SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

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INDEX NO. 650648/2023

MOTION DATE 04/24/2023

MOTION SEQ. NO. 001 002

In the Matter of the Application of

SUN KNOWLEDGE, INC d/b/a GO TELECARE, Date
SUN KNOWLEDGE SERVICES, INC. d/b/a
GO TELECARE, ATN CARE FRANCHISING, LLC d/b/a
AMERICAN TELEHEALTH NETWORK d/b/a
GO TELECARE, DIPAK NANDI, REENA NANDI,
JASON STEELE and BASKAR MENNON
Petitioners,

- v -

DECISION + ORDER ON MOTION

JIM OSBORNE, OSBORNE-ZIPFEL, LLC,MARTA DE SOTO, MICHAEL KLEMM, PERFECT TIMING FOR YOU LLC,ROBERT PALMER, PALMER TECHNOLOGIES CORP.,

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 8, 9, 10, 11, 12, 13, 29

were read on this motion to/for VACATE.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28

were read on this motion to/for DISMISSAL.

Motion Sequence Numbers 001 and 002 are consolidated for disposition. The petition (MS001) to vacate an arbitral award is denied and the cross-petition to confirm the award is granted. The motion (MS002) to dismiss the cross-petition is denied.

Background

This proceeding arises out of agreements between respondents and petitioners, titled Trademark & Servicemark License Agreements. Respondents allegedly paid fees to petitioners pursuant to these agreements in exchange for exclusive territorial rights to market petitioners'

medical billing and telehealth consultation services. Respondents obtained the right to use the trademark "GoTelecare" while other potential competitors were allegedly prevented from the right to market the same services in each person's territory. For instance, respondent Osborne signed various agreements that gave him exclusive rights in Texas, Colorado, New Mexico, and Oklahoma, among other states (NYSCEF Doc. No. 3 at 2).

As characterized in the arbitrator's decision, respondents claim that they "purchased their franchises based partially that they would receive exclusive territories. In violation of their agreements [petitioners] sold the same territory to multiple parties, including [respondents]. [Petitioners] opened other locations near [respondents'] exclusive territory" (*id*. at 3). The arbitrator noted that petitioners did "not challenge the fact that supposedly exclusive Territories were granted to multiple parties" (*id*.). The arbitrator concluded that petitioners "breached the various TSLAs by failing to honor and to make any reasonable efforts to ensure the legitimacy of their grants of territorial exclusivity to [respondents]" (*id*.).

Petitioners contend that respondents' claims were improperly joined and should have been handled as separate arbitrations. They argue that holding a single arbitration exposed the arbitrator to irrelevant and prejudicial prior bad act evidence that should not have part of the dispute. Petitioners also argue that certain respondents were awarded payments even though they were not parties or signatories to the license agreements. Petitioners maintain that the arbitrator improperly found that they violated the New York Franchise Law because respondents were licensees, not franchisees.

Respondents contend that the arbitrator directed petitioners to refund the fees paid to them by respondents plus interest. They claim the award was not irrational. Respondents also

insist that the procedural arguments raised by petitioners relating to prejudicial joinder and individual recovery for respondents were waived by participating in the arbitration.

Petitioners move to dismiss the cross-petition. They contend that the TSLAs gave respondents rights, within a certain geographical territory, to offer petitioners' medical billing or telemedicine services to respondents' customers. Petitioners insist they did not regulate any aspect of the respondents' activities or make them abide by any particular rules and so the application of the franchise law was improper.

They argue they did not waive their right to contest the joinder of the claims. Petitioners argue that the claims in the arbitration did not involve one party or incident; rather there were multiple unrelated claimants involved in different issues. Petitioners emphasize that there was no concert of action between the various claims raised in the arbitration proceedings. They claim that the proceedings were conducted via Zoom but that they never received any recordings and were told by the arbitrator that the links to recorded sessions had expired.

Petitioners maintain that each TSLA had an arbitration provision that called for the lease expensive procedure under the American Arbitration Association ("AAA") rules and the joinder violated these provisions.

Respondents raise procedural issues in reply concerning their cross-petition to confirm the award. They also claim that petitioners failed to raise their joinder arguments properly and that they chose to participate in the arbitration as one consolidated proceeding.

