Major League Baseball Players Association v. Arroyo et al Doc. 36

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 7/24/2024

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAJOR LEAGUE BASEBALL PLAYERS ASSOCIATION,

Plaintiff,

-v-

WILLIAM ARROYO, NOAH ASSAD, and JONATHAN MIRANDA,

Defendants.

24-cv-3029 (LJL)

OPINION AND ORDER

LEWIS J. LIMAN, United States District Judge:

Plaintiff the Major League Baseball Players Association (the "MLBPA" or "Plaintiff") moves, Dkt. No. 13, pursuant to Section 9 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 9, and Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, for an order confirming a decision by emergency arbitrator Michael H. Gottesman, Dkt. No. 16-1, denying the request of William Arroyo, Noah Assad, and Jonathan Miranda (collectively, "Defendants") for a temporary restraining order staying a disciplinary measure the MLBPA issued against them, Dkt. No. 16-8, while the merits of that dispute are pending before arbitrator Ruth M. Moscovitch of the American Arbitration Association ("AAA"). Defendants oppose Plaintiff's motion and move in the alternative, if the Court does not deny the MLBPA's motion, to stay this action pending the completion of arbitration before the AAA. Dkt. No. 22.

For the following reasons, Plaintiff's motion is denied and Defendants' motion is denied as moot.

BACKGROUND

Defendants Assad and Miranda are co-owners and officers of Rimas Sports, a baseball

Dockets.Justia.com

agency headquartered in San Juan, Puerto Rico. Dkt. No. 1 ¶ 6. Defendant Arroyo is an employee of Rimas Sports and was an MLBPA-certified player agent. *Id.* ¶ 5. In October 2021, Assad and Miranda also applied for certification as player agents. *Id.* ¶ 6.

The MLBPA acts as the exclusive bargaining agent for all Major League Baseball ("MLB") and Minor League Baseball ("MiLB") players with respect to the terms and conditions of their employment. *Id.* ¶ 7; Dkt. No. 16-3 at ECF p.16. Under the governing collective bargaining agreement, only MLBPA-certified agents can negotiate player contracts with MLB and MiLB clubs. Dkt. No. 16-3 at ECF p.17. As part of their certification, player agents agree to adhere to the MLBPA Regulations ("Regulations") which set out detailed rules for agent representation, disciplinary procedures, and mandatory arbitration. Dkt. No. 16-2 at ECF pp. 12–65.

Those rules prohibit any individual from acting as a player agent "unless the person has first obtained the appropriate certification from the MLBPA." *Id.* at ECF p.37. The Regulations also provide:

> No Player Agent . . . shall provide, cause to be provided or promise to provide, any money or any other thing of value to any player, or any person related to or associated with such player . . . to induce or encourage such player to use or continue to use any person's or firm's services as a Player Agent, Expert Agent Advisor, Representative, or Draft Advisor.

Id. at ECF pp. 38–39. Additionally, player agents and applicants cannot "provide or cause to be provided any materially false or misleading information, or conceal or fail to disclose in circumstances when disclosure is required, any material fact" relating to the provision of agent services "to any player or to anyone related to or associated with such player, or to the MLBPA." *Id.* at ECF p.44.

Violation of any of these rules "may result in the denial of certification to any offending Applicant, or disciplinary action against any offending Player Agent . . . or Applicant." *Id.* at

ECF p.37. Specifically, the Regulations permit the MLBPA to "revoke or suspend a Player's Agent . . . certification or take other disciplinary action against a Player Agent," including "requiring restitution to players or other parties for any damages or losses he or she has wrongfully caused." *Id.* at ECF p.34.

