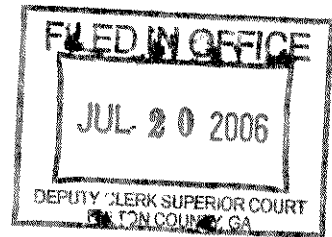


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**SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**



CAROL COHEN,)	
)	CIVIL ACTION FILE
Movant,)	NO. 2005-CV-100-613
)	
v.)	
)	
A.G. EDWARDS & SONS, INC.)	
and MICHAEL SEAN CAIN,)	
)	
Respondents.)	

ORDER

1. **The following is a final order to Plaintiff's CLAIM in the present action**
2. **Defendant's COUNTERCLAIMS are hereby SEVERED**
3. **The Clerk of Court is directed to close the above styled civil action and initiate a NEW CIVIL ACTION to be styled: A.G. EDWARDS & SONS, INC. and MICHAEL SEAN CAIN v. CAROL COHEN**
4. **No filing fee shall be required for the new civil action**

The above-referenced matter came before the Court on July 12, 2006 for a hearing on Movant Carol Cohen's Motion to Vacate Arbitration Award, Movant Cohen's Amended Motion to Vacate Arbitration Award, dual Motions to Confirm Arbitration Award and Motions for Reasonable and Necessary Attorney's Fees filed by Respondents A.G. Edwards & Sons, Inc. and Michael Sean Cain pursuant to O.C.G.A. § 9-15-14(a) and (b), and Respondent Michael Sean Cain's request for a judgment for expungement relief. After hearing the arguments of counsel, considering applicable legal authorities, and based on evidence presented at the hearing as to whether relief should be afforded under O.C.G.A. § 9-15-14(a) and (b), and the reasonableness and necessity of attorneys' fees, the Movant's Motion and Amended Motion to Vacate are **DENIED** and the motions of Respondents for reasonable and necessary attorneys' fees are **GRANTED**.

PROCEDURAL HISTORY

Movant Carol Cohen is a former customer of Respondent A.G. Edwards & Sons, Inc. ("A.G. Edwards"), a brokerage firm. Respondent Michael Sean Cain was a registered representative of A.G. Edwards and registered branch principal of A.G. Edwards' Griffin,

Georgia office, where he serviced Cohen's account. In May 2003, following the stock market collapse that began in the year 2000, Cohen filed a Statement of Claim for binding arbitration before the National Association of Securities Dealers, Inc. (the "NASD"). Therein, Cohen alleged securities and common law fraud, breach of fiduciary duty, and breach of contract against A.G. Edwards and Mr. Cain and sought an award of alleged monetary losses in her brokerage account, plus interest, punitive damages, and attorney's fees. The Respondents filed an Answer, denying the allegations in the Statement of Claim, and asserted various defenses.

At the arbitration hearing conducted in December 2004, Cohen presented evidence over the course of four days before a three-person panel of NASD arbitrators. After Cohen rested her case, Respondents A.G. Edwards and Cain moved for a dismissal of all of Cohen's claims, and the arbitration panel heard argument from A.G. Edwards' and Cain's respective counsel in support of the dismissal motion and by Cohen's counsel in opposition to that motion. All parties to the arbitration, including Cohen, affirmatively stated on the arbitration record that they had received a full and fair opportunity to be heard in the arbitration. After considering the evidence presented by Cohen at the hearing and the arguments of counsel, the arbitration panel unanimously dismissed all of Cohen's claims, which dismissal is reflected in the panel's arbitration Award dated February 10, 2005. In addition, the panel in the Award recommended that the NASD expunge all references to Cohen's complaint and arbitration from the securities industry records of Respondent Cain, subject to confirmation of the Award by a court of competent jurisdiction as required by certain NASD procedures. Finally, the arbitration panel denied each party's respective motions for attorneys' fees and related expenses incurred in the arbitration but granted each of A.G. Edwards' and Cain's motions to assess all the NASD forum fees from the arbitration (being \$14,400.00) solely against Cohen.

