IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

EDMOND J. RONCONE,	:	
	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. 8895-VCN**
	:	
PHOENIX PAYMENT SYSTEMS, INC. d/b/a ELECTRONIC PAYMENT EXCHANGE, RAY MOYER, NANCY REILLY and JOE BABIN,	:	
	:	
Defendants.	:	

MEMORANDUM OPINION

Date Submitted: April 9, 2014
Date Decided: November 26, 2014

G. Kevin Fasic, Esquire and Bonnie E. Copeland, Esquire of Cooch and Taylor, P.A., Wilmington, Delaware, Attorneys for Plaintiff.

Ian Connor Bifferato, Esquire, Thomas F. Driscoll III, Esquire, and J. Zachary Haupt, Esquire of Bifferato LLC, Wilmington, Delaware, and Frederick R. Kessler, Esquire of Wollmuth Maher & Deutsch LLP, New York, New York, Attorneys for Defendants.

NOBLE, Vice Chancellor

Plaintiff Edmond J. Roncone ("Roncone") is a former sales employee of Defendant Phoenix Payment Systems, Inc. ("EPX").[1] During Roncone's employment, the other Defendants were also EPX employees: Ray Moyer ("Moyer") was Chief Executive Officer; Nancy Reilly ("Reilly") was Chief Financial Officer; and Joe Babin ("Babin") was Vice President of Sales. After a dispute with his employer over allegedly unpaid sales commissions, Roncone resigned and soon filed a complaint with the American Arbitration Association ("AAA" and the "Arbitration") against the Defendants in June 2012. He asserted claims for violations of the Delaware Wage Payment and Collection Act ("WPCA"),[2] breach of contract, and *quantum meruit*. In response, the Defendants filed counterclaims for unjust enrichment and breach of the covenant of good faith and fair dealing.

The arbitration proceeding lasted over a year and included an opinion denying the Defendants' motion for summary judgment and an opinion granting Roncone's motion *in limine*. After a three-day hearing and opening and reply briefs submitted by the parties, the arbitrator ruled in Roncone's favor and against the Defendants on the WPCA claim[3] and the counterclaims in the Post-Arbitration

[1] Phoenix Payment Systems, Inc. does business as Electronic Payment Exchange.
[2] 19 *Del. C.* ch. 11.
[3] Given the decision in favor of Roncone on his WPCA claim, the arbitrator declined to rule on his breach of contract and *quantum meruit* claims.

Interim Opinion, dated July 12, 2013 (the "Interim Opinion").[4] The arbitrator found the Defendants jointly and severally liable for $71,424.23 in "unpaid commissions" due to Roncone, $71,424.23 in liquidated damages, and attorneys' fees and costs in an amount to be determined. With the benefit of additional briefing, the arbitrator later awarded attorneys' fees and costs of $128,671.42 to Roncone.[5] Thus, in the Final Award of Arbitrator (the "Final Award"), dated September 10, 2013, the arbitrator awarded a total of $271,694.88[6] to Roncone.

Roncone brought this action to confirm the Final Award. The Defendants have moved for summary judgment on their counterclaims to vacate, in part, or to modify the arbitration award.[7]

For the following reasons, the Court concludes that summary judgment in favor of Roncone is warranted, that confirmation of the Final Award is appropriate, and that Defendants' counterclaims should be dismissed.[8]

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[4] V. Compl. to Confirm Award of Arbitrator ("Compl.") Ex. C.
[5] *Id.* Ex. D.
[6] *Id.* This sum also includes $175 for administrative fees of the AAA.
[7] Since the summary judgment oral argument, Roncone and Reilly have stipulated to dismissal of the claims involving her. Roncone and the Defendants have also stipulated to dismissal of Count III of Defendants' Counterclaim.
[8] Roncone did not move for summary judgment, but he did argue that it should be granted confirming the Final Award. Answering Br. of Edmond J. Roncone in Opp'n to Defs.' Mot. for Summ. J. at 15 ("While no motion for summary judgment has been filed, the parties agreed to proceed with a determination based on written briefs."). Although the Defendants dispute that Roncone is entitled to summary judgment, they do not object, as a procedural matter, to the Court's consideration of Roncone's application, nor could they because the briefing and arguments of the parties fully debated the merits of Roncone's claims before the Court. *See, e.g.*, *Barry v. Town of Dewey Beach*, 2006 WL 1668352,