Once an investigation into an agent is initiated—either by a third-party complaint or the MLPBA itself—any ensuing legal or factual questions are referred to the MLBPA's Assistant General Counsel for Agent Regulation. *Id.* The affected agent is given notice and an opportunity to be heard. *Id.* The Assistant General Counsel then issues a report and recommendation to the Agent Regulation Review Committee, which issues a further recommendation to the MLBPA's Executive Director. *Id.* at ECF pp. 34–35. In consultation with the General Counsel, the Executive Director must "decide whether to adopt or reject the Review Committee's recommendation." *Id.* at ECF p.35. If the Executive Director opts to impose discipline, then the affected agent or applicant must be given a further notice describing the factual basis and relevant Regulations underlying the MLBPA's decision. *Id.*

"Any Applicant [or] Agent . . . aggrieved by disciplinary action taken by the MLBPA may appeal exclusively to arbitration under Section 7(B)" of the Regulations. *Id.* Under Section 7(B), an aggrieved party may appeal the MLBPA's decision and submit the dispute to arbitration before the AAA. *Id.* at ECF pp. 59–60, 62. When an applicant appeals a denial of certification, "an Applicant's timely filed appeal ordinarily will *not* operate to stay the MLBPA's action," except that if "the MLBPA, either upon the basis of the appeal itself or for other good cause, determines that it would be appropriate to do so, it may grant certification . . . until the appeal is resolved." *Id.* at ECF p.60 (emphasis in original). Conversely, when an agent appeals "a revocation or suspension of certification, or other disciplinary action, a timely filed appeal

ordinarily *will* operate to stay the MLBPA's action until the appeal is resolved." *Id.* (emphasis in original). However, "where the MLBPA determines that it is necessary to do so to protect the interests of Players, it may immediately implement the action set forth in the notice." *Id.*

In early 2022, the MLBPA opened an investigation into Defendants' conduct surrounding their representation of several baseball players previously represented by other agencies. Dkt. No. 16-8 at 24. On April 10, 2024, the MLBPA issued a Notice of Discipline to Defendants, concluding that Defendants had violated various Regulations and thus imposing a "discipline," that revokes Arroyo's agent certification, bars him from representing any players in their relations with the MLB, and prohibits him from reapplying for agent certification for five years. *Id.* at 61. Likewise, as part of the discipline, Assad and Miranda's applications for agent certification were denied and they too were prohibited from reapplying for five years. *Id.* The Notice of Discipline also prohibits certified agents from associating with Arroyo, Miranda, Assad, Rimas Sports, or any other entities affiliated with them. *Id.* Additionally, the MLBPA jointly and severally fined the Defendants $400,000. *Id.*

In its Notice of Discipline, the MLBPA "determined that it is necessary to immediately implement the . . . discipline in order to protect the interests of Players." *Id.* at 62. The MLBPA found that Defendants' "repeated disregard for the MLBPA's Regulations [was] egregious" and that Defendants would continue to violate the Agent Regulations if the discipline were not effective immediately. *Id.*

On April 15, 2024, Defendants applied for review of the MLBPA's Notice of Discipline before an independent arbitrator pursuant to Section 7(B) of the Regulations. Dkt. No. 1 ¶ 15. Defendants also filed an emergency motion for a temporary restraining order, staying the discipline. By agreement of the parties, that motion was heard by an emergency arbitrator,

Michael Gottesman. *Id.* ¶ 16. On April 19, 2024, arbitrator Gottesman issued a decision that denied Defendants' request and thus left the MLBPA's disciplinary order unaffected while arbitrator Moscovitch heard the merits of the dispute. Dkt. No. 16-1. Applying an abuse of discretion standard, arbitrator Gottesman concluded that Defendants' likelihood of success on the merits was "close to zero," and that the remaining factors relevant to a stay either were neutral or weighed against Defendants. *Id.*

The proceedings before arbitrator Moscovitch remain ongoing. However, on July 7, 2024, she denied Defendants' motion for a stay of the discipline against them pending the completion of arbitration before her. Dkt. No. 35-1. Arbitrator Moscovitch observed that "Arbitrator Gottesman issued a brief, but thoughtful decision" and reasoned that because "the parties' selected arbitrator rendered a decision, as he was requested to do by both sides, and denied [the] Motion for a Stay[,] I will not revisit or contravene his ruling." *Id.* at 3.

