UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

PIOTR NOWAK, *Plaintiff* vs. PENNSYLVANIA PROFESSIONAL SOCCER, LLC, and KEYSTONE SPORTS AND ENTERTAINMENT, LLC, *Defendants.*	:	CIVIL ACTION No. 2:12-cv-04165-MAM

PLAINTIFF, PIOTR NOWAK'S MEMORANDUM OF LAW IN SUPPORT OF HIS MOTION TO VACATE THE AAA ARBITRATION AWARD ENTERED ON APRIL 21, 2015

Plaintiff, Piotr Nowak, by and through his undersigned counsel, Haines & Associates, hereby submits this Memorandum of Law in Support of his Motion to Vacate the AAA Arbitration Award entered on April 21, 2015 (Doc. No. 18).

I. INTRODUCTION

This case stems from the termination by Pennsylvania Professional Soccer, LLC, who does business as the Philadelphia Union ("the Union" or "the Team") of Plaintiff, Piotr Nowak from the head coach position in June of 2012. Despite the existence of an additional three and a half years remaining on his coaching contract, the Union refused to pay Nowak for the remaining term of the agreement, citing a series of pretextual justifications and claiming the termination was "for cause," and incapable for being "cured."

After five days of testimony and extensive briefing by the Parties, on April 21, 2015, Arbitrator Margaret R. Brogan issued an Interim Award in favor of the Team. *See* Joint Appendix G. The Arbitration Award was internally inconsistent, unsupported by the evidence

and misread the underlying employment contract, misapplies the law and showed evidence of clear bias. The Federal Arbitration Act ("FAA") allows for an arbitration award to be vacated if an Arbitrator shows evident bias, engages in misconduct, fails to consider evidence or imperfectly executed his or her powers. 9 U.S.C. § 10(a)(2)-(4). Accordingly, Nowak petitions this Honorable Court to vacate the AAA Arbitration Award pursuant to 9 U.S.C. § 10(a) of the Federal Arbitration Act ("FAA").

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. Nowak's Tenure As The Philadelphia Union Team Manager and Termination

In June 2009, the Philadelphia Union signed the Employment Agreement which contracted Mr. Nowak as the Manager of the Philadelphia Union for the period from June 1, 2009 to December 31, 2012. *See* Confid. App. at O, tab 2, Employment Agreement. The agreement provided that Nowak was to be terminated "for cause" only, and that whether his termination was "for cause" was to be "determined in good faith." *See* Confid. App. at O, tab 2, Employment Agreement. The Agreement also provided that prior to terminating Nowak, the Team would specify the basis for potential termination and give Nowak the opportunity to cure the defect. *See* Joint Appendix G, at paragraph III(c). After the 2010 season, Mr. Nowak and the Team entered into a new agreement dated December 20, 2010 which named Mr. Nowak the Executive Vice President of Soccer Operations and extended his contract through December 31, 2015 but did not change his base compensation during the term. *See* Confid. Appendix at O, Contract Extension.

In June 2012, several players complained to the players' union about allegedly harsh training exercises and "hazing." The players' union brought this to the attention of the Team and Major League Soccer ("MLS"). On Wednesday, June 13, 2012 Nick Sakiewicz, CEO of the

Philadelphia Union informed Mr. Nowak that he had created a "culture of fear" among players, that his team-bonding "hazing" activities were unacceptable and that he was putting players' health and safety at risk, and provided Nowak with a termination letter. *See* Exhibit D, Termination Letter. The letter presented to Mr. Nowak during this meeting states that Mr. Nowak was terminated "for cause pursuant to paragraph III(A)" but does not specify which of the 8 subparagraphs of Paragraph III(A) on which the Team relied. *See* Exhibit D. The termination letter enumerates six (6) bases for Mr. Nowak's termination as follows:

1. various material breaches of League Rules (including the League's Collective Bargaining Agreement), including physical confrontations with players and officials during a Team game resulting in a fine and multi-game suspension, interfering with the rights of Team players to contact the player' union with concerns, subjecting Team players to inappropriate hazing activities and engaging in behavior that put the health and safety of Team players at risk.

