UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:15-CV-24369-JLK

RUBIS CARIBBEAN HOLDINGS, INC.

Petitioner,

v.

BE TAG HOLDINGS LIMITED and
BLUE EQUITY INTERNATIONAL, LLC,

Respondents.
_____/

ORDER CONFIRMING ARBITRAL AWARD

THIS CAUSE comes before the Court upon Petitioner Rubis Caribbean Holdings, Inc.'s ("Rubis") Motion Requesting Order Confirming Arbitral Award ("Motion") (D.E. 40), filed September 21, 2018.[1]

I. BACKGROUND

On March 18, 2015, after a five-day hearing, a three-member panel appointed by the American Arbitration Association's ("AAA") International Centre for Dispute Resolution ("ICDR") issued a unanimous arbitration award (D.E. 21-1), in part ordering Respondent BE TAG to "pay the sum of USD $2,250,000 to [Petitioner in this action] Rubis, together with simple interest at 2.2087% from December 31, 2013 until payment" (D.E. 21-1, at 23).

On November 24, 2015, Rubis filed in this Court its Petition to Confirm and Enforce Arbitral Award (D.E. 1), where BE TAG had not paid any portion of it (*id.* ¶ 28). On February 10, 2016, both Respondents filed Answers (D.E. 12; D.E. 13); however, Respondent Blue Equity International, LLC did not seek to defend against confirming the arbitral award (*see* D.E. 21, at 2). On February 24, 2016,

[1] The Court has also considered Respondents' Response in Opposition (D.E. 43), filed October 8, 2018; and Petitioner's Reply (D.E. 47), filed November 2, 2018.

the Court held the Petition in abeyance, and set a briefing scheduling (D.E. 19), with which the parties complied (*see* D.E. 21; D.E. 22; D.E. 25). The Court was clear that Respondents have the burden of showing why the arbitral award should be invalidated, and ordered them to file their brief "in the nature of a complaint" (D.E. 19, at 2), with which they complied (*see* D.E. 21).

On June 14, 2017, the Court, after reviewing the parties' briefs and evidence, stated:

> [I]t appears Arbitrator Graham failed to disclose that he was acting as a paid, retained expert for Rubis' law firm during the weeks or months immediately proceeding his appointment to the arbitral tribunal in the instant matter. BE TAG also points out that the nature and extent of the relationship between Arbitrator Graham and Rubis' arbitration counsel is still unknown . . . nor is it known how much Arbitrator Graham was paid for his services or when the payments were made.

(D.E. 29, at 5). Therefore, the Court ordered that the parties may complete limited discovery related to the nature and time periods of the relationships between Arbitrator Luis E. Graham ("Arbitrator Graham") and two of Rubis's counsel: Fox Williams, LLP ("Fox Williams") and Nicholas Craig. (*id.* at 8), explaining:

> [T]he Court finds Respondent has not made factual allegations or provided record evidence demonstrating actual bias or prejudice on the part of Arbitrator Graham. However, the Court concludes the circumstances of Arbitrator Graham's involvement with Nicholas Craig and Fox Williams in the *Desarollo* matter are the type of circumstances "likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence[.]"

(*id.* at 7).

The Court set a deadline for the completion of all discovery of January 22, 2018[2] (D.E. 29, at 8). The only discovery-related motion the parties filed was Respondent BE TAG's Motion to Compel Third Party Hogan Lovells to produce documents (D.E. 31), filed December 6, 2017. On January 5,

[2] The Court also set a deadline for the filing of motions of January 26, 2018 (D.E. 29, at 8). The parties seem to have ignored this deadline, as no motions were filed after the discovery deadline until September 12, 2018, when Petitioner filed the instant Motion. However, in this particular case, no one was prejudiced by this delay except Petitioner.

2018, BE TAG withdrew that motion, citing that it was "able to resolve the issues raised in the motion" after negotiations with Hogan Lovells (D.E. 38, at 1).

In its Motion, Rubis argue that "BE TAG has done nothing to rebut the heavy presumption in favor of the Court confirming Rubis's award" (D.E. 40, at 3). Respondents argue that discovery revealed that the relationship between Arbitrator Graham and Fox Williams and Nicholas Craig was (1) "lucrative;" (2) "concurrent" with the arbitration; (3) "substantial;" and (4) kept secret (D.E. 43, at 2). However, Rubis rebuts that Respondents' only new exhibits[3] do not support these conclusions.