I. BACKGROUND

A. *The Dispute among the Parties*

When Roncone was considering whether to join EPX in December 2007, he received various documents reflecting salary and commission terms for his prospective position. After negotiating an additional term providing for an annual $50,000 draw against his commissions, Roncone executed the various documents in January 2008.

One of those documents was the Employment Agreement that provided an annual salary of $100,000, which was paid throughout his employment with EPX. The Employment Agreement generally requires arbitration of "any and all claims or disputes arising out of this letter agreement and any and all claims arising from or relating to [Roncone's] employment with [EPX], including (but not limited to) . . . claims of . . . breach of contract . . . [and] claims regarding commissions."[9] Further, it established that "[t]he arbitrator's decision must be written and must include the findings of fact and law that support the decision."[10]

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at *5 n.47 (Del. Ch. June 8, 2006) (treating plaintiff's allegation, which was raised only in a brief, as incorporated into the complaint despite no proper motion to amend because the parties engaged on the merits without serious objection).

[9] Aff. of Frederick R. Kessler, Jan. 24, 2014, ("Kessler Aff.") Ex. 2 (Empl. Agmt.), at 2-3.

[10] *Id.* at 3.

Another document Roncone agreed to was the Sales Commission Plan (the "2007 Plan").[11] Certain terms of the 2007 Plan and a later 2009 Plan, defined herein—primarily whether the listed "Sales Goals" were preconditions to earning or receiving commissions—were in dispute in the Arbitration. The 2007 Plan commission rates ranged from 0.75% to 12%, with no renewal rate. From the start of his employment until July 2009, Roncone did not receive any commissions under the 2007 Plan.

In July 2009, EPX revised its Sales Commission Plan (the "2009 Plan").[12] The 2009 Plan provided for higher commission percentages ranging from 8% to 12%, with a 4% renewal rate. The 2009 Plan also contemplated that EPX sales employees would receive a base salary of $60,000. Although Roncone's commissions were now calculated based on the 2009 Plan, he continued to receive a $100,000 annual salary.

Sometime during 2010, an employee in EPX's accounting department was instructed to calculate commissions for salespersons, including Roncone. Roncone's commission report was based on the percentages in the 2009 Plan and the calculations were not conditioned on whether he had met the "Sales Goals." Later in 2010, Roncone and Moyer came to an unwritten understanding that for

[11] Kessler Aff. Ex. 3.
[12] *Id.* Ex. 4.

years 2008 and 2009, they would treat the draw payments and the commissions as a "wash."

Roncone received certain commission payments from EPX, but a substantial balance of unpaid commissions began to accrue. On multiple occasions, Roncone sought to address the balance issue with Moyer, Reilly, and Babin, but he was apparently unsuccessful in that endeavor. As of the end of March 2012, the balance of unpaid commissions was approximately $61,000, excluding any commissions due to Roncone for March 2012. The parties seem to have worked toward an amicable resolution, but they were unsuccessful.

Roncone's claim for commissions totaled $71,399.81.[13] In June 2012, EPX recalculated Roncone's overdue commissions under the percentages and terms of the 2007 Plan. Under these revised figures, EPX would have overpaid Roncone commissions by $160,029.32.[14]

[13] *Id.* Ex. 15 ¶ 20. This amount reflected $61,399.81 in commissions owed as of March 30, 2012, as well as an estimated $10,000 in accrued commissions for March 2012. The $10,000 figure was subject to later revision.

