UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-CV-61637-RAR

BARBARA QUAMINA,

Petitioner,

v.

U.S. BANK NATIONAL ASSOCIATION, *et al.*,

Respondents.
_____/

ORDER GRANTING JOINT MOTION TO DISMISS

Pending before the Court are Petitioner Barbara Quamina's Motion to Confirm an Arbitration Award ("Motion") [ECF Nos. 1, 21] and Respondents' Bank of America, N.A. ("BANA") [1], Merscorp Holdings, Inc. ("Merscorp"), and JPMorgan Chase Bank, N.A. ("Chase") (collectively, "Respondents") Joint Motion to Dismiss and/or Strike Motion to Confirm Arbitration Award or, in the Alternative, Response in Opposition to Petitioner's Motions [ECF No. 25] ("Joint Motion").[2]

This case arises from Petitioner's attempt to confirm a $2,179,652.12 arbitration award arising from a proceeding in which Respondents did not participate. As explained herein, Petitioner's Motion to Confirm an Arbitration Award is **DENIED**, Respondents' Joint Motion is **GRANTED**, a *sua sponte* Motion to Dismiss the Remaining Respondents is **GRANTED**, and this action is **DISMISSED WITH PREJUDICE**.

[1] Respondent La Salle Bank, N.A. previously merged with BANA. Accordingly, Respondents BANA and La Salle Bank, N.A. are collectively referred to herein as "BANA."

[2] Respondents Select Portfolio Servicing, Inc. and U.S. Bank National Association have not appeared in this action and are collectively referred to herein as the "Remaining Respondents."

BACKGROUND

A. Factual Background

Petitioner initiated this action on August 12, 2020, by filing a "Motion to Confirm Arbitration Award." [ECF No. 1]. Attached as Exhibit A to the initial filing is a document styled "Final Arbitration Award" purportedly issued on August 16, 2019 by the HMP[3] Arbitration Association in Bakersfield, California ("Award"). [ECF No. 1-2]. Robert Presley is listed as the sole arbitrator. *Id.* at 4-5, 37.

The Award consists primarily of meaningless legalese. It declares that it is the resolution of a dispute between "Barbara Quamina, a Natural Woman" as "Claimant," and "Select Portfolio Servicing, Inc., U.S. Bank National Association, LaSalle Bank N.A., Bank of America N.A., Merscorp Holdings, Inc. [and] JP Morgan Chase" as "Respondent(s)." *Id.* at 4. Under the heading "Basis for Arbitration," the document provides, among other things:

> On or about June 3, 2019, the Claimant and the Respondent(s) entered into a written, self-executing, binding, irrevocable, contractual agreement coupled with interests, for the complete resolution of their mis-convictions and other conflicts respecting their previous relationship. The Respondent(s) attempted to change the terms of that contractual agreement and the Claimant presented a counteroffer or conditional acceptance of the offer to the Respondent(s). The record clearly documents that the Respondent(s) have failed to properly respond after they received the counteroffer, whereby such nonresponse would equate to tacit acquiescence thereby creating an estoppel respecting the Respondent(s) and any future claims and/or prior claims and/or present claims associated with this instant matter.

Id. at 11. (emphasis added). Thus, the arbitrator found the Respondents agreed to the terms of the "contractual agreement mailed . . . by the Claimant on June 3, 2019" by "tacit acquiescence" and consequently the Respondents agreed to arbitration. *Id.* at 28.

[3] "HMP" stands for "Healing My People." *See* [ECF No. 1-2] at 9.

According to the Award, on August 16, 2019, Mr. Presley held an "arbitration hearing" where he "reviewed all contractual agreements and documentary evidence submitted by the parties in this matter." *Id.* at 27. The Award does not specify the parties' obligations under any contract, or how Respondents failed to carry out their contractual obligations. Nonetheless, it states that Mr. Presley found "all the elements that form a contractual agreement and a legally commercial binding obligatory relationship are present," *id.* at 8, but that Respondents "failed to fully perform to the terms of the agreement," and on that basis Petitioner was awarded $2,179,652.12, *id.* at 28. It also states that Mr. Presley found "there is no fraud and/or any attempt to induce fraud and/or to commit fraud, and/or inducement of contract, and/or fraud in the factum respecting the instant matter and contract." *Id*. at 8.

B. Procedural History

On September 12, 2019, Petitioner commenced a miscellaneous action in this District bearing Case No. 19-mc-23804-BB, in which she attempted to "register" a purported arbitration award (identical to the Award described above) as a foreign judgment ("Miscellaneous Action"). On October 7, 2019, the Clerk terminated the Miscellaneous Action "per chambers['s]" instructions and registration of the purported award was not authorized. *See Quamina v. U.S. Bank National Association, et al.*, No. 19-mc-23804-BB (S.D. Fla. 2019).