Cohen filed a motion to vacate with this Court on May 4, 2005, asserting that the Award had been procured by corruption, fraud, or misconduct and was not made in a fair and impartial manner. Respondents A.G. Edwards and Cain filed separate answers and responses to the motion to vacate, asserting that it failed to state a claim and was not supported by the arbitration record. Both Respondents requested that the Award be confirmed in accordance with 9 U.S.C. § 9, and Respondent Cain further counterclaimed against Cohen alleging, *inter alia*, tortious interference with business relations and seeking expungement relief according to the Award. Cohen subsequently filed an amended motion to vacate omitting the grounds asserted in the original motion but asserting, *inter alia*, that the arbitration panel had "manifestly disregarded the law" in rendering the Award. The parties thereafter extensively briefed all issues. Respondents A.G. Edwards and Cain have filed separate motions for reasonable and necessary attorney's fees under O.C.G.A. § 9-15-14(a) and (b) on the grounds that the vacatur motions contain no justiciable question of law or fact and were filed without substantial justification.

ANALYSIS

The Federal Arbitration Act (the "FAA") governs the Court's review of the arbitration panel's decision. Malice v. Coloplast Corp., 278 Ga. App. 395, 629 S.E.2d 95 (2006);

Joyner v. Raymond James Financial Services, Inc., 268 Ga. App. 835, 602 S.E.2d 871 (2004); Primerica Financial Services, Inc. v. Wise, 217 Ga. App. 36, 37, 456 S.E.2d 631, 632 (1995). The party moving for vacatur “bears the burden of setting forth sufficient grounds to vacate the arbitration award.” Scott v. Prudential Securities, Inc., 141 F.3d 1007, 1014 (11th Cir. 1998), citing O.R. Securities, Inc. v. Professional Planning Assocs., Inc., 857 F.2d 742, 746 (11th Cir. 1988).

During oral argument on her request for vacatur relief, Cohen argued “manifest disregard” as the basis for her attack on the arbitrators’ Award. “Manifest disregard of the law” is a non-statutory ground recognized by the United States Court of Appeals for the Eleventh Circuit for vacating an arbitration award. B.L. Harbert Int’l, LLC v. Hercules Steel Co., 441 F.3d 905, 910 (11th Cir. 2006); Montes v. Shearson Lehman Bros., Inc., 128 F.3d 1456, 1461 (11th Cir. 1997). This ground for vacating an arbitration award, however, requires “clear evidence” that the arbitrators were “conscious of the law and deliberately ignore[d] it.” B.L. Harbert, 441 F.3d at 901, quoting Montes, 128 F.3d at 1461. As explained by the Georgia Court of Appeals, the process for determining whether an arbitrator has manifestly disregarded the law under the FAA entails: (1) determining whether the law alleged to have been ignored by the arbitrators was “well defined, explicit, and clearly applicable”; and (2) determining whether the arbitrators were conscious of the law and “deliberately ignored” it. Malice, 278 Ga. App. at 398, 629 S.E.2d at 98; Montes, 128 F.3d at 1461. “Both of these prongs must be met before a court may find that there has been a manifest disregard of the law.” Malice, 278 Ga. App. at 398, 629 S.E.2d at 98-99. Also, “under both federal and Georgia law, when a motion to vacate or confirm an arbitration award is before the court, the court may not inquire into the merits of the dispute or consider the sufficiency of the evidence.” Malice, 278 Ga. App. at 398, 629 S.E.2d at 98; see also O.R. Securities, 857 F.2d at 747.

The Court finds that Movant Cohen has fully failed to satisfy the first requirement of showing “manifest disregard of the law,” which is to identify a well defined, explicit, and clearly applicable law. Cohen has further failed to demonstrate, in her pleadings or in response to questions posed by the Court during oral argument, that the arbitration panel disregarded such a law, deliberately or otherwise. Nor has Cohen made a showing in any substantive respect in support of any other asserted ground for vacating the arbitration Award. For these reasons, the Court denies Cohen’s motion and amended motion to vacate the Award.