II. DISCUSSION

A. Legal Standard for Vacating an Arbitration Award

The Federal Arbitration Act ("FAA") "imposes a heavy presumption in favor of confirming arbitration awards; therefore, a court's confirmation of an arbitration award is usually routine or summary." *Cat Charter, LLC v. Schurtenberger*, 646 F.3d 836, 842 (11th Cir. 2011) (Tjoflat, J.) (internal quotation marks omitted). However, Section 10 of the FAA allows a district court to vacate an arbitration award "where there was evident partiality or corruption in the arbitrators." 9 U.S.C. § 10(a)(2).[4] There is "evident partiality" only when "either (1) an actual conflict exists, or (2) the arbitrator knows of, but fails to disclose, information which would lead a reasonable person to believe that a potential conflict exists." *Univ. Commons-Urbana, Ltd. v. Univ. Constructors Inc.*, 304 F.3d 1331, 1339 (11th Cir. 2002) (internal quotation marks omitted). "The partiality alleged must be direct, definite and capable of demonstration rather than remote, uncertain and speculative." *Id.* The "burden of proving facts which would establish a reasonable impression of partiality rests squarely on

[3] Respondents attach 18 exhibits to their Response to the instant Motion, of which only two (Exhibits H and I) were obtained as a result of the discovery period the Court opened on June 14, 2017. Many of the others were already in the record, including four recycled exhibits of email correspondences (Exhibits E, J, K, and P) (*see* D.E. 21-12; D.E. 21-16; D.E. 21-15, and D.E. 21-15 again, respectively).

[4] The "statutory grounds justifying vacatur found in 9 U.S.C. § 10 [and § 11] are exclusive." *Cat Charter, LLC*, 646 F.3d at 842 n.10 (citing *Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 581 (2008)).

the party challenging the award." *Middlesex Mut. Ins. Co. v. Levine*, 675 F.2d 1197, 1201 (11th Cir. 1982).

B. Respondents Have Not Provided Evidence Demonstrating Arbitrator Graham Had a Conflict of Interest

1. There Was No Financial Relationship Between Arbitrator Graham and Rubis's Counsel

Respondents argue that there was a financial relationship, and that moreover the relationship was "substantial" and "lucrative," where "Arbitrator Graham and his firm [Hogan Lovells[5]] billed more than $180,000 for expert witness services" in the *Desarollo* matter, in which Fox Williams and Nicholas Craig (Rubis's counsel in the arbitration) served as counsel (D.E. 43, at 2). As evidence of this, Respondents attach Hogan Lovells's engagement letter with the Desarollo clients (Exhibit H) and Hogan Lovells's invoices to the Desarollo clients (Exhibit I).

The invoices document that Hogan Lovells billed Desarollo for a total of $116,048.74 on March 3, 2014 and $68,451.84 on May 6, 2014 (D.E. 51-2, at 21). "L. Graham" individually earned $43,911.00 for 86.00 hours on the March 3, 2014 invoice (*id.* at 12), and $32,181.00 for 63.10 hours on the May 6, 2014 invoice (*id.* at 20).

However, Exhibit H reveals that, although Fox Williams and Nicholas Craig may also have served as counsel in the *Desarollo* matter, they are nowhere mentioned in the engagement letter Respondents provide (*see* D.E. 51-1). The engagement letter states:

> We are pleased that Ryley Carlock & Applewhite (the "Company"), on behalf of its clients [Desarollo and others] has engaged Hogan Lovells US LLP Mexico, S.C. to render expert reports before the High Court of the Hong Kong Special Administrative Region Court of First Instance . . . the High Court of Justice, Queen's Bench Division, Royal Courts of Justice, London, England . . . and the Supreme Court of Bermuda, Civil Jurisdiction, Commercial List . . .

[5] The AAA's biographical information on Arbitrator Graham, attached to his Notice of Appointment, states that Luis Enrique Graham had been a partner at Hogan Lovells US LLP Mexico, S.C. since 2013 (D.E. 21-13, at 28).

(*id.* at 2). The engagement letter is addressed directly to Ryley Carlock & Applewhite in Phoenix, Arizona, the firm that "has engaged Hogan Lovells" to prepare expert reports before three international courts, whereas neither Fox Williams nor Nicholas Craig are even copied (*see id.*).

Moreover, the invoices (Exhibit I) are addressed to Desarollo itself (the client), whereas neither Fox Williams nor Nicholas Craig are copied (*see* D.E. 51-2). The second invoice mentions "Fox Williams solicitors in London" participating in conference calls and other communications regarding "L. Graham's draft expert report" (*id.* at 15, 16, 17) and mentions Nicholas Craig as participating in a conference call "in preparations for L. Graham's testimony before the court in London regarding his expert report" (*id.* at 18). However, there is no evidence of any payment of Arbitrator Graham by England-based counsel Fox Williams or Nicholas Craig.

Therefore, Respondents have not put forth any evidence that Fox Williams and Nicholas Craig were paying Arbitrator Graham at all, let alone that they were carrying on a "lucrative relationship." Unlike this Court's previous impression, Arbitrator Graham was not "acting as a paid, retained expert for Rubis's law firm" (D.E. 29, at 5), but was retained by an entirely different law firm (Ryley Carlock & Applewhite) and paid by the Desarollo client itself. Therefore, Respondents have put forth no evidence that Arbitrator Graham was biased in favor of Petitioner.

2. Arbitrator Graham's Involvement in the *Desarollo* Matter Was Not Suggestive of a Potential Conflict

The ICDR "invited [Mr. Graham] to serve as an arbitrator" in this matter on March 13, 2014 (D.E. 21-13, at 14). The invoices that Respondents submitted document charges for "attend hearing in London Court" on March 17, 18, 19, and 20 (D.E. 51-2, at 19). The latest work on the *Desarollo* matter that Arbitrator Graham billed for in the invoices Respondents submitted was on March 21, 2014, when he conducted "[r]esearch of issues of arbitrability of lease disputes" (*id.* at 20). Therefore, there was a temporal overlap in Arbitrator Graham's two roles.

