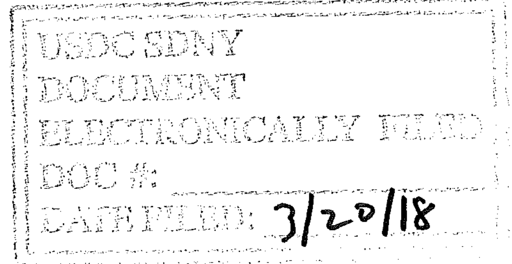

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---X
ROBERT PERRY and ROBERT H. SNYDER,

Petitioners,

16 Civ. 4305 (DAB)
MEMORANDUM & ORDER

v.

KINGSLAND CAPITAL MANAGEMENT LLC,

Respondent.
---X
DEBORAH A. BATTS, United States District Judge.

On June 9, 2016, Petitioners Robert Perry and Robert H. Snyder filed a Petition to Vacate an Arbitration Award against Respondent Kingsland Capital Management LLC. This case stems from a dispute related to Petitioners' departure from employment with Respondent and Respondent's failure to pay incentive fees purportedly owed to Petitioners. Petitioners seek to vacate the Arbitration Award denying Petitioners' claims to the incentive fees. On June 30, 2016, Respondent filed a Motion to Confirm the Arbitration Award and in opposition to the Petition. For the following reasons, the Petition is DENIED, and Respondent's Motion is GRANTED.

I. BACKGROUND

The facts set forth in brief here are primarily drawn from the Arbitration Award (Decl. Todd A. Gutfleisch ("Gutfleisch

Decl."), Ex. 1 ("Award")) and the Petition and are set forth in greater detail in those documents.

Petitioners began to work for Respondent, an investment company in 2005. (Pet. ¶¶ 15-19.) In 2006, Respondent sent offer letters to Petitioners (the "Offer Letters"), which set out various forms of compensation fees they were to receive including base salaries, bonuses, a share of Respondent's operating income, and a share of incentive fees in some of Respondent's funds. (Id. ¶ 20.) Handwritten provisions set out percentages each Petitioner was to receive with respect to operating income and incentive fees in certain funds. (Id. ¶¶ 20-22.) The provision regarding incentive fees provided: "You will receive a share of the Incentive Fees in any fund raised by [Respondent] during your employment with [Respondent] that has such a fee structure. Incentive fees will vest ratably over a five-year period with the beginning of the period being the closing date of such fund." (Award at 3; Pet. ¶ 23.) Petitioners also received memoranda in 2008 related to their compensation reviews for 2007 that set forth five elements of compensation for 2007, again including incentive fees (the "2007 Compensation Reviews"). (Award at 5-6; Pet. ¶¶ 24-28.)

In 2012, Respondent executed its LLC agreement (the "LLC Agreement," Gutfleisch Decl. Ex. 3(G)), which was signed by Petitioners. (Award at 9; Pet. ¶ 29.) The LLC Agreement

contained a Delaware choice of law clause (LLC Agreement § 10.7) and an arbitration clause. (LLC Agreement § 10.17.)

The LLC Agreement also contained a merger clause (the "Merger Clause"), which stated: "This Agreement constitutes the entire agreement between the parties pertaining to the subject matter thereof, and fully supersedes any and all prior agreements or understandings between the parties hereto pertaining to the subject matter thereof." (Award at 9; LLC Agreement § 10.3.) The LLC Agreement did not specifically mention the Offer Letters, the 2007 Compensation Reviews, or incentive fees. (Award at 9-10.) It did, however, address other forms of compensation. For example, it formalized Respondent's practice of distributing profits through operating profits, of which Petitioners were not to receive any. (Id. at 10-11.) The LLC Agreement also addresses Petitioners' equity interest in Respondent, which is also addressed in the Offer Letters and 2007 Compensation Review. (Id. at 11.) Under the LLC Agreement, in lieu of incentive fees, Petitioners received bonuses. (Id. at 11-12.)