2. material breaches of the Employment Agreement, including engaging in discussions regarding and otherwise actively seeking, employment by other professional soccer teams in Europe and making disparaging remarks to third parties regarding Club, its management and its ownership.

3. demonstrating gross negligence, including putting the health and safety of Team players at risk by requiring inured players to participate in strenuous training activities, not allowing players to have water during such activities despite temperatures in excess of 80 degrees, ignoring the advice of the head athletic training regarding which players are healthy enough to play in games and participate in the training sessions and creating an atmosphere where medical issues should be hid from medical staff and not treated.

4. committing actions that have reflected in a materially adverse manner on the integrity, reputation and goodwill of Club and the Team (in the eyes of the League, U.S. Soccer, current and potential Team players, sponsors and fans), including the unusually harsh treatment of players described above, actions during Team games that have resulted in fines and suspension, the multiple breaches of League Rules and a discussion (by you and your agent on your behalf) with the head of U.S. Soccer that was in very poor taste and left a very bad impression with U.S. Soccer.

5. multiple incidents of insubordination with respect to the Club's Chief Executive Officer, including claiming at one point (in direct contradiction to the terms of the Employment Agreement) that he does not report to the Club's Chief Executive Officer.

6. various material breaches of Team Rules, including creating a hostile work environment and culture of fear for Team players and other front office employees by orally berating and physically intimidating fellow employees.

See Confid. App. N. In addition, the Termination Letter asserts that the "Club has determined that the above infractions are not capable of being cured and believes your continued employment by Club would continue to cause material harm to Club." *Id.*

The termination letter did not state with specificity which allegations relate to which termination clause in the contract, was manifestly unfair, and was contrary to the terms of the contract. The Team's termination of Nowak was in breach of the Employment Agreement because it was done: (a) without seeking any input from Piotr Nowak concerning the issues raised by the players' union; (b) without any prior written discipline; (c) without providing Mr. Nowak the opportunity to cure any issues the Team had with him as was required by the contract; and (d) without the good-faith required by the contract.

As a result of the Team's breach of contract, on July 20, 2012, Nowak filed this lawsuit against the Team, alleging breach of contract. *See* Doc. No. 1. On September 11, 2013, this Court sent this matter to the American Arbitration Association's Employment Arbitration Tribunal and placed the matter in suspense. *See* Doc. No. 13.

B. AAA Arbitration Hearing and Interim Award

On May 28, 29 and 30, and August 19 and 20, 2014, arbitration hearings were held before Arbitrator Brogan. *See* Confid. App. M, Arbitration Hearing Transcripts. During the arbitration hearings, it should have been apparent that the "causes" for termination made by the

Team were pretextual, and the termination was done for the purpose of saving money. On May 28 and 29, the Team CFO and CEO discussed financial difficulties and pressures faced by the Team, including unpaid fees to the City of Chester. *See* Confid. App. M, May 28, 2014 Transcript, Dabusschere Testimony, p. 125:14-126:19; Confid. App. M., May 29, 2014 Transcript, Sakiewicz Testimony, p. 522:20-523:18. Additionally, the Arbitrator was presented with the testimony of Union Owner Jay Sugarman, who acknowledged that he was instructed by MLS Executive Vice President Todd Durbin to "keep [Nowak] away from [the Union's] players." *See* Confid. App. O, tab 12, Deposition Transcript of Jay Sugarman, p. 73:12-25.

