UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No.: 17-cv-80922-MIDDLEBROOKS

MONEY CONCEPTS CAPITAL CORP.,

Petitioner,

v.

ALAN JEROME SCHRYER,

Respondent.
_____/

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

THIS CAUSE comes before the Court on Plaintiff Money Concepts Capital Corp.'s ("Plaintiff") Motion for Summary Judgment, filed on February 5, 2018 (DE 27). Defendant Alan Jerome Schryer ("Defendant") filed a Response on February 20, 2018, in which he moves for summary judgment. (DE 30). His Response is therefore construed as a Motion for Summary Judgment. Plaintiff replied on February 27, 2018. (DE 33). For reasons stated below, Defendant is entitled to summary judgment.

BACKGROUND

Plaintiff is a securities broker-dealer and a member of the Financial Industry Regulatory Authority ("FINRA"). Defendant was associated with Plaintiff as a Registered Representative from September 2007 through December 2013. On September 5, 2007, the Parties entered into a Registered Representative Agreement ("The Agreement"), authorizing Plaintiff to settle claims and disputes asserted against it by customers whose accounts were handled by Defendant. Under the Agreement, Defendant was required to reimburse Plaintiff for the cost of any such settlements. (DE 27 at 2). The Agreement also contained a venue-selection clause stating that "[a]ny controversy or disagreement between the parties to this Agreement shall be determined by

arbitration in Palm Beach County, Florida in accordance with the rules and regulations as promulgated by the National Association of Securities Dealers, Inc." (DE 1-1).

After Plaintiff had entered into a number of settlements with customers whose accounts were handled by Defendant, Plaintiff sought reimbursement from Defendant. Defendant refused and brought arbitration proceedings against Plaintiff before FINRA Dispute Resolution in Los Angeles, California (the "Schryer Arbitration"). On March 6, 2017, Plaintiff commenced separate arbitration proceedings against Defendant (the "Money Concepts Arbitration").

Plaintiff filed a motion with the Director of FINRA Dispute Resolution to transfer the Schryer Arbitration from Los Angeles to Boca Raton, Florida pursuant to the venue-selection provision in the Parties' agreement.[1] That Motion was referred to the FINRA Arbitration Panel which held a telephonic pre-hearing conference on the Motion. The Panel ordered that the arbitration remain in Los Angeles. On August 4, 2017, Plaintiff initiated this action, filing its Petition to Compel Arbitration in Palm Beach County, Florida and to Stay Arbitration in Los Angeles, California. Both Parties move for summary judgment on the Petition.

STANDARD

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "Genuine disputes are those in which the evidence is such that a reasonable jury could return a verdict for the non-movant." *Ellis v. England*, 432 F.3d 1321, 1325-26 (11th Cir. 2005). "For factual issues to be considered genuine, they must have a real basis in the record." *Id.* at 1326 (internal citation omitted). "For instance, mere conclusions and unsupported factual allegations are legally insufficient to defeat a summary judgment motion."

[1] Plaintiff additionally moved to consolidate the Schryer Arbitration into the Money Concepts Arbitration. The consolidation is not at issue in this litigation.

Id. (internal citation omitted). "Moreover, statements in affidavits that are based, in part, upon information and belief, cannot raise genuine issues of fact, and thus also cannot defeat a motion for summary judgment." *Id.* (internal citations omitted).

The movant "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (quoting Fed. R. Civ. P. 56(c)(1)(A)). When the moving party bears the burden of proof at trial, "the moving party must show that, on all the essential elements of its case on which it bears the burden of proof at trial, no reasonable jury could find for the nonmoving party." *United States v. Four Parcels of Real Prop. in Greene & Tuscaloosa Ctys. in State of Ala.*, 941 F.2d 1428, 1438 (11th Cir. 1991) (internal citation omitted). "If the moving party makes such an affirmative showing, it is entitled to summary judgment unless the nonmoving party, in response, comes forward with significant, probative evidence demonstrating the existence of a triable issue of fact." *Id.* (internal quotations and citations omitted).

DISCUSSION

The Parties largely agree as to the material facts but dispute the application of controlling law. Plaintiff argues that the arbitration ought to proceed in Palm Beach County, Florida, the contractually agreed-upon venue. Defendant argues that venue is appropriate in Los Angeles based on the Arbitration Panel's Order.