PROCEDURAL HISTORY

On April 22, 2024, Plaintiff filed a petition to confirm arbitrator Gottesman's decision under Section 9 of the FAA, 9 U.S.C. § 9, and Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185. Dkt. No. 1. Plaintiff formally moved to confirm arbitrator Gottesman's decision on May 31, 2024, Dkt. No. 13, and filed a supporting memorandum of law and declaration of Jeffrey Kessler, Dkt. Nos. 14, 16. On June 14, 2024, Defendants opposed Plaintiff's motion to confirm and moved in the alternative for a stay of this action pending the completion of arbitration. Dkt. Nos. 22, 24. Plaintiff filed its reply and a further declaration of Jeffrey Kessler on June 21, 2024. Dkt. Nos. 29–30.

DISCUSSION

Plaintiff argues that this Court is authorized under Section 9 of the FAA, 9 U.S.C. § 9, to confirm arbitrator Gottesman's decision as it is either "a *final* ruling, not subject to further

arbitration appeal," or a confirmable interim award that "provide[s] for or den[ies] immediate equitable relief." Dkt. No. 29 at 3, 6 (emphasis in original). Defendants respond that "the arbitrator's Decision denying a stay of enforcement is an interim, non-final decision which is not subject to confirmation." Dkt. No. 24 at 1. Alternatively, Defendants contend that the Court should stay this action under Section 3 of the FAA, 9 U.S.C. § 3, while the merits of the MLBPA's disciplinary order are addressed by arbitrator Moscovitch. *Id.* at 13–14.

By its terms, the FAA gives courts the power to confirm only a final "award" of an arbitral panel.[1] 9 U.S.C. § 9; *see Michaels v. Mariforum Shipping, S.A.*, 624 F.2d 411, 414 (2d Cir. 1980). When a final award is rendered, the arbitrators "are, in common-law parlance, '*functus officio*,' meaning that their authority over those questions is ended." *Trade & Transp., Inc. v. Nat. Petrol. Charterers Inc.*, 931 F.2d 191, 195 (2d Cir. 1991); *see also Emps.' Surplus Lines Ins. Co. v. Glob. Reins. Corp.-U.S. Branch*, 2008 WL 337317, at *4 (S.D.N.Y. Feb. 6, 2008) ("[I]f a district court confirms a partial final award, the arbitrator is *functus officio*, *i.e.*, without power to modify it."). By contrast, an award that is not final is subject to revision by the arbitrators. *See Emps.' Surplus Lines Ins. Co.*, 2008 WL 337317, at *4. The arbitrators are not *functus officio* and the award cannot be confirmed and can instead be vacated on grounds that the arbitrators' powers were "so imperfectly executed . . . that a mutual, final, and definite award upon the subject matter submitted was not made." 9 U.S.C. § 10(a)(4).

[1] The parties agree that the Court should apply FAA principles, regardless of whether arbitrator Gottesman's decision is subject to the Labor Management Relations Act. Dkt. Nos. 14 at 8, 24 at 8 n.4; *see also Nat'l Football League Mgmt. Council v. Nat'l Football League Players Ass'n*, 820 F.3d 527, 546 n.13 (2d Cir. 2016) ("[T]he federal courts have often looked to the [FAA] for guidance in labor arbitration cases." (quoting *United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 41 n.9 (1987))).

As a general matter, for an award to be final and subject to confirmation, the award "must be intended by the arbitrators to be their complete determination of all claims submitted to them." *Michaels*, 624 F.2d at 413; *see also P.R. Shipping Auth. v. Star Lines Ltd.*, 454 F. Supp. 368, 372 (S.D.N.Y. 1978) ("It is the general rule with regard to the confirmability of arbitration awards that, in order to be 'final' and 'definite,' the award must both resolve all the issues submitted to arbitration, and determine each issue fully so that no further litigation is necessary to finalize the obligations of the parties under the award."). "[A] district court does not have the power to review an interlocutory ruling by an arbitral panel," nor an order that "is merely a first step in deciding all claims submitted to arbitration." *Michaels*, 624 F.2d at 413, 414 (internal citations omitted).