Nearly one year later, on August 12, 2020, Petitioner initiated this action by filing the instant Motion, seeking to have this Court confirm the purported Award "as a judgment and enter judgment against the Respondent(s) in the amount of $2,179,652.12."[4] *See* [ECF No. 1] at 3. Along with the Motion, Petitioner has also filed a memorandum of law, affidavit, and numerous exhibits related to the Award allegedly entered in her favor. *See* [ECF Nos. 1-5]. Petitioner does

[4] The Respondents in this action are identical to those identified by Petitioner as Respondents in the Miscellaneous Action.

not attach any document evidencing the existence of an arbitration agreement between herself and any of the Respondents. Additionally, in her Memorandum in Support of Motion to Confirm Arbitration Award [ECF No. 4] ("Memorandum"), Petitioner further requests that the Court enter an order "releasing Respondents past present and future claims against Petitioner's property(s) and return any and all properties held in any manner per the arbitration award."[5]

On September 1, 2020, Merscorp filed its initial response [ECF No. 9].[6] BANA filed its initial response on September 8th [ECF No. 13]. Thereafter, on September 29th, Petitioner filed a Notice of Correction Removing Merscorp Holdings as Respondent in Motion to Confirm the Arbitration Award [ECF No. 20] ("Notice") and a Corrected Motion to Confirm Arbitration Award [ECF No. 21] ("Corrected Motion"). The Corrected Motion is a 2-page coversheet which purports to remove Merscorp as a Respondent in this action but is otherwise identical to the Motion [ECF No. 1]. *Id.*

On October 9, 2020, BANA filed a second response addressing the Notice and the Corrected Motion. [ECF No. 22]. Three days later, Chase and Merscorp filed a Motion to Strike Petitioner's Notice and Corrected Motion. [ECF No. 23]. To better manage the orderly progress of this case, on October 15th, the Court entered an Omnibus Order denying all pending motions without prejudice and requiring all Respondents to submit a single combined response or separate

[5] As an initial matter, Petitioner's request is improper because the relief sought not only lacks any legal or factual basis, but it falls significantly outside the scope of the purported arbitration "award." However, even if that were not the case, the request for relief is especially deceitful given that Petitioner completely omits that she is currently a named defendant in a foreclosure action filed by U.S. Bank National Association ("U.S. Bank") on April 30, 2018, in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, No. 2018-014002-CA-01, in which U.S. Bank alleges that Petitioner owes the sum of $1,393,462.15, plus interest, costs, etc., for a default stemming back to August 1, 2013 ("First Proceeding"). Neither the Civil Coversheet [ECF No. 1-1] nor any of Petitioner's filings in this action advised this Court about the pendency of the First Proceeding.

[6] On September 11, 2020, Chase filed a Joinder in Merscorps' Initial Response. *See* [ECF No. 15].

answers as appropriate. [ECF No. 24]. Accordingly, Respondents filed the Joint Motion currently before the Court.[7]

LEGAL STANDARD

Petitioner asks the Court to confirm her arbitration award under 9 U.S.C. § 9. *See* Memorandum [ECF No. 4] at 1. Section 9 of the Federal Arbitration Act ("FAA") provides that, "upon application of any party to the arbitration, the court *must* confirm the arbitrator's award unless it is vacated, modified, or corrected in accordance with sections 10 and 11 of the statute." *Frazier v. CitiFinancial Corp., LLC,* 604 F.3d 1313, 1321 (11th Cir. 2010) (emphasis in original). The FAA permits vacatur of an arbitration award in four narrow circumstances. 9 U.S.C. § 10(a). Relevant here, § 10(a)(1) permits a court to vacate an arbitration award if "the award was procured by corruption, fraud, or undue means." 9 U.S.C. § 10(a)(1). The party moving to vacate the award has the burden to set forth sufficient grounds to vacate the arbitration award in its moving papers. *O.R. Sec., Inc. v. Prof'l Planning Assocs., Inc*., 857 F.2d 742, 748 (11th Cir. 1988).

ANALYSIS

A. No Arbitration Agreement Exists Between Petitioner and Respondents

As the Supreme Court has repeatedly emphasized, arbitration is simply a matter of contract and consent. *Granite Rock Co. v. Int'l Bhd. Of Teamsters*, 561 U.S. 287, 299 (2010); *AT&T Techs., Inc. v. Commc'ns Workers of Am*., 475 U.S. 643, 648 (1986). After all, "a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *JPay, Inc. v. Kobel*, 904 F.3d 923, 929 (11th Cir. 2018) (citation and quotation omitted). Moreover, it is "well settled that where the dispute at issue concerns contract formation, the dispute is generally for courts to decide." *Granite Rock*, 561 U.S. at 296–97. Whether a contract exists is determined by state-law

[7] The Court construes the Joint Motion as a motion to (1) dismiss Petitioner's application to confirm the arbitration award and (2) vacate the arbitration award.

contract principles. *Bazemore v. Jefferson Capital Sys., LLC*, 827 F.3d 1325, 1329 (11th Cir. 2016).