[14] Defs.' Main Br. in Supp. of Their Mot. for Summ. J. Granting Their Countercls. and Appl. to Vacate in Part, or Modify, Arbitration Award, and to Enjoin Use of Misappropriated Info. ("Defs.' Main Br.") Ex. 23 (Aff. of Joel Shutt, Mar. 13, 2013) ¶ 8(e). This figure was reached by subtracting the amount paid to him ($245,000) from the amount allegedly owed to him ($84,970.68). Defendants argue that if Roncone's commissions were based on the 2009 Plan, then his salary pursuant to that plan would have been $60,000 annually. Because he received $100,000 per year for three years after the 2009 Plan's implementation, he would have been overpaid by $120,000 in base compensation.

B. *The Arbitration Proceeding*

The parties conducted substantial discovery during the Arbitration. In March 2013, the Defendants moved for summary judgment arguing that the unambiguous language of the relevant agreement signed by Roncone entitled them to judgment in their favor on Roncone's claims and their counterclaims. The arbitrator denied the summary judgment motion, in part finding that there was a dispute of material fact as to the meaning of certain contract provisions and whether Rabin and Reilly were "employers" within the meaning of the WPCA.

In advance of the evidentiary hearing, Roncone filed a motion *in limine* to exclude evidence concerning his alleged breach of his confidentiality agreement with EPX. The Defendants alleged that Roncone had misappropriated confidential information on the day he resigned from EPX. The arbitrator granted the motion *in limine*, concluding that the issue was beyond the scope of the arbitration and, also, irrelevant for excusing Defendants from paying commissions.

In May 2013, the arbitrator held a three-day hearing. In the Interim Opinion of July 2013, the arbitrator ruled in Roncone's favor and against the Defendants on his WPCA claim and the counterclaims. Subsequently, the arbitrator ruled in Roncone's favor on the issue of attorneys' fees. Altogether, in the Final Award, the arbitrator granted to Roncone $71,424.23 in unpaid commissions, $71,424.23 in liquidated damages, $128,671.42 in attorneys' fees and costs, and $175 for

administrative AAA fees, for a grand total of $271,694.88. The Defendants were found to be jointly and severally liable.

II. CONTENTIONS

Defendants attempt to justify their request that the Final Award be vacated through several contentions. First, the arbitrator improperly excluded evidence of Roncone's misappropriation of EPX's confidential information which would have excused any breach of Roncone's employment agreement and, thus, defeated his claim under the WPCA. This evidence, according to Defendants, also would have demonstrated Roncone's bad faith conduct and unclean hands. Second, because the arbitrator determined that the 2009 Plan applied to Roncone's commissions, the arbitrator should also have concluded that Roncone's annual salary had been reduced pursuant to the 2009 Plan. Because he was paid at a higher salary, the amount paid in error should have been a credit to Defendants. Third, there were "reasonable grounds" for withholding the commissions; even if the commissions were due, those grounds would have allowed Defendants to avoid liability for the liquidated damages assessed by the arbitrator. Fourth, the award of attorneys' fees to Roncone was flawed because the arbitrator relied upon an improperly redacted affidavit and upon inconsistent case law from jurisdictions other than Delaware. Fifth, imposing employer liability on corporate officers was not consistent with the standards of the WPCA. Sixth, because the WPCA prescribes certain courts of

Delaware as proper fora for WPCA claims, referring WPCA claims to arbitration was improper. In the alternative, Defendants request that the final award be modified to correct for the arbitrator's "evident miscalculation" resulting from his failure to apply the 2009 Plan's lower-based salary.

Roncone, not surprisingly, responds that none of these arguments has merit and, because the arbitration was otherwise duly conducted, the Final Award should be confirmed.