The term "award," however, is not self-defining. A ruling of an arbitral panel may be considered an "award" and may be subject to judicial review under a variety of circumstances, even if the ruling does not conclusively decide every point required by and included in the submission of the parties. *See Zeiler v. Deitsch*, 500 F.3d 157, 169 (2d Cir. 2007). It is sufficient that the ruling "'finally and conclusively dispose[s] of a separate and independent claim'" and "requires specific action and do[es] not serve as a preparation or a basis for further decisions by the arbitrators." *Id.* (quoting *Metallgesellschaft A.G. v. M/V Capitan Constante*, 790 F.2d 280, 283 (2d Cir. 1986)); *see also Schreiber v. Friedman*, 2017 WL 5515853, at *4 (E.D.N.Y. Mar. 30, 2017); *Daum Glob. Holdings Corp. v. Ybrant Digit. Ltd.*, 2014 WL 896716, at *3 (S.D.N.Y. Feb. 20, 2014) (Nathan, J.).

The Second Circuit has held, for example, that an award may be final "if the parties agree that the panel is to make a final decision as to part of the dispute." *Trade & Transp., Inc.*, 931 F.2d at 195. In that instance, "if the parties have asked the arbitrators to make a final partial

award as to a particular issue and the arbitrators have done so, the arbitrators have no further authority, absent agreement by the parties, to redetermine that issue." *Id.*; *see, e.g.*, *Zeiler*, 500 F.3d at 169 (holding that arbitral panel's orders to provide accountings at the dissolution of a partnership were final because the nature of the arbitration was not one in which "the arbitrators would hear all the evidence and eventually reach a conclusive resolution of the entire case," and each order was a "practical" order to a party to take various actions and "was specific and final and did not need to be followed by a concluding award"). An award is also final where "the parties intended to 'resolve finally the issues submitted' to the arbitrator." *1199EIU United Healthcare Workers E. v. PSC Cmty. Servs.*, 520 F. Supp. 3d 588, 602 (S.D.N.Y. 2021) (quoting *Corp. Printing Co. v. N.Y. Typographical Union No. 6*, 1994 WL 376093, at *4 (S.D.N.Y. July 18, 1994) (Sotomayor, J.)) (stating that "the general test for finality depends on the arbitration agreement and whether the parties intended to 'resolve finally the issues submitted' to the arbitrator"); *see also Dynasty Stainless Steel & Metal Indus., Inc. v. Hill Int'l, Inc.*, 2021 WL 4755824, at *4 (E.D.N.Y. July 26, 2021), *report and recommendation adopted*, 2021 WL 4398203 (E.D.N.Y. Sept. 26, 2021). In that case, the work of the arbitrators with respect to the issue submitted is completed and the award sought to be confirmed does not "serve as a preparation or a basis for further decisions by the arbitrators." *Zeiler*, 500 F.3d at 169.

The Second Circuit has also held that a ruling is final and constitutes a reviewable award where it awards relief that is "independent and separate from the remaining issues before the arbitrators and [can] be finally determined without reference to [other] legally irrelevant issues."[2] *Metallgesellschaft A.G.*, 790 F.2d at 282. In *Metallgesellschaft A.G.*, the Circuit held that an

[2] The Circuit's varied statements on when an arbitral decision constitutes a final award can be applied as distinct tests; however, because they often overlap, those formulations are perhaps more accurately understood as different articulations of the same inquiry.

arbitrator's award granting the petitioner $794,684.33 for maritime freight charges that were admittedly due and owing was properly subject to confirmation notwithstanding a counterclaim for alleged short delivery and fuel contamination, where the parties agreed to a freight clause that reflected the clear and express intent that the shipper "would pay its freight bill promptly upon delivery and would not be able to evade the prompt performance of this contractual obligation by asserting a claim in abatement or set-off," *id.* at 282, and where "[f]inding no reason to depart from the parties' undertaking, the arbitrators made a partial final award . . . for the freight admittedly due and owing," *id.* at 281. The award was not subject to revision and no further action by the arbitrators was necessary for it to be effective. *Id.*; *see also Fluor Daniel Intercont'l, Inc. v. Gen. Elec. Co.*, 2007 WL 766290, at *2–3 (S.D.N.Y. Mar. 13, 2007) (Lynch, J.) (holding a partial award was final as to claims that were dismissed or on which damages were awarded, despite the award's reservation on several other claims and counterclaims); *Priv. Sanitation Union Loc. 813 v. V & J Rubbish Removal*, 1990 WL 144207, at *3 (S.D.N.Y. Sept. 26, 1990) (concluding a partial award of $174,611.75 for violations of a collective bargaining agreement prior to September 30, 1987 was final notwithstanding the arbitrator's deferral of a decision on the amount of damages owed for violations after that date).

Finally, the Second Circuit has acknowledged that a ruling that resolves the parties' rights "only for an interim period" and leaves open the possibility that the arbitral panel will reach a different conclusion after the underlying dispute is resolved also may be considered a final, reviewable award in certain circumstances. *See Offshore Expl. & Prod., LLC v. Morgan Stanley Priv. Bank, N.A.*, 626 F. App'x 303, 307 (2d Cir. 2015) (summary order). In *Southern Seas Navigation Ltd. of Monrovia v. Petroleos Mexicanos of Mexico City*, 606 F. Supp. 692, 693 (S.D.N.Y. 1985), Judge Weinfeld confirmed an interim award, granting the owner of a ship

equitable relief and reducing the amount of a notice of claim of lien placed on a vessel by the party that had chartered it and that had prevented the shipowner from engaging in a "transaction vital to its continued financial viability," even though the ruling left open the possibility that the charterer could establish its claims at the conclusion of the arbitration. The court held that "[s]uch an award is not 'interim' in the sense of being an 'intermediate' step toward a further end. Rather, it is an end in itself, for its very purpose is to clarify the parties' rights in the 'interim' period pending a final decision on the merits." *Id.* at 694. Indeed, the award would have been illusory absent confirmation: "The only meaningful point at which such an award may be enforced is when it is made, rather than after the arbitrators have completely concluded consideration of all the parties' claims." *Id.*; *see also Pac. Reins. Mgmt. Corp. v. Ohio Reins. Corp.*, 935 F.2d 1019, 1022–23 (9th Cir. 1991) ("Temporary equitable relief in arbitration may be essential to preserve assets or enforce performance which, if not preserved or enforced, may render a final award meaningless. However, if temporary equitable relief is to have any meaning, the relief must be enforceable at the time it is granted, not after an arbitrator's final decision on the merits. Arbitrators have no power to enforce their decisions."); *RHC Operating LLC v. N.Y. Hotel & Motel Trades Council, AFL-CIO*, 2022 WL 1810305, at *8 (S.D.N.Y. June 2, 2022). In addition, like a preliminary injunction, an arbitrator's interim award is "reviewable as a discrete and separate ruling apart from any decision on the merits," and "[n]o undue intrusion results from a finding that such an award is ripe for confirmation." *S. Seas*, 606 F. Supp. at 694; *see also Ecopetrol S.A. v. Offshore Expl. & Prod. LLC*, 46 F. Supp. 3d 327, 338 (S.D.N.Y. 2014); *Daum*, 2014 WL 896716, at *2; *Loc. 144, Hotel, Hosp., Nursing Home & Allied Servs. Union v. CNH Mgmt. Assocs., Inc.*, 669 F. Supp. 632, 633–34 (S.D.N.Y. 1987) (holding that an order that a party to the arbitration pay a minimum amount of money that would

be due as damages into an escrow fund was ripe for confirmation because it was "an order designed to protect the ultimate integrity of the final award").[3]

Arbitrator Gottesman's three-page, emailed decision is not a confirmable award. Dkt. No. 16-1. First, the ruling, by its terms, did not finally and conclusively resolve all of the issues submitted by the parties as part of the arbitration. *See A/S Siljestad v. Hideca Trading, Inc.*, 678 F.2d 391, 392 (2d Cir. 1982) (per curiam). Arbitrator Gottesman resolved only the preliminary question, raised on an emergency basis, whether the arbitrators would forestall MLBPA from taking an action it had the authority to take under its Regulations in the absence of an arbitral ruling. Dkt. No. 16-1 at 1.