Here, Respondents assert that no binding arbitration agreement exists between them and the Petitioner. J. Mot. at 2, 5-9. Petitioner argues that the "written, self-executing, binding, irrevocable, contractual agreement" which Respondents "refused to answer or purposely ignored" created "a binding contract that led to [a] Final Arbitration Award." *See* Pet.'s Obj. to J. Mot. [ECF No. 28] at 1. Petitioner's argument overlooks the threshold issue—namely whether that "written, self-executing . . . contractual agreement" constitutes a valid agreement in the first place. Petitioner insists that Respondents' purported "[f]ailure and/or refusal to respond" to her June 3, 2019 mailing somehow created a valid agreement to arbitrate because "[a]cceptance through silence/failure to respond constitutes a Binding Contract." *See* Petitioner's Objection to Respondent's Joint Motion ("Objection") [ECF No. 28] at 2, ¶ 7.

Petitioner's "tacit acquiescence" theory of contract formation is unavailing. It is a fundamental principle of contract law that silence does not ordinarily constitute acceptance of a contract. Restatement (Second) of Contracts § 69 (Am. Law. Inst. 1981); *see also United States v. Weaver*, 905 F.2d 1466, 1473 (11th Cir. 1990) (finding no agreement where offeree initially failed to respond because absent particular circumstances not present, "an offeror does not have the power to cause the mere silence of an offeree to operate as an acceptance"). As the Restatement notes, "[a]cceptance by silence is exceptional." Restatement § 69 cmt. a. There are only three circumstances where silence may constitute acceptance: (1) the offeree takes the offered benefit with reason to know it was offered with the expectation of compensation; (2) the offeree, in remaining silent, intends to accept the offer; and (3) previous dealings between the parties give rise to the inference that silence constitutes acceptance. *Id.* None of these exceptions applies here.

Petitioner relies on the fact that her June 3, 2019 mailing to Respondents purported to be a "self-executing binding and irrevocable contractual agreement" as proof that Respondents' silence constituted assent. *See* Objection at 2, 4. That argument, however, ignores that "[t]he mere fact that an offeror states that silence will constitute acceptance does not deprive the offeree of his privilege to remain silent without accepting." Restatement § 69 cmt. c. Absent one of the exceptions outlined above, silence, no matter how Petitioner characterizes it, is not enough to manifest assent. Because the Court finds Respondents did not agree to be bound by the contract Petitioner allegedly mailed to them on June 3, 2019, the parties could not have agreed to the arbitration provision buried in Petitioner's purported contract.

B. The HMP Award Is a Sham

The Court also finds Respondents have met their burden to prove that Petitioner's $2,179,652.12 arbitration award was procured by fraud and must be vacated pursuant to the FAA. As evidenced by the lengthy string cite of cases in Respondents' Joint Motion (J. Mot. at 5-6), Petitioner's fake arbitration award scheme is commonplace. As one district court aptly articulated, "[t]hese awards do not result from legitimate arbitrations where all the parties to the arbitration participate, and they do not stem from any contractual agreement to arbitrate between parties . . . [i]nstead, these awards are mere pieces of paper paid for by borrowers that have no legal effect." *Decormier v. Nationstar Servicers, LLC*, No. 12-CV-00062, 2020 WL 5257737, at *2 (E.D. Cal. Sept. 3, 2020) *report and recommendation adopted in part, rejected in part*, 2020 WL 5989180 (E.D. Cal. Oct. 9, 2020) (report and recommendation rejected on other grounds). Additionally, this is not the first time a federal district court has been asked to consider an arbitration award issued by Robert Presley or an "HMP" organization. *See In re Matter of: Arbitration Award of*

Robert Presley of HMP Arbitration Servs., No. 19-CV-00088, 2019 WL 10817149, at *2 (D. Utah Nov. 13, 2019).