III. ANALYSIS

A. *The Procedural Standard of Review*

Under Court of Chancery Rule 56(c), the Court may grant a motion for summary judgment if "there is no genuine issue as to any material fact" and the "moving party is entitled to judgment as a matter of law." The Court views the evidence presented, and all reasonable inferences from that evidence, in the light most favorable to the non-moving party.[15] "[A] summary judgment motion provides an appropriate judicial mechanism for reviewing an arbitration award, because the complete record is before the court and no *de novo* hearing is permitted to determine whether one of the five statutory exceptions is applicable."[16]

[15] *See Lyondell Chem. Co. v. Ryan*, 970 A.2d 235, 241 (Del. 2009).
[16] *Wier v. Manerchia*, 1997 WL 74651, at *7 (Del. Ch. Jan. 28, 1997), *aff'd*, 700 A.2d 736 (Del. 1997).

B. *The Substantive Standard of Review*

Defendants base their efforts to avoid the arbitrator's decision on what they call his "litany of vacatable errors."[17] In passing, they purport to acknowledge the broad deference that the Court must give to the contractually agreed upon arbitration process, but they devote much of their effort to trying to squeeze their disagreement with the arbitrator into the limited scope of the statutorily provided grounds available to them.

Consistent with public policy favoring alternative dispute resolution, this Court "must accord substantial deference to the decisions of arbitrators."[18] "[R]eview of an arbitration award is one of the narrowest standards of judicial review in all of American jurisprudence."[19] An arbitration award may be confirmed, modified, or vacated pursuant to the Federal Arbitration Act (the "FAA")[20] or the Delaware Uniform Arbitration Act (the "DUAA").[21] Because the relevant sections of the DUAA are largely based on those of the FAA (with one exception noted below), Delaware courts often look to federal case law for

[17] Defs.' Main Br. at 22.
[18] *TD Ameritrade, Inc. v. McLaughlin, Piven, Vogel Sec., Inc.*, 953 A.2d 726, 732 (Del. Ch. 2008) (citation omitted).
[19] *SPX Corp. v. Garda USA, Inc.*, 94 A.3d 745, 750 (Del. 2014) (internal quotation omitted).
[20] 9 U.S.C. § 10(a).
[21] 10 *Del. C.* ch. 57.

guidance when determining whether the circumstances alleged warrant vacatur of an arbitration award.[22]

Under 10 *Del. C.* § 5714(a)(3), the Court shall vacate an award where the arbitrator "exceeded [his] powers, or so imperfectly executed them that a final and definite award upon the subject matter submitted was not made." The FAA analogue is 9 U.S.C. § 10(a)(4).

Vacatur pursuant to this DUAA subsection requires evidence that the arbitrator acted in "manifest disregard" of the law. The evidence must establish "that the arbitrator (1) knew of the relevant legal principle, (2) appreciated that this principle controlled the outcome of the disputed issue, and (3) nonetheless willfully flouted the governing law by refusing to apply it."[23] In other words, the Court must find "an error that is so obvious that it would be instantly perceived as such by the average person qualified to serve as an arbitrator."[24] It is inappropriate to vacate an arbitration award if the arbitrator's decision "rationally can be derived from . . . the parties' submissions."[25]

Under 10 *Del. C.* § 5714(a)(4), the Court shall vacate an award where the arbitrator "refused to hear evidence material to the controversy . . . so as to

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[22] *See, e.g., Falcon Steel Co., Inc. v. HCB Contractors, Inc.*, 1991 WL 50139, at *3 (Del. Ch. Apr. 4, 1991).
[23] *SPX Corp.*, 94 A.3d at 750 (citations omitted).
[24] *Travelers Ins. Co. v. Nationwide Mut. Ins. Co.*, 886 A.2d 46, 49 (Del. Ch. 2005) (citation omitted).
[25] *TD Ameritrade*, 953 A.2d at 732.

prejudice substantially the rights of a party." The FAA analog is 9 U.S.C. § 10(a)(3). Finally, under 10 *Del. C.* § 5714(a)(5), the Court shall vacate an award where, among other reasons, "[t]here was no valid arbitration agreement, or the agreement to arbitrate had not been complied with." Although there is no similar, express provision in the FAA, it is likely that the issues specified in this DUAA subsection would qualify as potential grounds for vacatur under one of the other FAA subsections.