The ruling did not "finally and conclusively dispose[] of a separate and independent claim." *Metallgesellschaft A.G.*, 790 F.2d at 283. Arbitrator Gottesman merely denied Defendants' request for emergency relief suspending the MLBPA's right to implement its discipline, based on his initial findings that Defendants had not shown a likelihood of success nor that they were entitled to emergency relief on any other ground. Dkt. No. 16-1 at 3–4. In fact, arbitrator Gottesman intentionally refrained from considering the underlying claim arising from Defendants' alleged violation of the MLBPA Regulations. *See id.* at 3. Whether the discipline

[3] *See also Banco de Seguros del Estado v. Mut. Marine Offs., Inc.*, 230 F. Supp. 2d 362, 369 (S.D.N.Y. 2002) (confirming an interim order requiring prejudgment security); *Brit. Ins. Co. of Cayman v. Water St. Ins. Co.*, 93 F. Supp. 2d 506, 513 (S.D.N.Y. 2000) ("[A]n award of temporary equitable relief such as a security award, separable from the merits of the arbitration, is subject to federal review."); *Atlas Assurance Co. of Am. v. Am. Centennial Ins. Co*., 1991 WL 4741, at *2–3 (S.D.N.Y. Jan. 16, 1991) (confirming interim award directing defendant to fund an interest-bearing escrow account for the benefit of the successful party as determined in the final award); *Konkar Mar. Enters. v. Compagnie Belge D'Affretement*, 668 F. Supp. 267, 272 (S.D.N.Y. 1987) (confirming interim order to establish joint escrow account in order to provide a "security for enforcement of an award in the event that respondent was found liable"); *Sperry Int'l Trade, Inc. v. Gov't of Isr.*, 532 F. Supp. 901, 909 (S.D.N.Y. 1982) (confirming arbitrators' order directing defendant to place a letter of credit in escrow pending final arbitration), *aff'd*, 689 F.2d 301 (2d Cir. 1982).

imposed by MLBPA may stand is currently under consideration by the arbitrator the parties have chosen, who has been authorized by the parties under Section 7(B) of the Regulations to finally and definitively dispose of all claims submitted to her. While the parties consented to have arbitrator Gottesman decide whether to grant interim relief on an emergency basis, *see* Dkt. No. 16-1 at 2, they also agreed to have arbitrator Moscovitch issue a final decision on the merits of their dispute, *see* Dkt. No. 16-2 at ECF p.62. Accordingly, arbitrator Gottesman's decision is inseparable from the underlying claim regarding Defendants' alleged violations of the MLBPA Regulations and the MLBPA's decision to discipline Defendants—the exact issues currently before arbitrator Moscovitch. *See SH Tankers Ltd. v. Koch Shipping Inc.*, 2012 WL 2357314, at *4 (S.D.N.Y. June 19, 2012) (Nathan, J.) (denying confirmation of an arbitration panel's decision because "[t]he ruling . . . did not 'dispose' of any claim in the arbitration, much less 'finally'").

For the same reasons, the parties cannot be deemed to have "asked [arbitrator Gottesman] to make a final partial award as to a particular issue." *Trade & Transp., Inc.*, 931 F.2d at 195. Although arbitrator Gottesman was retained for the limited purpose of deciding whether Defendants were entitled to emergency relief and he deemed his role complete upon issuing his decision, *see* Dkt. No. 16-1 ("My jurisdiction ends with the issuance of this ruling."), the decision he made was provisional and not final. He determined that, on the record he was presented and for reasons that were not limited to the merits, he would not issue a ruling that stood in the way of the MLBPA imposing its discipline. The doctrine of *functus officio* applies with respect to the claims submitted to arbitration and not with respect to the individual named arbitrator who issues that relief. *See Empls.' Surplus Lines Ins. Co.*, 2008 WL 337317, at *4; *see also Trade & Transp., Inc.*, 931 F.2d at 195 ("[I]f the parties have asked the *arbitrators* to make

a final partial award as to a particular issue and the *arbitrators* have done so, the *arbitrators* have no further authority." (emphasis added)). If an arbitrator became unavailable and had to be replaced, the Court would not thereby deem any prior decision made by the arbitrator to be a final reviewable award on the grounds the person whose ruling was sought to be confirmed was no longer sitting and so was *functus officio*.[4] The fact that the parties agreed that arbitrator Gottesman would hear Defendants' emergency request, while reserving for arbitrator Moscovitch the final decision leads to no different result.

