IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TERRI TEPPER, as executor of the estate of LAWRENCE WEINER,	)	
Petitioner,	)	Case No. 1:25-cv-09985
v.	)	Judge Franklin U. Valderrama
OPPENHEIMER & CO., INC.,	)	
Respondent.	)	

OPPENHEIMER & CO. INC.'S CROSS-MOTION TO CONFIRM THE ARBITRATION AWARD AND RESPONSE IN OPPOSITION TO PETITIONER'S MOTION TO VACATE ARBITRATION AWARD

By this untimely proceeding, Petitioner Terri Tepper ("Petitioner") attempts to rehash a FINRA arbitration award entered against her and in favor of Oppenheimer & Co., Inc. ("Oppenheimer"). Tepper challenges the arbitrator's findings and seeks to overturn the award for alleged "manifest disregard for the law". (ECF No. 1 at ¶¶ 2, 5, 7, 8, 9). However, Tepper's unseasonable Motion to Vacate Arbitration Award is both time-barred and fails on the merits. The arbitrator conducted an evidentiary hearing where the arbitrator heard evidence, considered approximately fifty (50) exhibits, and received arguments of counsel. After the evidentiary hearing, the arbitrator issued a five-page, written Award that expressly addresses and cites FINRA Rule 2165, *i.e.* the very same law that Petitioner, without any evidentiary support, baselessly claims was disregarded.

Oppenheimer cross-moves to confirm the award and respectfully asks that the Court enter judgment thereon in favor of Oppenheimer and against Petitioner.

ARBITRATION AND AWARD

Lawrence Weiner ("Decedent") "was an experienced investor" who had three accounts with Oppenheimer. (ECF No. 1-3 at page 4, Factual Background). Decedent died on December 21, 2023 according to the death certificate attached to the Motion to Vacate. Petitioner submits what appears to be an erroneous letter from a personal trainer in support of her Motion to Vacate which asserts that Decedent attended group fitness classes in December 2024. (ECF No. 1-2). The exact date of Decedent's death aside, the parties do not dispute that Petitioner is Decedent's executor.

According to the Award, Petitioner and Jordan Tepper Weiner ("J.T. Weiner"), one of Decedent's purported heirs, initiated FINRA arbitration proceedings against Oppenheimer and filed a statement of claim in October 2024. (ECF No. 1-7 at page 1, Case Information). Arbitration ensued. Petitioner and J.T. Weiner filed an amended claim, presented expert and other testimony and evidence, filed motions, and had their claims fully heard by the arbitrator. The arbitrator held an evidentiary hearing and rendered a written award in favor of Oppenheimer and against Petitioner and J.T. Weiner (the "Award"). FINRA issued the Award on May 23, 2025. A true and accurate copy of the Award is attached to Petitioner's Motion as Exhibit 7 (ECF No. 1-7).

JURISDICTION

This Court has jurisdiction because the parties are diverse and the arbitral award concerned a dispute in excess of $75,000, even though Petitioner made a fundamental error in her alleged basis for invoking this Court's jurisdiction.

The Federal Arbitration Act does not bestow an independent basis for federal subject matter jurisdiction. *Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 581 (2008); *Kinsella v. Baker Hughes Oilfield Operations, LLC*, 66 F.4th 1099, 1102-03 (7th Cir. 2023). Instead, parties must establish an independent basis for a federal court to hear their dispute.

Here, jurisdiction arises in diversity under 28 U.S.C. § 1332, though not for the reason Petitioner asserts. Oppenheimer is a New York corporation. Petitioner, who is an executor of a decedent's estate, incorrectly claims her citizenship matters

for purposes of diversity. *Gustafson v. zumBrunnen*, 546 F.3d 398 (7th Cir. 2008) ("[T]he federal diversity statute treats 'the legal representative' of a decedent's estate (or the estate of an infant or an incompetent) as a citizen of the same state as the decedent"). Regardless, decedent was a citizen of Illinois. Accordingly, Oppenheimer and the Decedent are diverse.

According to the Award, Petitioner requested damages in the amount of $122,438.00 in the arbitration. As such, federal subject matter jurisdiction is satisfied because there is complete diversity among the parties and the amount in controversy is met. *Magruder v. Fidelity Brokerage Servs. LLC*, 818 F.3d 285, 287 (7th Cir. 2016) (holding that amount which could have been awarded formed the basis to calculate the amount in controversy under diversity statute).