For instance, in *Swanson v. Wilford, Geske, & Cook*, No. 19-CV-0117, 2019 WL 4575826 (D. Minn. Aug. 30, 2019), a district court vacated an arbitration award issued by "HMP Dispute Resolution Arbitration." The *Swanson* court found that the plaintiff failed to show that the defendants agreed to arbitrate, and thus there was no "agreement to arbitrate between the parties which would support the purported 'Arbitration Award.'" *Id*. at *5-7. Similarly, in *Orman v. Cent. Loan Admin. & Reporting*, No. 19-CV-4756, 2019 WL 6841741 (D. Ariz. Dec. 12, 2019) a district court vacated an arbitration award purportedly issued by an arbitrator from "HMP Dispute Resolution." The *Orman* court held that the respondents' silence in response to the movant's counteroffer to arbitrate did not constitute the respondents' agreement to arbitrate, and there was no contract between the parties. *See id.* at *4-5. Like the Petitioner here, the movant in *Orman*:

> crafted a 'self-executing unilateral arbitration agreement' that she then sent to the general correspondence addresses of Respondents. When this mailing was ignored or explicitly rejected, [the movant] took her document to some sort of self-proclaimed arbitrator. That arbitrator, with zero analysis and zero input from Respondents, summarily awarded [the movant] over $10 million, a figure that was not rooted in any factual or legal basis whatsoever. When notices of a seemingly random arbitration related to a long-ignored document were ignored by Respondents, [the movant] then thought it appropriate to ask the Court to confirm her award.

Id. at *7 (footnote and citations omitted). The court described the action as "completely frivolous," and stated that the movant "concocted a rambling document that she then had rubber-stamped by an arbitrator who merely restated the near gibberish contained in [the movant's] 'counteroffer.'" *Id.* at *6. The court sanctioned the movant and her counsel by ordering them to pay the respondents' legal fees. *Id.* at *7-8.

As if these district court cases involving arbitration awards issued by "HMP" organizations

were not persuasive on their own, Respondents highlight several indicia of fraud surrounding Petitioner's purported arbitration award, including but not limited to:

- The award's "All-Purpose Proof of Service" is invalid, as it claims to be "signed" by HMP Arbitration Association, not by any individual who purportedly served it [ECF No. 1-2] at p. 2-3;
- The award does not identify which state's law governs the purported proceedings;
- The award does not identify the contractual agreement underlying the dispute with specificity;
- The award suggests involvement of multiple claimants by referring to "depriving them of their right to property, their right to contract . . .," but Petitioner is the only claimant identified [ECF No. 1-2] at p. 9; and
- The award refers to the Tucker Act, which has no application to the instant matter because none of the parties are an agency of the U.S. government [ECF No. 1-2] at p. 10-11.

J. Mot. at 7-8.

Further, the arbitration somehow led to the issuance of an award for $2,179,652.12, but Mr. Presley provides no legitimate factual or legal basis supporting that amount. *See Ainsworth v. Skurnick*, 960 F.2d 939, 941 (11th Cir. 1992); *Raiford v. Merrill Lynch, Pierce, Fenner & Smith, Inc*., 903 F.2d 1410, 1413 (11th Cir. 1990); *U.S. Postal Serv. v. Nat'l Ass'n of Letter Carriers*, 847 F.2d 775, 778 (11th Cir. 1988).

C. The Remaining Respondents Are Also Dismissed

A court may grant a *sua sponte* motion to dismiss an action with prejudice for failure to state a claim when "the complaint is patently frivolous or if reversal would be futile." *Tazoe v. Airbus S.A.S*., 631 F.3d 1321, 1336 (11th Cir. 2011) (quotation and ellipsis omitted); *see also In re Matter of: Arbitration Award of Robert Presley of HMP Arbitration Servs*., 2019 WL 10817149, at *1. Based upon the foregoing analysis of the moving Respondents' Joint Motion, that standard is satisfied here for the Remaining Respondents. As demonstrated above, Petitioner's claim in this

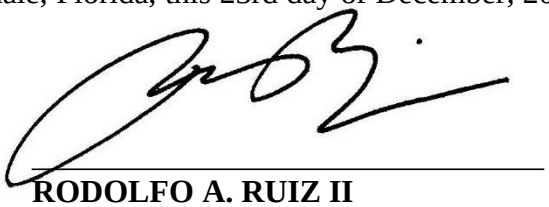
action lacks any plausible basis in law or in fact as it would relate to any named Respondent. Therefore, the Court concludes that Petitioner cannot provide any additional allegations that would save her claim against the Remaining Respondents from dismissal. Thus, the Court hereby *sua sponte* dismisses the Remaining Respondents and dismisses Petitioner's claim against them with prejudice.

CONCLUSION

For the foregoing reasons, the Court finds the purported arbitration award was procured by fraud and this case is a sham. Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Petitioner's Motion to Confirm an Arbitration Award [ECF Nos. 1, 21] is **DENIED**.
2. Respondents' Joint Motion [ECF No. 25] is **GRANTED**.
3. The Remaining Respondents are hereby *sua sponte* **DISMISSED**.
4. This action is **DISMISSED *with prejudice*** and the Clerk of Court is directed to **CLOSE** this matter.

DONE AND ORDERED in Fort Lauderdale, Florida, this 23rd day of December, 2020.



RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

cc: Counsel of Record