Finally, in denying Defendants' motion for stay, arbitrator Gottesman did not grant any "equitable relief [necessary] to preserve the integrity of a final award," *Loc. 144*, 669 F. Supp. at 632, during "the 'interim' period pending a final decision on the merits," *S. Seas*, 606 F. Supp. at 694. In his "interim procedural ruling," arbitrator Gottesman ultimately decided *not* to act. *Accenture LLP v. Spreng*, 647 F.3d 72, 77 (2d Cir. 2011) (concluding that an arbitral order denying leave to amend claims was an "interim procedural ruling, not an arbitration award"); *see also SH Tankers Ltd.*, 2012 WL 2357314, at *4 (denying a petition to vacate an arbitral panel's stay order "as a nonfinal procedural order"). Arbitrator Gottesman did not "requir[e] 'specific action' outside the arbitration itself . . . thus constituting final, equitable relief with respect to a specific issue." *Bailey Shipping Ltd. v. Am. Bureau of Shipping*, 2014 WL 1282504, at *4 (S.D.N.Y. Mar. 28, 2014) (quoting *Zeiler*, 500 F.3d at 169). He did not order the MLBPA to implement its discipline; he did not even rule that implementing that discipline would be lawful. *See Jock v. Sterling Jewelers Inc.*, 188 F. Supp. 3d 320, 326 (S.D.N.Y. 2016) (holding that

[4] For example, the AAA's Commercial Arbitration Rules and Mediation Procedures provide: "If for any reason an arbitrator is unable or unwilling to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these Rules." Am. Arb. Ass'n, *Commercial Arbitration Rules and Mediation Procedures* R-21(a) (2022).

arbitrator's interim order conditionally certifying collective action was not a final arbitration award because many issues "remain 'in need of further adjudication'" (quoting *Rocket Jewelry Box, Inc. v. Noble Gift Packaging, Inc.*, 157 F.3d 174, 176 (2d Cir. 1998) (per curiam))). He merely refused to prevent the MLBPA from immediately disciplining Defendants. Yet the MLBPA did not need an arbitral order to implement the discipline against Defendants, because, as it claims, it already had the authority to do so under the Regulations. *See* Dkt. No. 16-2 at 49 (authorizing the MLBPA to implement a discipline against an Agent immediately "where the MLBPA determines that it is necessary to do so to protect the interests of Players"). An order of confirmation would thus have "no effect" on the MLBPA's ability to effectuate that discipline during arbitration before the AAA. *Cf. Guglielmo v. Neb. Furniture Mart, Inc.*, 2021 WL 4124660, at *3 (S.D.N.Y. Sept. 9, 2021). If it were Defendants who brought this suit, seeking to vacate Arbitrator Gottesman's emergency ruling, the Court would not have the power to do so because the order would not constitute a final award. *See Michaels*, 624 F.2d at 414; *SH Tankers Ltd.*, 2012 WL 2357314, at *4. It did not order or authorize MLBPA to do anything or "require specific action." *Zeiler*, 500 F.3d at 169. An order of vacatur thus would not change the status quo; it would simply place Defendants in the same position they were in before arbitrator Gottesman ruled—with MLBPA at liberty to impose its discipline on Defendants. By parity of reasoning, arbitrator Gottesman's ruling can no more be considered a final award where, as here, the prevailing party seeks judicial confirmation. An award is an award regardless of whether it is sought to be confirmed or vacated. Simply put, an order of confirmation would give Plaintiff nothing more of consequence than the rights it already possesses under the Regulations.

As of the time arbitrator Gottesman rendered his decision and this action was filed, arbitrator Moscovitch still had it within her power to decide whether and when the discipline

could be imposed. She had it within her power to grant emergency relief to Defendants. *See Accenture*, 647 F.3d at 77 n.5 ("The second arbitrator remains free to determine the preclusive effect, if any, of the [prior] Order.").[5] Having denied Defendants' request, she still has it within her power to determine when and how to hear Defendants' claims. She could hear them quickly, which—depending on the outcome—could have a similar practical effect to a ruling granting Defendants emergency relief. On the other hand, the matter might require more protracted proceedings, leaving for a later date the final answer to the question whether Arroyo will ultimately be barred from representing any players and Assad and Miranda will be prohibited from reapplying for agent certification. Those decisions will be for arbitrator Moscovitch, subject to the Regulations and the parties' consensual choices. A judicial ruling confirming arbitrator Gottesman's decision is thus not necessary to avoid making Moscovitch's "final award" "meaningless." *S. Seas*, 606 F. Supp. at 694; *Yonir Techs., Inc. v. Duration Sys. (1992) Ltd.*, 244 F. Supp. 2d 195, 204 (S.D.N.Y. 2002). To the contrary, judicial review of arbitrator Gottesman's decision (even under the relaxed standards of the FAA) could only "undu[ly] intru[de] upon the arbitral process," by placing a premature "yea or nay" on a preliminary conclusion as to the merits while that question is still under consideration by the parties' chosen arbitrator. *S. Seas*, 606 F. Supp. at 694; *see also Verizon Pa. LLC v. Commc'ns Workers of Am.*,

[5] In denying Defendants' renewed motion for a stay, arbitrator Moscovitch tellingly relied on law of the case principles. *See* Dkt. No. 35-1 at 3 ("It is well established that litigants are not entitled to multiple bites at the apple: once a decision maker has considered and ruled on an issue, that issue is settled for the duration of the case."). But "the law of the case doctrine is a discretionary doctrine and not a rule of law that precludes reconsideration by one judge of a ruling earlier made in the same case by another judge." *United States v. Klein*, 474 F. Supp. 1243, 1246 (S.D.N.Y.), *aff'd*, 614 F.2d 1292 (2d Cir. 1979). Thus, arbitrator Moscovitch's decision not to deviate from arbitrator Gottesman's ruling should not be confused with a conclusion that she lacked the discretion to do so.

216 F. Supp. 3d 530, 534 (E.D. Pa. 2016) ("[J]udicial review of incomplete awards . . . would disrupt and delay the arbitration process and could result in piecemeal litigation.").

An order of confirmation is intended to "ar[m] the winning party of an arbitration 'with a court order . . . [and] a variety of remedies available to enforce the judgment.'" *Teamsters Loc. 177 v. United Parcel Serv.*, 966 F.3d 245, 253 (3d Cir. 2020) (quoting *Florasynth, Inc. v. Pickholz*, 750 F.2d 171, 176 (2d Cir. 1984)). Yet Plaintiff did not obtain any relief through arbitrator Gottesman's ruling, so there is nothing Plaintiff could enforce if the Court were to confirm his ruling. For that reason, and the others expressed herein, Plaintiff is not entitled to an order of confirmation, as arbitrator Gottesman's ruling is not final.

CONCLUSION

Plaintiff's motion to confirm arbitrator Gottesman's decision, Dkt. No. 13, is DENIED and Defendants' motion for a stay, Dkt. No. 22, is DENIED as moot.[6]

As arbitrator Gottesman's ruling is not final, "the Court finds that it has no jurisdiction" over Plaintiff's petition to confirm arbitrator Gottesman's award. *Jock*, 188 F. Supp. 3d at 324; *see Schreiber*, 2017 WL 5515853, at *5; *Time Warner Cable of N.Y.C. LLC v. Int'l Bhd. of Elec. Workers, AFL-CIO, Loc. Union No. 3*, 2015 WL 2454122, at *5 (E.D.N.Y. May 22, 2015); *see also Michaels*, 624 F.2d at 414 ("Under the Federal Arbitration Act, a district court does not have the power to review an interlocutory ruling by an arbitration panel." (citation omitted)). Consequently, this case must be dismissed for lack of jurisdiction.

[6] Because Defendants seek a stay pending arbitration only "[i]f this Court is not inclined to deny the MLBPA's Motion as premature," Dkt. No. 24 at 13, Defendants' motion is moot.

The Clerk of Court is respectfully directed to close Dkt. Nos. 13 and 22, and close this case.

SO ORDERED.

Dated: July 24, 2024
New York, New York

LEWIS J. LIMAN
United States District Judge