Unless a contract directs otherwise, Courts resolve threshold questions about arbitration by "determin[ing] the parties' intent with the help of presumptions." *Bamberger Rosenheim, Ltd., (Israel) v. OA Dev., Inc., (United States)*, 862 F.3d 1284, 1288 (11th Cir. 2017). "On the

one hand, courts presume that the parties intend courts, not arbitrators, to decide . . . disputes about arbitrability." *Id.* (citations omitted). "On the other hand, courts presume that the parties intend arbitrators, not courts, to decide disputes about the meaning and application of particular procedural preconditions for the use of arbitration." *Id.* (citations omitted). "Procedural questions are generally for the arbitrators themselves to resolve." *Id.* (citation omitted). "[D]isputes over the interpretation of forum selection clauses in arbitration agreements raise presumptively arbitrable procedural questions." *Id.* (citing four other Circuit Courts of Appeal that have held similarly).

However, where "a valid arbitration agreement has been disregarded by the arbitrators" that presumption may be overcome, and a court may enforce the arbitration agreement. *Sterling Financial Inv. Group, Inc. v. Hammer*, 393 F.3d 1223 (11th Cir. 2004). This exception is narrowly construed, and will not apply where "the arbitrator (even arguably) interpreted the parties' contract." *Bamberger*, 862 F.3d at 1288. This narrow construction is consistent with this Circuit's view that "judicial review of arbitration decisions is among the narrowest known to law." *Id.* at 1287 (citing *AIG Baker Sterling Heights, LLC v. Am. Multi-Cinema Inc.*, 508 F.3d 995, 1001 (11th Cir. 2007)).

Therefore, the Arbitration Panel's decision will not be disturbed unless the Panel disregarded the Parties' Agreement. *Sterling Financial*, 393 F.3d at 1225. However, if the Arbitration Panel even arguably interpreted the Agreement, its decision stands. *Bamberger*, 862 F.3d at 1288. The Arbitration Panel did not expressly state whether or not it interpreted the Parties' Agreement, however, the undisputed material facts demonstrate that the Panel at least arguably did so when it rejected Plaintiff's argument that the Parties' Agreement required the venue to be moved to Palm Beach County and determined that venue was proper in Los Angeles.

On April 7, 2017, Plaintiff filed a Motion for Consolidation and to Change Hearing Location with the Director of FINRA who referred the matter to the Arbitration Panel (DE 30-7). In the Motion, Plaintiff argued that venue was proper in Palm Beach County based on the venue-selection provision in the Parties' Agreement. Plaintiff attached a copy of the Parties' Agreement in support. On July 5, 2017, the Arbitration Panel held a telephonic hearing on the Motion during which the Parties argued the issues of venue and consolidation for approximately one hour. (DE 30 at 5). Following the hearing, the Arbitration Panel entered an Order which stated that after considering the pleadings submitted and arguments advanced, the Panel determined that venue is proper in Los Angeles, California. (DE 30-10).

The Agreement, containing the venue-selection clause, was before the Panel and was central to Plaintiff's argument that venue was appropriate in Palm Beach County. The Parties vigorously disputed this issue in the briefs. Plaintiff does not explain how the Panel could possibly have resolved the Motion without interpreting the venue-selection provision. Further, Plaintiff's Motion quoted the venue-selection provision and the Panel expressly stated that it considered the pleadings. Accordingly, based on the undisputed material facts, it is at least arguable that the Panel interpreted the agreement.

Plaintiff argues that the Agreement's venue-selection provision unambiguously mandates that all disputes related to the agreement are to be arbitrated in Florida. The fact that the Arbitration Panel required the Parties to arbitrate outside of Florida, Plaintiff argues, shows that the Panel clearly disregarded this provision. Plaintiff's analysis is misguided. As the Supreme Court has stated, "[t]he arbitrator's construction holds, however good, bad, or ugly." *Oxford Health Plans, LLC v. Shutter*, 569 U.S. 564, 573 (2013); *see also Bamberger*, 862 F.3d at 1288 ("Our review of the arbitrator's venue determination . . . is limited to 'whether the arbitrator

(even arguably) interpreted the parties' contract, not whether he got its meaning right or wrong.'") (quoting *Oxford Health Plans*, 569 U.S. at 569). Therefore, Plaintiff's argument that because the Arbitration Panel's ultimate decision is inconsistent with the venue-selection provision, the Panel must have disregarded that provision is without merit. Based on the foregoing, there is no genuine issue of material fact and Defendant Alan Jerome Schryer is entitled to judgment as a matter of law. Accordingly, it is hereby

ORDERED AND ADJUDGED that:

1. Plaintiff's Motion for Summary Judgment (DE 27) is **DENIED**.
2. Defendant Alan Jerome Schryer is entitled to summary judgment in his favor.
3. The Petition (DE 1) is **DISMISSED WITH PREJUDICE.**
4. Judgment will be entered by separate Order.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 6 day of March, 2018.

DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record