1. Arbitrator's Refusing to Hear Material Evidence

Defendants argue that the arbitrator improperly excluded evidence that Roncone misappropriated EPX's confidential information. This, so Defendants seemingly argue, not only precluded a proper claim by them but also interfered with their ability to demonstrate that Roncone materially breached his employment agreement which would have provided a defense to his wage payment claims. They argue that Roncone's "bad faith conduct and unclean hands" defeated his breach of contract claim and his *quantum meruit* claims. Refusing to consider material evidence goes to the core of the integrity of the arbitration process.

The arbitrator, before the arbitration hearing, concluded that he did not have power over the contentions regarding Roncone's handling of EPX's confidential information. The parties had agreed to exclude certain claims from the reach of arbitration: "[T]his arbitration provision does not apply to . . . claims concerning

the ownership, validity, infringement, misappropriation, disclosure, misuse or enforceability of any confidential information . . . ."[26] Defendants argue that they were not using the misappropriation evidence only as a claim, but, also as explanatory evidence. According to them, the provision relied upon by the arbitrator did not limit the evidence that they could present, only the claims. They point to the text of the arbitration provision which focuses upon "claims." Their arbitration extends to, for example, "claims or disputes arising out of this letter agreement" and "all claims arising from or relating to your employment with the Company."[27] One can plausibly argue that the agreement's exclusion of "claims" relating to misappropriation of confidential information limits only the seeking of affirmative relief, not defensive explanations or justifications. Yet the arbitrator read the agreement differently, plausibly concluding that the parties excluded misappropriation issues from the scope of his power as arbitrator. More significantly, the arbitrator did not limit his analysis to the text of the agreement. He concluded that the "case centers solely on the payment of commissions . . . ."[28] He noted that the Defendants had not raised any specific claims regarding misuse of any confidential information. Finally, he observed that the Defendants had offered no reason why misuse of confidential information would "excuse them

[26] Empl. Agmt. at 3.
[27] *Id.* at 2-3.
[28] Defs.' Main Br. Ex. 28, at 2.

from making the required payments."[29] The arbitrator's conclusion was based on a plausible, certainly more than colorable, reading of the agreement and his factual basis was also within the scope of the authority accorded to him by the parties. Nothing in Defendants' argument on this issue warrants vacating the Final Award.[30]

2. Credit for Salary Overpayment

According to Defendants, the arbitrator failed to implement the 2009 Plan salary of $60,000. The Employment Agreement, when Ronone was hired in January 2008, established an annual salary of $100,000. The arbitrator concluded that the Employment Agreement was not modified in this regard.[31] EPX had paid Roncone at the $100,000 level for as long as he was employed. The arbitrator rejected the Defendants' contentions that the salary would necessarily have been modified along with the commission rate. The arbitrator did not exceed his powers or execute them imperfectly in reaching his conclusion. In short, this is the type of factual determination where the reviewing court's authority is limited.

[29] *Id.*

[30] The Defendants also challenge the decision by the arbitrator not to consider misappropriation evidence by arguing that the arbitrator exceeded his powers or improperly executed his powers because he disregarded (1) the plain language of the employment agreement and (2) controlling law. The arbitrator acted within the scope of his authority in not adopting these contentions.

[31] The arbitrator wrote, "There is no basis for the after-the-fact attempt to rewrite history . . . ." Compl. Ex. C, at 2.

