

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DENISE A. BADGEROW

CIVIL ACTION

VERSUS

NO: 17-9492

REJ PROPERTIES, INC., ET AL.

SECTION: "A" (2)

ORDER AND REASONS

The following motion is before the Court: **Motion to Confirm Arbitration Award (Rec. Doc. 146)** filed by Defendant Ameriprise Financial Services, Inc. Plaintiff, Denise Badgerow, has filed an opposition to the motion. The motion, noticed for submission on May 15, 2019, is before the Court on the briefs without oral argument.

The claims against Ameriprise in this action had been stayed pending arbitration. On December 28, 2018, the FINRA arbitrators issued their award which dismissed all of Badgerow's claims against Ameriprise, Thomas Meyer, Ray Trosclair, and Gregory Walters with prejudice. The latter three individuals were the principals of WMT d/b/a REJ Properties, Inc. and are not parties to this litigation.¹

Ameriprise now moves to confirm the arbitration award, which again was issued in favor of not only Ameriprise but also the three principals (Thomas Meyer, Ray Trosclair, and Gregory Walters) who are not parties to this action. In her opposition

¹ On January 10, 2018, the Court entered its Order and Reasons staying all claims against Ameriprise pending arbitration. (Rec. Doc. 47). On May 29, 2019, the Court entered an extensive opinion addressing Badgerow's discrimination, Equal Pay Act, and breach of contract claims against WMT d/b/a REJ Properties, Inc. (Rec. Doc. 159). Throughout this Order and Reasons the Court will assume the reader's familiarity with both of those prior opinions.

Badgerow advises that she does not object to confirmation of the arbitration award insofar as it applies to Ameriprise but she opposes any effort by Ameriprise to have the award confirmed in favor of Greg Walters, Thomas Meyer, and Ray Trosclair. Badgerow contends that Ameriprise lacks standing to confirm the award as to Walters, Meyer, and Trosclair. Badgerow also contends that the award should be vacated as to these individuals because of fraudulent conduct during the arbitration proceedings.²

As to the standing argument, in a prior Order and Reasons, the Court held that REJ Properties, Inc., which was not a party to the arbitration proceeding, lacked standing to seek enforcement of the award. (Rec. Doc. 109). Contrary to what Badgerow suggests, Ameriprise's motion to confirm the award without qualification is not analogous to the motion that REJ Properties filed. Ameriprise was a party to the arbitration and the whistleblower claim that Badgerow is determined to pursue against the individual defendants involves Ameriprise and one of its employees. Ameriprise is entitled to have full repose as to the claims that Badgerow litigated and lost in the arbitration. To be sure, the non-party individual defendants will benefit indirectly from the relief that Ameriprise seeks but it does not follow that Ameriprise is seeking direct relief on their behalf.³ Badgerow's standing argument lacks merit.

² Badgerow filed a petition to vacate the arbitration award on the basis of fraud in state court. She named Walters, Meyer, and Trosclair as defendants. These defendants removed the case to the Eastern District of Louisiana, and it was allotted as Civil Action 19-10353. The individual defendants have filed a motion to confirm the award in that action and Badgerow has filed a motion to remand.

³ The individual defendants will be indirect beneficiaries if Ameriprise obtains confirmation of the award because Badgerow's petition to vacate in Civil Action 19-10353 will surely be met with a collateral estoppel or issue preclusion defense. In other words, having been provided the opportunity in this action to fully and fairly litigate the validity of the award vis à vis the fraud allegation, Badgerow will likely be precluded from having a second opportunity to litigate the

As to the fraud argument,⁴ Badgerow contends that the individual defendants engaged in fraud as to her whistleblower claim, which was brought under state law, La. R.S. § 23:967. By way of background, the crux of the whistleblower claim is that Greg Walters fired Badgerow for reporting to Ameriprise's Marc Cohen that she had been paid commissions directly from REJ Properties' operating account instead of through a third-party commission-paying software system. Badgerow had also mentioned to Cohen that she did not have a written compensation agreement with WMT. Badgerow argued that this non-compliant manner in which WMT paid commissions and compensated her was a violation of SEC and/or FINRA regulations and that she was fired right after telling Cohen about it.

The individual defendants and their counsel took the position during the arbitration that the foregoing "non-compliance" was not a violation of any law but rather was simply a violation of Ameriprise's policies and procedures.⁵ Badgerow claims that this line of argument has been revealed as being fraudulent because a non-party recently responded to discovery that conclusively proves that the individual defendants

same issue in Civil Action 19-10353, whether the case remains here or ends up back in state court.