With regard to each of A.G. Edwards’ and Cain’s respective motions for reasonable and necessary attorneys’ fees, O.C.G.A. § 9-15-14(b) provides that the Court may award such fees if it finds that a party has brought an action “lack[ing] substantial justification.” O.C.G.A. § 9-15-14(b). This provision is fully applicable to proceedings such as this involving a motion to vacate an arbitration award. Marchelletta v. Seay Construction Servs., Inc., 265 Ga. App. 23, 393 S.E.2d 64 (2004) (affirming fee award where party moving to vacate arbitration award had failed to present issues even approaching legal standards for vacating arbitration awards). Moreover, in B.L. Harbert, the Eleventh Circuit states that sanctions may be appropriate when a litigant seeks to overturn an arbitration award on the

purported basis of “manifest disregard of the law” when the argument has no real legal basis. 441 F.3d at 913.

The Court finds that Respondents A.G. Edwards and Cain are each entitled to recover their respective reasonable and necessary attorneys’ fees because Cohen’s claims and arguments for vacating the arbitration award lack substantial justification, as provided in O.C.G.A. § 9-15-14(b). Respondents A.G. Edwards and Cain have each supported their respective fee requests with affidavits and proffers of their respective lead counsel. Based upon the written submissions and arguments at the hearing, and in consideration of the tenacity with which Cohen pursued her two motions to vacate and, correspondingly, her failure to present any evidence to the Court demonstrating that the arbitrators “manifestly disregarded the law,” the Court finds the attorneys’ fees of A.G. Edwards and Cain to be reasonable and necessarily expended in defense of this matter. Accordingly, pursuant to O.C.G.A. § 9-15-14(b), the Court awards A.G. Edwards its requested attorneys’ fees and other expenses of \$33,736.00 and awards Cain his requested attorneys’ fees and other expenses of \$28,070.72.

Based on the foregoing, the Court rules as follows:

1. Movant’s Motion and Amended Motion to Vacate Arbitration Award are **HEREBY DENIED**;
2. Respondents’ respective motions that the Award be confirmed are each **HEREBY GRANTED** and the Award is hereby made a judgment of this Court;
3. As further judgment of the Court, all references to Cohen’s arbitration complaint and claims against Cain in the arbitration entitled *Carol Cohen (Claimant) v. A.G. Edwards & Sons, Inc. and Michael Sean Cain (Respondents)*, NASD Arbitration No. 03-03797 are hereby **ORDERED EXPUNGED** instantaneously from the NASD’s Central Registration Depository records and any related securities industry records; and
4. The separate motions of Respondents A.G. Edwards and Cain for their respective reasonable and necessary attorneys’ fees are each **HEREBY GRANTED**.
5. Judgment is hereby awarded to A.G. Edwards and against Cohen in the sum of \$33,736.00, and to Cain and against Cohen in the sum of \$28,070.72, which judgments shall each accrue interest at the post-judgment statutory rate; and
6. Cohen shall recover nothing herein.

As ruled during the July 12, 2006 hearing, the Court determined that it would not hear or adjudicate Cain’s pending Counterclaim against Cohen in any respect as part of this proceeding due to fact that Cohen had initiated this proceeding as an application for vacatur relief. Accordingly, Cain’s Counterclaim is **SEVERED** from all the motions and other remaining issues matters pending before the Court in this proceeding and now decided

herein; and said Counterclaim shall henceforth proceed as a separate, ordinary civil action in accordance with the Georgia Civil Practice Act.

Due to said severance, the Court expressly holds that its motion rulings, orders and judgment herein constitute a full and final adjudication of any and all motions, matters and issues properly pending before the Court in this proceeding and, accordingly, there is no just reason to delay entry of final judgment herein upon all of said matters.

SO ORDERED, this ^{20th} day of July, 2006.



JUDGE URAL GLANVILLE

Distribution:

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