The Arbitrator held that the 2006 Offer Letters, confirmed by the 2007 Compensation Reviews, did not limit entitlement to a vested incentive fee to current employees of Respondent. (Award at 6.) In other words, any vested rights survive an employee's departure. (Id. at 6-7.) The Arbitrator also rejected

Respondent's arguments that the 2007 Compensation Reviews and related notes were open-ended and inconsistent and thus were unenforceable and that the Offer Letters were abandoned or modified by its behavior. (Id. at 7-8.) Accordingly, the Arbitrator addressed the issue of the LLC Agreement.

The Arbitrator analyzed the subject matter of the LLC Agreement, given the merger clause's statement that it was the entire agreement pertaining to its subject matter. (Id. at 9-11.) The Arbitrator found that the LLC Agreement addressed Petitioners' compensation,[1] as did the Offer Letters and 2007 Compensation Review, and that it superseded those prior agreements. (Id. at 10-11.) The Arbitrator also supported this interpretation of the LLC Agreement by looking to extrinsic evidence. (Id. at 12-14.)[2]

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[1] The Arbitrator found that Petitioners "signed the LLC [Agreement] in 2012 with reasonably full knowledge that they were trading speculative Incentive Fees for the tax-advantaged bird-in-the-hand deal that they then felt to be imminent." (Id. at 14.)

[2] Petitioners argue that the Arbitrator should not have considered the extrinsic evidence but do not make arguments relying on the substance of the extrinsic evidence. Accordingly, the Court does not address it here.

II. Discussion

A. Standard for Vacatur under the Federal Arbitration Act

Under the Federal Arbitration Act (the "FAA"), the Court must affirm the award "unless the award is vacated, modified." 9 U.S.C. § 9. "Normally, confirmation of an arbitration award is 'a summary proceeding that merely makes what is already a final arbitration award a judgment of the court.'" D.H. Blair & Co. v. Gottdiener, 462 F.3d 95, 110 (2d Cir. 2006) (quoting Florasynth, Inc. v. Pickholz, 750 F.2d 171, 176 (2d Cir. 1984)). "Arbitration awards are subject to very limited review," Folkways Music Publishers, Inc. v. Weiss, 989 F.2d 108, 111 (2d Cir. 1993), with the party moving to vacate the award carrying the burden of proof. D.H. Blair, 462 F.3d at 110.

"The arbitrator's rationale for an award need not be explained, and the award should be confirmed if a ground for the arbitrator's decision can be inferred from the facts of the case. Only a barely colorable justification for the outcome reached by the arbitrators is necessary to confirm the award." Id.; see also Trs. of N.Y.C. Dist. Council of Carpenters Pension Fund v. Dejil Sys., Inc., No. 12 Civ. 005 (JMF), 2012 WL 3744802, at *3 (S.D.N.Y. Aug. 29, 2012) ("Where . . . there is no indication that the arbitration decision was made arbitrarily, exceeded the arbitrator's jurisdiction, or

otherwise was contrary to law, a court must confirm the award upon the timely application of any party.").

B. Whether the Arbitrator's Behavior Requires Vacatur of the Arbitration Award

9 U.S.C. § 10(a)(4) provides that a district court may vacate an arbitration award "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." The Second Circuit has construed this provision narrowly. See Jock v. Sterling Jewelers Inc., 646 F.3d 113, 122 (2d Cir. 2011). "The focus of our inquiry . . . is whether the arbitrators had the power, based on the parties' submissions or the arbitration agreement, to reach a certain issue, not whether the arbitrators correctly decided that issue. Put simply, section 10(a)(4) does not permit vacatur for legal errors." Id. (internal citations, quotations, and alterations omitted). "'[A]s long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority,' a court's conviction that the arbitrator has 'committed serious error' in resolving the disputed issue 'does not suffice to overturn his decision.'" ReliaStar Life Ins. Co. of N.Y. v. EMC Nat'l Life Co., 564 F.3d 81, 86 (2d Cir. 2009) (quoting United Paperworkers Int'l Union AFL-CIO v. Misco, Inc., 484 U.S. 29, 38 (1987)).