⁴ Section 10 of the Federal Arbitration Act provides the exclusive grounds for vacatur of an arbitration award: 1) where the award was procured by corruption, fraud, or undue means; 2) where there was evidence of partiality or corruption in the arbitrators, 3) where the arbitrators were guilty of misconduct, or 4) where the arbitrators exceeded their powers. *Cooper v. WestEnd v. Capital Mgt., LLC*, 832 F.2d 534, 544 (5th Cir. 2016) (citing 9 U.S.C. § 10(a)). The burden of proof is on the party seeking to vacate the award, and any doubts or uncertainties must be resolved in favor of upholding it. *Cooper*, 832 F.3d at 544 (citing *Brabham v. A.G. Edwards & Sons, Inc.*, 376 F.3d 377, 385 & n.9 (5th Cir. 2004)).

⁵ Notably, in correspondence from Ameriprise's Cohen that predates this lawsuit, Cohen characterized the non-compliance as failure to follow company policy and procedure not as a violation of any law. (Rec. Doc. 153-1 Exhibit F).

not only violated SEC requirements but that they knew this during the arbitration.

Badgerow's fraud defense to confirmation of the award is legally frivolous. The Court begins by noting that the "smoking gun" that Badgerow recently received in discovery is actually a marketing or sales document produced by a vendor that sells commission paying software/services to companies like WMT. (Rec. Doc. 153-1 Exhibits I & J). The whistleblower statute requires proof of an *actual* violation of law; even a good faith belief that a violation occurred is insufficient. *Causey v. Winn-Dixie Logistics, Inc.*, 186 So. 3d 185, 187 (La. App. 1st Cir. 2015) (citing *Accardo v. La. Health Servs. & Indem. Co.*, 943 So.2d 381, 386 (La.App. 1st Cir. 2006)); *Wilson v. Tregre*, 787 F.3d 322, 326 (5th Cir. 2015) (citing *Ross v. Oceans Behavioral Hosp.*, 165 So. 3d 176 (La. App. 5th Cir. 2014)); *Mabry v. Andrus*, 34 So. 3d 1075, 1081 (La. App. 2nd Cir. 2010)). It is utterly absurd to suggest that a marketing proposal that contained legal opinions formed by marketers trying to persuade companies to buy their product established an actual violation of law. Badgerow presented the facts of her case to the arbitrators and her attorneys argued the specific violations of the law that allegedly occurred. Badgerow did not prove her case. It is ludicrous of Badgerow to suggest that she failed to prove her claim because the arbitrators did not have the benefit of the assertions contained in a vendor's sales pitch or that those assertions establish that an actual violation of the law occurred. The documents upon which Badgerow hinges her fraud theory are irrelevant to any element of her whistleblower claim.

In that vein, even if Badgerow had established untoward conduct that rose to the level of fraud, she does not tether that conduct in any way to the failure on the merits of the whistleblower claim itself. In other words, Badgerow cannot establish a causal nexus

between the fraud that she alleges and the basis of the panel's decision. *See Forsythe Int'l, S.A. v. Gibbs Oil Co.*, 915 F.2d 1017, 1022 (5th Cir. 1990). Badgerow's opposition does not even cite the whistleblower statute much less address the substantive requirements of a claim.⁶

The whistleblower statute requires a violation of state law not federal law. La. R.S. § 967(A)(1); *Wilson*, 787 F.3d at 327. Badgerow's whistleblower claims were grounded on violations of SEC/FINRA regulations which are not state law. Thus, Badgerow's whistleblower claim failed as a matter of law without even considering the evidence that was offered in support of it. Furthermore, the statute grants a cause of action against the "employer" and the individual defendants were not Badgerow's employer.⁷ Simply, the reasons that Badgerow's whistleblower claim failed are numerous and none of those reasons involve fraud by any of the defendants.⁸

Finally, Badgerow's attempt to attack the award is untimely. Notice 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.

⁶ In conjunction with this ruling the Court has considered the 30 page memorandum in opposition that Badgerow is seeking leave to file in Civil Action 19-10353. Notwithstanding its length, that document suffers from the same deficiencies as the opposition filed in this case.

⁷ Badgerow's pursuit of Meyer and Trosclair on the whistleblower claim is especially perplexing because it is undisputed that Walters alone made the decision to terminate Badgerow. In any case, Walters in his individual capacity was not Badgerow's employer.


⁸ Of course, aside from the problems mentioned above, the arbitrators could very well have been unconvinced that Walters terminated Badgerow in reprisal for telling Marc Cohen about the manner in which WMT was paying her commissions. As the Court explained in its Order and Reasons granting summary judgment in favor of REJ Properties, Badgerow has no evidence to impugn Walters' testimony explaining the legitimate non-retaliatory reasons that he terminated her employment.

Badgerow did not file any such motion within the three months limitation period. And because her allegation of fraud is legally frivolous, she presents no basis to escape the limitations problem.

Accordingly;

IT IS ORDERED that the **Motion to Confirm Arbitration Award (Rec. Doc. 146)** filed by Defendant Ameriprise Financial Services, Inc. is **GRANTED**. The arbitration award is confirmed as to all parties to that proceeding. A final judgment will be entered in favor of Ameriprise.

June 11, 2019



JAY C. ZAINEV
UNITED STATES DISTRICT JUDGE