Discussion

"CPLR 7511 provides just four grounds for vacating an arbitration award, including that the arbitrator exceeded his power (CPLR 7511[b][1][iii]), which "occurs only where the arbitrator's award violates a strong public policy, is irrational or clearly exceeds a specifically

enumerated limitation on the arbitrator's power. Mere errors of fact or law are insufficient to vacate an arbitral award. Courts are obligated to give deference to the decision of the arbitrator, even if the arbitrator misapplied the substantive law in the area of the contract (*NRT New York LLC v Spell*, 166 AD3d 438, 438-39, 88 NYS3d 34 [1st Dept 2018] [internal quotations and citations omitted]).

Petitioners' main concerns with the arbitration are that there was 1) improper consolidation, 2) the arbitrator awarded payments to non-signatories and 3) the arbitrator misapplied the New York Franchise Law.

With respect to consolidation, the arbitrator noted that:

> "Respondents contend that the consolidation of the claims of four separate Claimants in this one action was unfair because the Claimants have different legal positions and the representation of all four individuals by a single counsel created a conflict of interest. It is true that the various Claimants had different interactions with the Respondents. However, this award is based on the finding of facts that were common to all Respondents, including the RBEs' violations of territorial exclusivity in the TSLAs, and the fact that Respondents failed to make the disclosures required under the NYFL. In fact, rather than harming Respondents' position, the consolidation of the claims may have made it more difficult for Claimants to support their fraud allegations apart from the issue of territorial exclusivity. Respondents assert that with the representation of multiple claimants, "[i]ndependence of judgment, loyalty and matters of privilege cannot be adequately ensured." (Respondents' Closing Brief, p.5). However, this assertion does not establish the existence of a conflict of interest. There was no evidence of any such conflict, and the consolidation of clams in this action was appropriate." (NYSCEF Doc. No. 3 at 7).

The Court finds that the determination by the arbitrator to do a joint arbitration was rational and is not a basis to vacate the award. Petitioners' disagreement with that decision is just that—a disagreement. Their speculation that the arbitrator viewed the claims differently (due the total value of the claims) is not a reason to vacate the award and, therefore, make respondents pursue each claim individually. The arbitrator noted that there were facts common to all claims—that is sufficient. Whether or not this Court would have made the same

determination is not the point. The arbitrator offered a rational justification for why he handled all of the claims in a single arbitration hearing. And petitioners' claim that this violated the letter and spirit of the arbitration provision to implement the least expensive procedure under the AAA is of no moment. Courts often consolidate hearings to reduce costs; it is a perfectly rational thing to do.

The Court also finds that the awards to the individual respondents do not compel the Court to vacate the arbitral award. As respondents observe, there was no double recovery and so the fact that, allegedly, the individual respondents should not have been awarded any money does not justify vacatur. Any disputes between the corporate and individual respondents can be handled among these parties—it does not change the amount petitioners were directed to pay.

The last major issue raised by petitioners is the application of the New York Franchise Law. Similarly, this is not a valid basis to vacate the award. Although petitioners stress that the TSLA agreements were license agreements, have nothing to do with franchises and petitioners never endeavored to run a franchise, the arbitrator offered a detailed analysis of why he concluded that this law applied (NYSCEF Doc. No. 3 at 5). This Court is unable to disturb such a conclusion even assuming the arbitrator misapplied this substantive law (*NRT New York LLC*, 166 AD3d at 439).

Summary

Although petitioners raise strenuous objections to the conclusions of the arbitrator, this Court cannot vacate the award simply because petitioners disagree with the outcome. Petitioners' attempts to characterize the arbitrator's decisions as exceeding his powers are without merit. The fact is that the parties chose to include arbitration provisions in the TSLAs;

that means that an arbitrator must make determinations about many key issues, including whether to consolidate and the application of certain laws. The Court's power to disturb such an award is extremely limited and, here, the arbitrator provided rationales for his decisions. Petitioners cannot get a "second bite at the apple" in this proceeding.

Accordingly, it is hereby

ORDERED that the petition to vacate the subject arbitration award is denied and the cross-petition to confirm the award is granted and respondents are directed to upload a proposed order and judgment on or before May 17, 2023.

4/28/2023
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED		DENIED	GRANTED IN PART	X	OTHER
APPLICATION:		SETTLE ORDER			X SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE