SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: PETER H MOULTON **PART** 40B

Justice

Index Number : 103204/2012
LONGFIELD, TINA M.
vs.
FINANCIAL TECHNOLOGY PARTNERS
SEQUENCE NUMBER : 001
VACATE OR MODIFY AWARD

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, **were read on this motion to/for** _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ **No(s).** _____

Answering Affidavits — Exhibits _____ **No(s).** _____

Replying Affidavits _____ **No(s).** _____

Upon the foregoing papers, it is ordered that this ~~motion is~~ Petition and cross motion are decided per attached

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 11/28/12

_____, J.S.C.
HON. PETER H. MOULTON

1. CHECK ONE: ..... ☑ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☐ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 40B

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TINA M. LONGFIELD,

Petitioner,

Index No. 103204/12

-against-

FINANCIAL TECHNOLOGY PARTNERS L.P. and FTP SECURITIES LLC,

Respondents.

----------X

Peter Moulton, J.:

This proceeding is brought by petitioner Tina M. Longfield for an order partially vacating an arbitration award. Respondents Financial Technology Partners L.P. and FTP Securities LLC (together, FTP) cross-move to confirm the award, which entitles FTP to a judgment in the amount of $233,750. FTP also seeks attorneys' fees and interest on the award.

I. Background

FTP is an investment bank. Petitioner was hired to be FTP's Managing Director in January 2008. The parties' relationship was governed by an employment agreement (Agreement) (Aff. of Michael E. Grenart, Ex. B), which provided that petitioner would receive a base salary, and a "Minimum Bonus" in 2008, to be paid incrementally over the course of the year. According to the Agreement, petitioner's employment was "at-will," and could be "terminated by you or by the Firm at any time, with or without

advance notice or procedures, and for any or no particular reason or cause." Agreement, at 2-3.

Under a part of the Agreement entitled "Cash Compensation," it is specified that "in the event your employment is terminated by the Firm for any reason except for Cause or you resign from the Firm in 2008 for an Acceptable Reason, you will receive the 2008 Minimum Bonus pro-rated for that portion of the year you are an Active Employee ... ." *Id.* at 1-2. "Cause," as relevant here, is defined as "(ii) your willful misconduct which has had, or potentially will have, an adverse effect on the business, operations, reputation or business prospects of the Firm ... , (iv) any material breach of this offer letter ... or any written policy of the Firm ... ." *Id.* at 1-2. The Agreement continues that, if petitioner is "terminated for Cause during 2008, you agree to pay back to the Firm any 2008 Minimum Bonus payments received." *Id.* at 2.

"Acceptable Reason" is defined as:

> resignation (not in connection with Cause) for (i) significant change in duties or responsibilities to those not commensurate with the position as described by the Managing Partner as of the date hereof, (ii) payments not made in accordance with the terms of this offer letter or, (iii) intense dissatisfaction with employment at the Firm, provided that 30 days prior to your resignation you must provide written notice to the Company describing the basis for your intense dissatisfaction and must provide the Firm with a bona fide opportunity to address and resolve issues raised in your notice.

It is uncontested that, in September 2008, petitioner was

called by FTP's Managing Partner, Steven McLaughlin (McLaughlin), who directed her to cut short a planned vacation in order to attend a meeting with an important client, because McLaughlin was himself unable to attend. Rather than return from her vacation, petitioner sent McLaughlin a rather long and rambling e-mail, dated September 27, 2008, in which she chose to express her "intense dissatisfaction" with the Firm (Notice of Cross Petition, Ex. Q).

Apparently, petitioner had been composing the e-mail letter for some months prior to sending it to Mclaughlin. The e-mail addresses a litany of complaints. Although petitioner does not expressly say in her e-mail that she is resigning, she asks for directions for the return of her laptop and blackberry, and requests salary and bonus payments due to her for the remainder of the year. She notes that "this has nothing to do with our current discussion of vacation, but rather a pattern of behavior and management." *Id.* at 3. Petitioner does not directly address the order to return to work. The e-mail does not contain any provision for FTP to cure.

McLaughlin responded to petitioner's e-mail shortly thereafter by terminating petitioner for "Cause," i.e., insubordination for refusing a direct order of management, and for abandoning her job. FTP concluded that petitioner had not resigned for an "Acceptable Reason." As a result, FTP sought

the return of the bonus payments petitioner had already received for the year 2008.

Although the parties commenced litigation to resolve their impasse, in the form of a FINRA arbitration by petitioner, and an action in Superior Court of the State of California by FTP, the parties eventually agreed to arbitrate. Arbitration Agreement, Notice of Cross Petition, Ex. F. The parties agreed that the arbitration would be "final, binding and non-appealable." *Id.*, ¶ 3.

The arbitration took place over four days in March and April 2012. Several witnesses were produced, along with documentary evidence. Post-arbitration submissions were provided to the arbitrator. An "Opinion and Award" was issued by the arbitrator, dated June 7, 2012 (Award) (Notice of Cross Petition, Ex. A).

During the arbitration, and in her post-arbitration submission, petitioner argued that she had been terminated without Cause, and so was entitled to the bonus payments for the remainder of 2008. Notably, she never argued that she had resigned prior to her termination.

FTP argued that petitioner had not resigned for Acceptable Reasons and had not given FTP an opportunity to address her numerous issues or "intense dissatisfaction," as required by the Agreement. In the Award, the arbitrator summarized that FTP

"maintain[s] that since Claimant resigned preemptively, was terminated for cause, and did not resign for an Acceptable Reason, her claim should be denied." Award, at 5.

The arbitrator concluded that "Claimant failed to trigger the 'Acceptable Reason' clause in her contract for a number of reasons." *Id.* at 6. Specifically, the arbitrator noted the indications in petitioner's e-mail that petitioner had no intention of returning to work (although this was not specifically stated in the e-mail), and that she had failed to allow FTP an opportunity to cure. The arbitrator found "that the Claimant resigned her employment when she submitted her email letter of September 27, 2008." *Id.* at 7.

However, the arbitrator also found that "[FTP] had cause to terminate Claimant's employment." *Id.* After the arbitrator set forth the chain of events leading to petitioner's refusal to attend the important client meeting, and her further refusal to return to work, the arbitrator found that "Claimant's actions amount to insubordination, a violation of the Standards of Conduct and hence, cause for termination." *Id.* at 8. As a result, the arbitrator held that:

> [t]he Employment Agreement states that if Claimant is terminated for cause during 2008 "you agree to pay back to the Firm any 2008 Minimum Bonus payments received." This language is clear and unambiguous. The amounts paid by [FTP] during 2008 to Claimant as part of her Minimum Bonus total $233,750. Accordingly, Claimant will be ordered to repay [FTP] this amount.

Id. Therefore, the arbitrator determined that petitioner was terminated for Cause, having failed to put forth an Acceptable Reason for her behavior.

II. Arguments

Petitioner's basic argument is that the arbitrator made a specific finding that she resigned (although she never argued this in the arbitration), and that, as an at-will employee, she was entitled to resign at any time, with or without reason. Therefore, according to petitioner, it is irrational to say that she was terminated by FTP for Cause, as she had already rightfully resigned. Petitioner maintains that the arbitrator acted with "manifest disregard of the law" when he made this determination.

Petitioner argues that, whether or not her resignation was "'in connection with Cause' did not negate the fact of her resignation, and only negated her right under the 'Acceptable Reason' clause to additional compensation." Reply of Petitioner, at 6. She has given up any request for the pro-rated bonus for 2008, but seeks to vacate so much of the award as requires her to return the bonus monies she actually received in 2008.

FTP argues that it is perfectly rational to find that petitioner's e-mail resignation did not set forth Appropriate Reasons for her resignation, and that she was, as a result,

properly terminated for Cause under the Agreement.

III. Discussion

"Courts may vacate an arbitrator's award only on the grounds stated in CPLR 7511 (b)." *Matter of New York City Transit Authority v Transport Workers' Union of America, Local 100, AFL-CIO*, 6 NY3d 332, 336 (2005); *Lentine v Fundaro*, 36 AD2d 539 (2d Dept 1971), *affd* 29 NY2d 382 (1972). As applicable, CPLR 7511 (b) (iii) provides for vacatur when an arbitrator "exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made ... ." Judicial interference with an arbitration award should be avoided unless the award is "violative of a strong public policy, totally irrational or in excess of a specifically enumerated limitation upon arbitral authority." *Matter of Board of Education of Dover Union Free School District v Dover-Wingdale Teachers' Association*, 61 NY2d 913, 915 (1984); *see also Silverman v Benmore Coats, Inc.*, 61 NY2d 299 (1984). An award should be confirmed if the arbitrator provides a "'barely colorable justification [internal citation omitted]'" for the award. *Roffler v Spear, Leeds & Kellogg*, 13 AD3d 308, 309 (1st Dept 2004).