ARGUMENT

I. THE AWARD SHOULD BE CONFIRMED

It is respectfully submitted that the Court should confirm the Award. *Renard v. Ameriprise Fin. Servs., Inc.*, 778 F.3d 563, 566-71 (7th Cir. 2015) (affirming confirmation of FINRA arbitration award). Section 9 of the Federal Arbitration Act ("FAA") provides:

> If 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 and 11 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 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. Petitioner initiated proceedings in this Court regarding the Award under the FAA, and Oppenheimer agrees that the FAA applies.

Here, the arbitration Award is sound, grounded in the law and the applicable account agreements, and was rendered by an arbitrator who gave Petitioner and J.T. Weiner substantial due process including, but not limited to, motion practice and an evidentiary hearing. Accordingly, the Award should be confirmed. *Std. Sec. Life Ins. Co. of New York v. FCE Benefit Administrators, Inc.*, 967 F.3d 667, 671 (7th Cir. 2020) ("Confirmation is 'usually routine or summary'".) (quoting *Hasbro, Inc. v. Catalyst USA, Inc.*, 367 F.3d 689, 691-92 (7th Cir. 2004).

II. PETITIONER'S MOTION TO VACATE IS TIME BARRED

Congress enacted different time periods for confirmation and vacatur of arbitration awards. While a party seeking to confirm an arbitration award has one-year to do so, a motion to vacate an arbitration award "**must be served** upon the adverse party or his attorney **within three months** after the award is filed or delivered. Compare 9 U.S.C. § 9 and § 12 (emphasis added). "The purpose of the short periods prescribed in the federal and state arbitrations statutes for moving courts to vacate an award is to accord the arbitration award finality in a timely fashion." *Olson v. Wexford Clearing Servs. Corp.*, 397 F.3d 488, 492 (7th Cir. 2005) (holding that motion to vacate NASD arbitration award was unseasonable and affirming District Court's dismissal of action on statute of limitations grounds).

The Seventh Circuit has addressed the relevant limitations period. *Webster v. A.T. Kearney, Inc.*, 507 F.3d 568, 572 (7th Cir. 2007). A party seeking vacatur must serve notice on the opposing party within three months, as prescribed by 9 U.S.C. § 12, not merely apply to a court. *Id.* at 572 ("[W]e clarify now and for purposes of future cases that *service* of a motion to vacate is the act that stops the three-month statute of limitations. Unless and until Congress amends § 12 and makes filing the critical date, we will continue to enforce the plain language of the statute.") (emphasis in original). The service requirement is easy to satisfy and sets a very low bar. Petitioner could have seasonably served notice of her Motion to Vacate via email or a delivery service like Federal Express, but she did not. *Aperion Care, Inc. v. Senwell Senior Inv. Advisors*, No. 22 C 3120, 2022 WL 10505696 at *2 (N.D. Ill. 2022) (holding service via email was appropriate method to serve notice of motion to vacate arbitration award); *Corinthian Colleges, Inc. v. McCague*, No. 09 C 4899, 2010 WL 918074 at *2 (N.D. Ill. 2010) (same).

Here, the Award was signed by the arbitrator on May 22, 2025, and served by FINRA on May 23, 2025. As such, Petitioner had until August 23, 2025 to ***serve*** notice of her motion to vacate, not just file it. Petitioner failed to meet the statutory deadline. She filed her motion on August 20, 2025, but rather than immediately serve her motion, she sat on it for a week. Petitioner issued a waiver of the service of summons on August 27, 2025 -two days after her deadline to serve the motion to vacate expired on Monday, August 25, 2025 (August 23 was a Saturday).

For this reason alone, Petitioner's motion to vacate is time barred and must be dismissed.

On September 23, 2025, Oppenheimer sent Petitioner's counsel a letter setting forth Oppenheimer's defense to the Petition and demanding withdrawal of the Motion to Vacate. On October 7, 2025, the undersigned counsel agreed to extend the safe harbor period of Federal Rule of Civil Procedure 11 until October 31, 2025 in light of Petitioner's counsel purported trial schedule.

III. VACATUR FAILS ON THE MERITS

Beyond her fatal statute of limitations failure, Petitioner's motion to vacate fails on the merits. As a starting point, Petitioner presents insufficient evidentiary support for her Motion to Vacate. She does not provide this Court with a transcript of the evidentiary hearing, did not submit any affidavits, and offers no writings or other evidence showing that the arbitrator refused to postpone the hearing, upon sufficient cause shown, refused to hear evidence pertinent and material to the controversy, or deliberately disregarded what the arbitrator knew to be the law. As the party seeking vacatur of the Award, Petitioner bears the burden of presenting competent evidence to this Court to prove her claims under Sections 10(a)(3) and 10(a)(4). *Health Servs. Mgmt. Corp. v. Hughes*, 975 F.2d 1253, 1258-59 (7th Cir. 1992); *see also Nat'l Wrecking Co. v. Int'l Broth .of Teamsters, Local 731*, 990 F.2d 957, 961 (7th Cir. 1993) ("[T]he party challenging the award must demonstrate that the arbitrator deliberately disregarded what the arbitrator knew to be the law in order to reach a particular result.")

It is well settled that arbitration awards are entitled to great deference. *See, e.g.*, *Local 15, Int'l Bhd. of Elec. Workers, AFL-CIO v. Exelon Corp.*, 495 F.3d 779, 782 (7th Cir. 2007) (noting "the great deference accorded to arbitration awards"). The Seventh Circuit instructs that "[t]he Federal Arbitration Act ("FAA"), and the Supreme Court, indicate that 'arbitration awards are largely immune from ... scrutiny in court.'" *Nano Gas Techs., Inc. v. Roe*, 31 F.4th 1028, 1031 (7th Cir. 2022) (quoting *Cont'l Cas. Co. v. Certain Underwriters at Lloyds of London*, 10 F.4th 814, 816 (7th Cir. 2021). Courts "may not reconsider the merits of an award even when a party argues that the arbitrators made a factual error or even a legal one when interpreting a contract." *Zimmer Biomet Holdings, Inc. v. Insall*, 108 F.4th 512, 515 (7th Cir. 2024). A court should not second guess an arbitrator's findings and instead defers to an arbitrator's decision "[a]s long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority." *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 30 (1987); *see also, e.g.*, *Crosby v. Sears Holding Corp.*, No. 15-6396, 2018 WL 1394037, at *2 (N.D. Ill. Mar. 20, 2018) ("A court must grant an arbitration award great deference so long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority") (internal quotation marks omitted).

Here, Petitioner lacks a colorable (or, indeed, any) basis to vacate the Award under Section 10(a)(3) or 10 (a)(4) of the FAA. *Hyatt Franchising, L.L.C. v. Shen Zhen New World I, LLC*, 876 F.3d 900, 903 (7th Cir. 2017) (instructing that party

who loses in arbitration and pursues non-meritorious challenges under Section 10(a)(3) and 10(a)(4) may be sanctioned for multiplying litigation under 28 U.S.C. § 1927).

A. SECTION 10(a)(3)

Section 10(a)(3) provides that a court "may make an order vacating the award" "where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced." 9 U.S.C. § 10. The statutory prerequisite has not been met.

Petitioner cites *Flender Corp. v. Techna-Quip Co.*, 953 F.2d 273, 280 (7th Cir. 1992). Petition reliance on *Flender Corp.* is entirely misguided. In fact, *Flender Corp.* supports confirmation of the Award at issue here. In *Flender Corp.*, the Seventh Circuit affirmed confirmation of an arbitration award and rejected an argument that the arbitrator violated Section 10(a)(3) by excluding certain evidence and making determinations about relevancy. The Court of Appeals expressly instructed that "[e]very failure of an arbitrator to receive relevant evidence does not constitute misconduct requiring vacatur of an arbitrator's award." *Id.* at 280.

