitted).

Mr. Bryant's argument seems to be essentially the same as outlined in Part III.A.1, *supra*—that the arbitrator made a material mistake or miscalculation in reviewing and affirming SEINV's valuation of Mr. Bryant's shares. The problem is that the arbitrator never awarded either of the parties anything.[4] Instead, he found that "the evidence presented [did] not support any claim for relief against [Defendants]." (Arbitration Award, Dkt. [1-7] at 2.) Section 11 of the FAA "reaches only computational errors, not legal or factual mistakes concerning the amount of damages that should be awarded." Waddell v. Holiday Isle, LLC, 2009 WL 2413668, at *3 (S.D. Ala. 2009). Thus, the arbitrator's decision that Mr. Bryant was not entitled to relief, which was based on his review of the evidence and interpretation of the agreement, is not subject to modification. See Carothers Constr., Inc. v. E-Builds LLC, No. 1:10CV170-SPM/GRJ, 2011 WL 13227947, at *1 (N.D. Fla. Jan. 24, 2011) ("The purpose of 9 U.S.C. § 11(a) is to correct mathematical and computational errors so as to effect the Arbitrator's intent, not to permit the District Court to

[4] The arbitration award does provide that the costs of arbitration "shall be borne equally by the parties." (Arbitration Award, Dkt. [1-7] at 2.) This, however, is not an award, but an effectuation of the terms of the contract. And neither of the Parties have challenged its accuracy

review the Arbitrator's award for legal error.").[5]

Indeed, what Mr. Bryant is actually seeking is for the Court to vacate the arbitration award and find that Mr. Bryant is entitled to some relief. For the reasons set forth above, the Court cannot do so. Accordingly, Mr. Bryant's Motion to Vacate is hereby **DENIED** as to modification.

Conclusion

As discussed above, Mr. Bryant's Motion to Vacate or Modify Arbitration Award and for Related Relief [1] is **DENIED** in its entirety, and his Request for Oral Argument/Evidentiary Hearing [16] is likewise **DENIED**. Defendants' Motion to Dismiss Mr. Bryant's Amended Complaint [10] is **DENIED as moot**. The Clerk is **DIRECTED** to close the case.

---

[5] The Court further notes that it lacks power to award additional monetary relief outside of the arbitration award, not only under the FAA, but also the arbitration agreement itself. According to the arbitration agreement, "arbitration shall be the exclusive remedy hereunder; provided that nothing contained in this Section . . . shall limit any party's right to bring (I) post-arbitration actions seeking to enforce an arbitration award or (ii) actions seeking injunctive or other similar relief in the event of a breach or threatened breach of any of the provisions of this Agreement." (LLC Agreement, Dkt. [1-3] § 10.16.) It is, therefore, all encompassing, and so "intervention by the court to award additional relief would be inconsistent with the language and policy of the Federal Arbitration Act." Glover v. IBP, Inc., 334 F.3d 471, 477 (5th Cir. 2003).

SO ORDERED, this 16th day of January, 2018.

RICHARD W. STORY
United States District Judge