3. Liquidated Damages

The WPCA authorizes the award of liquidated damages in an amount equal to the improperly withheld salary.[32] Liquidated damages should not be awarded if the Defendants had reasonable grounds for withholding Roncone's commissions. The Court's review again is limited when considering the Defendants' arguments that the arbitrator erred factually and legally. He rejected the grounds asserted by the Defendants in an effort to justify their conduct.[33] Certainly, the arbitrator did not manifestly disregard the law. The Defendants argue that their conduct must have been based upon "reasonable grounds" because they survived Roncone's motion for summary judgment before the arbitration hearing. The question here is largely one of fact; if the arbitrator had accepted the Defendants' testimony, he might have resolved the merits of their dispute differently. That a factual dispute prevented summary judgment does not preclude the arbitrator, after he engages in the fact finding effort, from concluding that Roncone's version of the facts was correct and that he was entitled to liquidated damages.

4. Attorneys' Fees

By 19 *Del. C.* § 1113(c), "[a]ny judgment entered for a plaintiff in an action brought under this section shall include an award for the costs of the action, the

[32] 19 *Del. C.* § 1103(b).
[33] A determination of "reasonableness" is clearly a task committed to the judgment of the arbitrator who has considered the evidence and who applies the text of the law.

necessary costs of prosecution and reasonable attorney's fees, all to be paid by the defendant." With his award in favor of Roncone, the arbitrator acted within his authority also to award Roncone his attorneys' fees and costs. In setting the award, the arbitrator assessed a number of factors. Defendants assert that Roncone failed to prove that his fee arrangement with his counsel was on an hourly basis. The arbitrator concluded otherwise and relied upon the affidavit of Roncone's counsel and his conclusion was consistent with those records. Some entries on the billing records may have been redacted, but the assertion of attorney-client privilege was not overcome by the Defendants. Moreover, the Defendants have not shown how the redactions interfered with the arbitrator's function. Even if the arrangement were on some basis other than hourly, the arbitrator had significant discretion in determining a "reasonable" attorneys' fee. In short, the arbitrator set forth a reasonable and rational basis for his award; there is no requirement that he engage with Defendants on every single argument that they might conjure up. He fairly and consistently dealt with the imprecise task of calculating attorneys' fees, and acted appropriately. Defendants also criticize the arbitrator for seeking guidance from judicial decisions outside of Delaware. They do not persuasively demonstrate that that was error or that it was material in reaching his conclusion. It certainly is not unusual for Delaware judges to consider authority from beyond

the State's borders. The Defendants, of course, disagree with the arbitrator's findings, but they offer no basis for the Court to set aside his award.

5. Status as "Employers"

Under the WPCA, certain employees of the employing entity may become liable for improperly withheld compensation. In accordance with 19 *Del. C.* § 1101(b), the "officers of a corporation and any agents having the management thereof who knowingly permit the corporation to violate [the WPCA] shall be deemed to be the employers of the employees of the corporation." Defendant Babin was held personally liable for the sums due Roncone. Nothing offered by the Defendants demonstrates that the arbitrator exceeded his powers or imperfectly executed them in such a fashion that vacating his award would be proper. There was evidence that Babin was intimately involved in the decision to pay or not pay the commissions. From that evidence, the arbitrator was entitled to reach the conclusion that Babin should be treated as an employer for purposes of the WPCA. The Defendants argue that the arbitrator failed to accord proper weight to the "knowingly permit" language, but there are factual findings by the arbitrator that demonstrate that he did not ignore the requirements of the law. Of course, Babin was an officer and was engaged in management of the enterprise. More importantly, the arbitrator reflected upon the notion of "knowingly permit," and the

conclusions which he reached were within the range of discretion accorded him by the parties to the agreement committing their disputes to arbitration.[34]

In sum, the conclusion that Babin should be treated as an employer is another one of those decisions assigned by the parties for the arbitrator and where the arbitrator's conclusions of law and fact were within the scope of his discretion.