Here, Petitioner argues that the arbitrator's denial of a motion to compel that she pursued, specifically the arbitrator's declination to order the production of a "detailed Client Activity Report", and certain other pre-hearing rulings on various motions related to various pleadings somehow "depriv[ed] Petitioner of a fair hearing." (ECF No. 1 at ¶ 7). However, it is well settled that discovery and

evidentiary rulings, even determinations that foreclose certain evidence or arguments, do ***not*** amount to refusing to hear evidence or misbehavior which could arguably be considered grounds to vacate. *Bartlit Beck LLP v. Okada*, 25 F.4th 519, 522 (7th Cir. 2022) ("On procedural and evidentiary matters, federal courts defer to arbitrators' decisions so long as those decisions are reasonable.") (holding motion to vacate did not satisfy either Section 10(a)(3) or parallel in New York Convention on Foreign Arbitral Awards); *see also, Halim v. Great Gatsby's Auction Gallery, Inc.*, 516 F.3d 557, 563-64 (7th Cir. 2008) (holding that arbitrator's declination to rule on discovery disputes did not amount to manifest disregard of the law or constitute grounds for vacatur). According to the Seventh Circuit, "[t]he statutory phrase 'refusing to hear evidence' concerns the conduct of the hearing, not the conduct of discovery." *Hyatt Franchising, L.L.C.,* 876 F.3d at 901. Petitioner was allowed ample discovery by the arbitrator including, but not limited to monthly statements and other documents from Oppenheimer. The Seventh Circuit has made clear that "nothing in the Federal Arbitration Act requires an arbitrator to allow *any* discovery", let alone that an arbitrator must acquiesce to any and every discovery request that a claimant may want to pursue. *Hyatt Franchising, L.L.C.*, 876 F.3d at 901. In short, there is simply no support for the argument that the arbitrator refused to hear any evidence proffered in the arbitration or engaged in any inappropriate prejudicial behavior.

B. SECTION 10(a)(4)

Petitioner also baselessly argues that the arbitrator engaged in "manifest disregard of the law in clear violation of § 10(a) of the FAA" and posits that the

arbitrator failed to apply FINRA Rule 2156. (ECF No. 1 at ¶¶ 5, 8, 9). However, that argument has no basis in fact. The Award, on its face, makes clear that the arbitrator recognized Petitioner made a claim under FINRA Rule 2156, among other specifically cited and enumerated FINRA rules. (ECF No. 1-7 at Case Summary and Relief Requested). That the arbitrator considered and rejected the requested relief under FINRA Rule 2156 does not show that the arbitrator exceeded his powers under the arbitration agreement or engaged in a manifest disregard of the law. He recognized and decided about FINRA Rule 2156 – end of story. *Wise v. Wachovia Secs, LLC*, 450 F.3d 265, 268-69 (7th Cir. 2006).

Petitioner's Section 10(a)(4) argument falters not only on the facts but also on the law. Manifest disregard is of dubious continued viability following the Supreme Court's decision in *Hall Street Assocs, L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 584-89 (2008). *Affymax, Inc. v. Orthos-McNeil-Janssen Pharmaceuticals, Inc.*, 660 F.3d 281, 285 (7th Cir. 2011) (discussing continued viability of the manifest disregard standard). To the extent it continues to be viable, manifest disregard of the law is limited to instances where an arbitrator directs the parties to violate the law as to a third-party. *Renard v. Ameriprise Fin. Servs, Inc.*, 778 F.3d 563, 567-68 (7th Cir. 2015). The manifest disregard standard is not in play and should be rejected. *Wise*, 450 F.3d at 268-69. Like her other alleged grounds for vacatur, Petitioner's alleged manifest disregard argument is nothing more than a transparent attempt to impermissibly appeal the arbitrator's finding in Oppenheimer's favor.

CONCLUSION

For the reasons set forth above, Oppenheimer respectfully requests that the Court deny Petitioner's Motion to Vacate and enter judgment in favor of Oppenheimer and against Petitioner confirming the Arbitrator's May 23, 2025 Award. Oppenheimer further requests costs and other relief that the Court deems just and equitable and may request attorney's fees if Petitioner declines to withdraw the Motion to Vacate.

Dated: October 23, 2025

Respectfully submitted,

DUANE MORRIS LLP

By: /s/ Mark A. Bradford

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CERTIFICATE OF SERVICE

The undersigned certifies that on October 23, 2025, the foregoing document was electronically filed with the Clerk of the U.S. District Court, using the Court's CM/ECF system, which will send electronic notification of the filing to those parties who have appeared and are registered as CM/ECF participants in this matter. Parties may access this filing through the Court's CM/ECF system.

/s/ Mark A. Bradford