

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

NELSON BALBERDI,) CIVIL 15-00481 LEK-KSC
)
Plaintiff,)
)
vs.)
)
FEDEX GROUND PACKAGE SYSTEM,)
INC.,)
)
Defendant.)
_____)

ORDER GRANTING DEFENDANT'S MOTION TO CONFIRM ARBITRATION AWARD

On July 7, 2016, Defendant Fedex Ground Package System, Inc. ("Fedex" or "Defendant") filed a Motion to Confirm Arbitration Award ("Motion").¹ [Dkt. no. 23.] Plaintiff Nelson Balberdi ("Plaintiff") did not file a response. The Court finds this matter suitable for disposition without a hearing pursuant to Rule LR7.2(d) of the Local Rules of Practice of the United States District Court for the District of Hawai'i ("Local Rules"). After careful consideration of the Motion, supporting memorandum, and the relevant legal authority, the Motion is HEREBY GRANTED for the reasons set forth below.

¹ The Court recognizes that Defendant refers to itself as FedEx, but this is not how Defendant's name appears in the case caption. Because neither party has moved to amend the caption, the Court will refer to Defendant as its name appears in the case caption.

BACKGROUND

The background of this matter is well known to the parties, and the Court only repeats the information that is relevant to the instant Motion. On April 7, 2016, Plaintiff filed a Motion to Vacate Arbitration Award ("Motion to Vacate"). [Dkt. no. 12.] In an Order filed on June 29, 2016 ("6/29/16 Order"), the Court denied the Motion to Vacate. [Dkt. no. 22.²] Defendant argues that, given the history of this case, the Court must grant the Motion. [Mem. in Supp. of Motion at 3-4.]

STANDARD

Pursuant to the Federal Arbitration Act ("FAA"), [i]f the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10^[3] and 11^[4] of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse

² The 6/29/16 Order is also available at 2016 WL 3629055.

³ 9 U.S.C. § 10 explains when a federal court may vacate an arbitration award.

⁴ 9 U.S.C. § 11 explains when a federal court, upon "the application of any party to the arbitration," may modify or correct an arbitration award.

party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding.

9 U.S.C. § 9. The FAA also provides that “[n]otice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered.” 9 U.S.C. § 12.

It is well established in the Ninth Circuit that

[a] court must confirm an arbitration award “unless the award is vacated, modified, or corrected.” 9 U.S.C. § 9; Kyocera Corp. v. Prudential-Bache Trade Servs, Inc., 341 F.3d 987, 997 (9th Cir. 2003). “Under the statute, confirmation is required even in the face of erroneous findings of fact or misinterpretations of law.” Kyocera, 341 F.3d at 997 (internal quotation marks omitted).

Inomedic/Innovative Health Applications, LLC v. Noninvasive Med. Techs., Inc., Case No. 2:14-cv-01035-RFB-VCF, 2016 WL 5934419, at *1 (D. Nev. Oct. 11, 2016).

DISCUSSION

As a preliminary matter, Plaintiff did not file a memorandum in opposition, and the Court therefore FINDS that the Motion is unopposed. Moreover, in the 6/29/16 Order, the Court noted that both parties agree that the FAA applies to the instant dispute. See 2016 WL 3629055, at *2.

The Award of Arbitrator was made in this district, and the Motion was filed within a year of the arbitrator’s decision. See Mem. in Supp. of Motion, Decl. of Sarah O. Wang, Exh. A

(Stipulation for Arbitration, dated 7/5/13, stating that the arbitration would take place on Maui); id., Exh. E (Award of Arbitrator, dated 7/23/15). In addition, the Court has already considered and denied Plaintiff's Motion to Vacate. Finally, it has been over a year since the Award of Arbitrator was filed, and, thus, the three-month deadline for filing a notice to modify or correct an arbitration award has long passed. It is undisputed that, aside from the Motion to Vacate, Plaintiff did not file any additional motions. Thus, at this point, the Court has not and cannot vacate, modify, or correct the Award of Arbitrator. The Court therefore GRANTS the Motion and CONFIRMS the Award of Arbitrator.

CONCLUSION

On the basis of the foregoing, the Motion to Confirm Arbitration Award, filed by Defendant Fedex Ground Package System, Inc. on July 7, 2016, is HEREBY GRANTED. There being no issues remaining in this case, the Court DIRECTS the Clerk's Office to enter judgment, incorporating and confirming the Award of Arbitrator, dated July 23, 2015, and close this case.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, October 21, 2016.



/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

NELSON BALBERDI VS. FEDEX GROUND PACKAGE SYSTEM, INC.; CIVIL 15-00481 LEK-KSC; ORDER GRANTING DEFENDANT'S MOTION TO CONFIRM ARBITRATION AWARD