6. WPCA Claims May Be Resolved in Arbitration

Wage payment claims "may be maintained in any court of competent jurisdiction."[35] Defendants argue that it follows that the parties could not have agreed to resolve any wage payment claim through arbitration. Nothing in the statute precludes arbitration; the public policy of Delaware favors allowing parties to arbitrate their differences and, subject to certain limitations, to define their relationship through contract.[36] One such limitation on the power to contract may be found in the WPCA; at 19 *Del. C.* § 1110, the General Assembly directed that unless otherwise authorized, provisions of the WCPA may not be "contravened or set aside by private agreement." No waiver of any provision of law is at issue

[34] The Defendants also suggest that the arbitrator improperly assigned the burden of proof. The words of the arbitrator answer this argument: He found that the "record is replete with evidence that Reilly and Babin had knowledge of the fact that Roncone was not paid commissions he was entitled to." Compl. Ex. C, at 5. At most, the arbitrator drew inferences. Maybe the inferences were not correct, but there is certainly no basis to find them arbitrary or beyond the scope of his authority.

[35] 19 *Del. C.* § 1113(a).

[36] *Medicis Pharm. Corp. v. Anacor Pharm., Inc.*, 2013 WL 4509652, at *3 (Del. Ch. Aug. 12, 2013).

here. Wage payment claims "may" be brought in a court of competent jurisdiction; there is no requirement that they "must" be brought in a court, as contrasted with an arbitration forum.[37] It seems as if Defendants are, after the arbitration hearing, without any effort before that hearing to seek judicial review, now attempting to reject the very agreement to which they assented. They do so without any authority, persuasive or otherwise, and, thus, their argument does not help in their effort to vacate the Final Award. Curiously, the Defendants cite to *Mossman v. CNC Insurance Associates, Inc.*,[38] which holds that the Court of Chancery "is not a court of competent jurisdiction . . . in which an action under WPCA standing alone, may be brought." That provides no guidance on arbitrability; it simply reflects that this Court does not generally have subject matter jurisdiction if there is an adequate remedy at law which the WPCA provides.

7. Modification Because of Evident Miscalculation

Finally, Defendants invoke 10 *Del. C.* § 5715(a)(1) which requires the Court to "modify or correct the award where . . . [t]here was an evident miscalculation of figures . . . ." The arbitrator concluded that the 2009 Plan constituted the

[37] No view need be expressed on whether exclusive jurisdiction would frustrate the agreement and intent to arbitrate. While a statutory grant of original and exclusive jurisdiction over a claim may preclude arbitration, when statutory language is permissive in its grant of jurisdiction, those claims may be brought outside the judicial system. *See, e.g., In re Rehab. of Manhattan Re-Ins. Co.,* 2011 WL 4553582, at *5 (Del. Ch. Oct. 4, 2011).

[38] 1993 WL 330062, at *2 (Del. Ch. Aug. 19, 1993).

commission calculation procedure but he did not factor in the lower annual base salary ($60,000 instead of $100,000 under the Employment Agreement). The alleged annual overpayment covered three years and, thus, according to Defendants necessitates a credit (or a counterclaim) of $120,000 in their favor. Recognizing that credit would also affect liquidated damages and attorneys' fees as awarded by the arbitrator.

EPX was paying Roncone an annual salary of $100,000 during the applicable period, while calculating his commission based on the 2009 Plan. This issue is not one of mathematical or computational error. The arbitrator's findings, largely based on fact, were that EPX's actions confirmed the agreed-upon salary and commission structure. That was a substantive conclusion of the arbitrator. Because the arbitrator implemented the award he intended, and without any miscalculation, Defendants' arguments under Section 5715(a) fail.[39]

IV. CONCLUSION

For the foregoing reasons, the Final Award is confirmed and Defendants' counterclaims are rejected. Counsel are requested to confer and to submit an implementing form of order.[40]

[39] A similar argument could also be made under 9 U.S.C. § 11.

[40] The Court does not address the question of whether Roncone is entitled to an award of attorneys' fees incurred in pursuing this action.