Petitioners argue that, pursuant to 9 U.S.C. § 10(a)(4), the Arbitration Award should be vacated because the Arbitrator exceeded his power by disregarding the terms of the contracts at issue. They do not, however, cite any case law supporting the proposition that this is grounds for vacatur under the FAA. The Arbitrator here had the power to decide whether Petitioners were owed incentive fees because of the arbitration clause in the LLC Agreement and because Petitioners submitted that argument to him. Accordingly, the Court rejects Petitioners arguments with respect to 9 U.S.C. § 10(a)(4) and affirms the Arbitration Award on this ground.

C. Whether the Arbitrator Manifestly Disregarded the Terms of the Parties' Agreements

Courts in the Second Circuit give substantial deference to an arbitrator's resolution of a contract dispute. Yusuf Ahmed Alghanim & Sons v. Toys "R" Us, Inc., 126 F.3d 15, 23 (2d Cir. 1997). The Second Circuit has identified three factors to consider in evaluating whether an arbitrator's decision should be vacated for manifest disregard of the law. The first factor is "whether the law that was allegedly ignored was clear, and in fact explicitly applicable to the matter before the arbitrators. An arbitrator obviously cannot be said to disregard a law that is unclear or not clearly applicable. Thus, misapplication of an ambiguous law does not constitute manifest disregard." Stolt-

Nielsen SA v. AnimalFeeds Int'l Corp., 548 F.3d 85, 93 (2d Cir. 2008), rev'd on other grounds, 559 U.S. 662 (2010). Second, the Court asks whether "the law was in fact improperly applied, leading to an erroneous outcome." Id. Under this factor, "[e]ven where explanation for an award is deficient or non-existent, we will confirm it if a justifiable ground for the decision can be inferred from the facts of the case." Id. The third factor is whether the arbitrator knew of the law's existence and its applicability to the issue at hand—in other words, whether the arbitrator intentionally disregarded the law. Id.; see also Westerbeke Corp. v. Daihatsu Motor Co., 304 F.3d 200, 222 (2d Cir. 2002) ("Under our heightened standard of deference, vacatur for manifest disregard of a commercial contract is appropriate only if the arbitral award contradicts an express and unambiguous term of the contract or if the award so far departs from the terms of the agreement that it is not even arguably derived from the contract.").

Petitioners failed to meet its burden as the Arbitrator has provided more than a barely colorable justification for its Final Award. See D.H. Blair, 462 F.3d a 110. They simply recycle the same arguments here as they did before the Arbitrator, specifically that the LLC Agreement was silent as to incentive fees and that this did not create ambiguity so as to authorize the Arbitrator to consider extrinsic evidence. The Arbitrator,

however, interpreted the express terms of the merger clause, which included the phrase "subject matter." (Award at 9.) The Arbitrator examined this phrase using the entirety of the LLC Agreement, which was appropriate. His interpretation of extrinsic evidence, though not necessary to his holding, does not constitute manifest disregard of the law. See Giller v. Oracle USA, Inc., No. 11 CIV. 02456 JGK, 2012 WL 467323, at *6 (S.D.N.Y. Feb. 14, 2012) (disregard of parol evidence rule does not constitute manifest disregard of the law), aff'd, 512 F. App'x 71 (2d Cir. 2013).

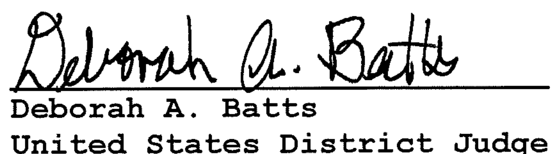
Accordingly, Petitioners have failed to meet their burden in demonstrating that the Arbitrator manifestly disregarded the terms of the Agreements.

III. CONCLUSION

For the foregoing reasons, the Petition to Vacate the Arbitration Award is DENIED and the Motion to Affirm is GRANTED. The Clerk of Court is directed to enter judgment in favor of Respondent and against Petitioners.

SO ORDERED.

DATED: New York, NY
March 20, 2018



Deborah A. Batts
United States District Judge