Specifically, with regard to contract interpretation,

> [w]hen an arbitrator has been empowered to interpret a contract, the resulting award is not subject to vacatur unless it is totally irrational. Parties who

> agree to refer contract disputes to arbitration must recognize that arbitrators may do justice and the award may well reflect the spirit rather than the letter of the agreement. Courts may not overturn an award because they believe the arbitrator has misconstrued the apparent, or even obvious, meaning of the contract ... in light of what he found to be the intent of the parties [internal quotation marks and citations omitted].

Matter of Local Division 1179, Amalgamated Transit Union, AFL-CIO v Green Bus Lines, Inc., 50 NY2d 1007, 1008-1009 (1980).

In the present matter, this court finds that the Award is not "totally irrational," and that a "colorable" basis for the Award has been stated. While petitioner's at-will right to resign was provided for in the Agreement, there was also language in the Agreement which could specifically be found applicable to the compensation due a resigning employee, when the resignation was not made for Acceptable Reasons, and where the employer reasonably found Cause for termination of the employee's right to certain compensation. Here, the arbitrator reasonably found that petitioner could not avoid the effect of her insubordination, and pocket nearly a quarter of a million dollars of bonus payments, by preemptively resigning her employment.

Petitioner argues that vacatur is appropriate under the standard of "manifest disregard for the law," a standard applicable in federal law under the Federal Arbitration Act. *Wien & Malkin LLP v Helmsley-Spear, Inc.*, 6 NY3d 471, 480

(2006). Manifest disregard of the law is established by a showing that "(1) the arbitrators knew of a governing legal principle yet refused to apply it or ignored it altogether, and (2) the law ignored by the arbitrators was well defined, explicit and clearly applicable to the case [internal quotation marks and citations omitted]." *Id.* at 481; *see also Transport Value, L.L.C. v Johnson*, 93 AD3d 599 (1st Dept 2012).

Assuming that this federal standard was applicable here, which it is not, petitioner has not met the standard. "[M]anifest disregard of the law means more than an error or misunderstanding of the applicable law [internal quotation marks and citation omitted]" (*Transparent Value, L.L.C. v Johnson*, 93 AD3d at 601), which is all that petitioner is alleging. In consequence, petitioner's application must be denied, and the Award must be confirmed.

In passing, the court notes the dispute between the parties over FTP's right to argue that the entire proceeding is inappropriate, due to the language in the Agreement making the results of the arbitration unappealable. While FTP sets this contractual language forth in the recitation of facts in its cross petition, it never actually argues that the language bars the present proceeding until its reply memorandum. As such, the matter should not be addressed here. *See Iarocci v Iarocci*, 98 AD3d 999 (2d Dept 2012)(matter raised for the first time in

reply brief is not properly before the court). The request by petitioner to provide a surreply to this argument is denied as moot.

FTP applies for sanctions under 22 NYCRR 130-1.1, in the form of attorneys' fees. The request is denied. FTP has not shown that the present proceeding is without merit. FTP's request for interest on the amount granted in the Award is also denied. As FTP fails to point out, the arbitrator specifically ruled against a grant of interest (Award, at 10), and FTP has not moved to vacate that part of the Award.

Accordingly, it is

ORDERED that the petition brought by petitioner Tina M. Longfield to partially vacate the arbitration award in the proceeding entitled *Matter of Longfield v Financial Technology Partners L.P.*, rendered on June 7, 2012, is denied, and the proceeding is dismissed; it is further

ORDERED that the cross petition brought by respondents Financial Technology Partners L.P. and FTP Securities LLC to confirm the award, in the sum of $233,750, is granted; and it is further

ADJUDGED that the award is confirmed.

Dated: November 28, 2012

ENTER:

J.S.C.

HON. PETER H. MOULTON

FILED

DEC 06 2012

NEW YORK
COUNTY CLERK'S OFFICE