However, on his Notice of Appointment, Arbitrator Graham checked "yes" to the question "Are there any connections, direct or indirect, with any of the case participants that have not been covered by the above questions?" (D.E. 21-13, at 12), and attached the following disclosure:

> I consider myself impartial and independent from the parties, and thus capable to seat as chairman in the present dispute. Nevertheless, I want to disclose and state the following facts.
>
> (a). I am acting as an independent expert retained by the law firm of Ryley Carlock & Applewhite, which is counsel to company "A" [Desarollo] in a dispute before the courts of the United States of America. The law firm of Fox Williams LLP also serves as counsel to company "A" in a dispute before the courts of England. The two referred proceedings are completely unrelated to this arbitration . . .
>
> (b.1). My law firm, Hogan Lovells, provides legal services through several offices around the world. For this reason, my acceptance as an arbitrator does not prevent my law firm from intervening on matters that might be related to the parties in the present dispute, as long as it does not represent any of the parties and as long as such matters are completely unrelated to the present dispute.
>
> (b.2). Additionally, the undersigned will not participate in any matter relating, directly or indirectly, to the parties involved in this arbitration.

(*id.* at 13). The ICDR enclosed the Notice of Appointment with its March 28, 2014 letter to counsel informing them of its appointment of the three arbitrators (*id.* at 3). The letter also stated:

> Arbitrator Graham has made a disclosure, as detailed on the enclosed Notice of Appointment and attachment. Please advise the ICDR of any objections to his appointment by close of business **Monday, April 14, 2014** copying the other side. Arbitrator Graham shall not be copied on any comments related to the disclosure.

(*id.* at 3–4). Respondents did not submit any objections (*see* D.E. 21-2, at 3).[6]

The phrase in Arbitrator Graham's disclosure "in a dispute before the courts of the United States of America" is not exactly accurate where there is now record evidence documenting that he was retained to submit an expert report in courts in Hong Kong, England, and Bermuda (D.E. 51-1, at

[6] On November 26, 2014, Respondents filed an emergency motion to disqualify Arbitrator Graham where Respondents had learned that, somewhat contrary to his disclosure, he "served as a witness in a proceeding in England (where Mr. Craig's clients offered Mr. Graham as an expert)" (D.E. 21-2, at 3). However, after Claimant Rubis responded (D.E. 21-3) and Respondents submitted a Reply (D.E. 21-4), the ICDR denied the emergency motion and reaffirmed the continued service of Arbitrator Graham (D.E. 21-5, at 2).

2). However, it was Ryley Carlock & Applewhite, a U.S.-based firm, that retained Arbitrator Graham for the proceedings before all three courts (D.E. 51-1). Furthermore, a November 26, 2014 email from Nicholas Craig to BE TAG's counsel, attached by Respondents, states that "[a]part from exchanging social pleasantries with [Arbitrator Graham] before court, I had no meetings or other interaction with him and simply observed him giving his evidence" (D.E. 43-12, at 4).

As Petitioner Rubis notes, the International Bar Association's Conflict Guidelines ("IBA Guidelines") divides conflicts into three categories, including a Green List, "situations where no appearance and no actual conflict of interest exists from an objective point of view . . . [of which] the arbitrator has no duty to disclose" (D.E. 47-1, at 26, ¶ 7). Upon review of example situations listed in the IBA Guidelines, the relationship between Arbitrator Graham and Fox Williams or Nicholas Craig is closest to the following description:

> 4.4.3 The arbitrator and . . . an affiliate of one of the parties[] have *worked together* as joint experts, or *in another professional capacity*, including as arbitrators in the same case.

(*id.* at 34 (emphasis added)). The IBA categorizes this situation within the Green List.

Overall, the Court finds that Arbitrator Graham's involvement in the *Desarollo* matter was not of a type that would lead a reasonable person to believe that a potential conflict exists.

III. CONCLUSION

After the close of all discovery, Respondents have not provided evidence demonstrating that Arbitrator Graham had actual bias or failed to disclose a potential conflict. Therefore, Respondents have not met their burden for vacating an arbitration award under Section 10 of the Federal Arbitration Act. Accordingly, it is **ORDERED, ADJUDGED, and DECREED** that Petitioner's Motion Requesting Order Confirming Arbitral Award **(D.E. 40)** be and the same is hereby **GRANTED**. The initial Petition to Confirm and Enforce Arbitral Award **(D.E. 1)** is also hereby **GRANTED**. The March 18, 2015 Arbitral Award, which awarded Petitioner USD $2,250,000 and simple interest at 2.2087%

from December 31, 2013 until payment, is hereby **CONFIRMED** as a Final Judgment of this Court. Judgment is entered for Petitioner Rubis Caribbean Holdings, Inc., and this case is **DISMISSED**.

DONE and ORDERED in Chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida this 23rd day of April, 2019.

JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT of FLORIDA

cc: All Counsel of Record