The pretextual reasons provided for Nowak's termination, including those in the MLS Report, were also rebutted during the hearing. For instance, it was clear that the "hazing" rituals were not contrary to Team policy, but done with the consent and encouragement of Team officials. Team CEO Jay Sakeiwicz described rookie hazing as "bonding experience," laughed while watching videos of the hazing of rookie players, and discussed the hazing with Nowak, but never told him to stop. *See* Confid. App. M, May 28, 2014 Transcript, Nowak Testimony, p. 189:11-190:21; Confid. App. M, May 29, 2014 Transcript, Sakiewicz Testimony, p. 514:24; Joint Appendix G, AAA Interim Award, p. 26. Additionally, Nowak refuted the Team's position that Nowak denied the players water on a hot and "humid" day, by establishing that there was very minimal humidity on May 31, 2012. *See* Confid. App. O, Tab 13, Climatology Data, which was introduced as "Claimant's 13 on August 20, 2014. Despite the fact that soccer is a sport, which requires nearly uninterrupted running, it was not disputed that Nowak allowed his players to walk, and that after the trainer complained about the water, Nowak cured this defect, and subsequently made sure that the players were hydrated. Joint Appendix G, 41-42.

Additionally, former agent Shep Messing testified to conversations he had with Piotr Nowak in the summer of 2011 regarding finding other employment. *See* Confid. App. M, May 30, 2014 Transcript, Messing Testimony, pp. 667:13-669:20. At no point during the hearing did any party claim that Nowak's interest in exploring other job opportunities was in violation of the Employment Agreement. Nowak also rebutted the assertions that he was "interfering" with players' union activity. Nowak explained that both he and Team Sporting Director, Diego Gutierrez players that days off could be handled internally, and did not require involvement of the players' union. Confid. App. M, May 28, 2014 Transcript, Nowak Testimony, p. 231:5-234:23. Nowak explained that he *never* told the players that they *could not* go to the players' union. Nowak further stated that he believed that the complaints about days off were coming from players' families, and not the players' themselves. Confid. App. M, May 28, 2014 Transcript, Nowak Testimony, pp. 231:5-234:23.

On the issue of concussions, Nowak explained that he went beyond what was required of him in assuring the players' remain healthy, and was perceived as "going insane ordering the helmets, protective helmets, for goalkeepers and players." pp. 223:5-225:7. Team player Chris Albright acknowledged that Nowak ordered protective helmets for players suffering from concussions, but asserted that Nowak referred to such players as "pussies." Confid. App. M, May 29, 2014 Transcript, Albright Testimony, p. 479:12-23.

On April 21, 2015, an Interim Award was entered by the AAA Arbitrator, Margaret R. Brogan, in favor of the Team. *See* Joint App. G, AAA Arbitration Award. In the Interim Award, the Arbitrator Brogan issued findings that were internally inconsistent, contrary to irrefutable (and unrefuted) evidence and displayed a misapplication of the law. Additionally, the Interim Award displayed evident bias in favor of the Team. Specifically, Brogan accepts at face-value

that the May 31, 2012 run was in "dangerous conditions," despite the fact that Nowak clearly refuted the Team and MLS' assertions regarding the conditions.

The Arbitrator also demonstrated her own inconsistency in her award on this point, demonstrating either a clear misunderstanding of the facts or her bias against Mr. Nowak. For instance, the Arbitrator sets forth the reasons for the termination, relying primarily on events in the months leading up to the termination. *See* Joint App. G, pp. 7-9. However, throughout the remainder of the Award, the Arbitrator discusses Nowak's purported misconduct in 2010 and 2011- the period immediately after Mr. Nowak had signed a new contract extending the term of his employment and granting him additional responsibilities. *See* Confid. App. N. For instance, Shep Messing, a soccer agent, testified to conversations he had with Piotr Nowak in the *summer of 2011* regarding finding other employment- a year before the relevant time frame. *See* Confid. App. M, May 30, 2014 Transcript, Messing Testimony, pp. 667:13-669:20. Despite the fact that this event took place a year before the supposed misdeeds that led to Nowak's termination, at the end of her Award, the Arbitrator describes the events as a justification for Nowak's termination. *See* Joint Appendix G, p. 44.

Very troublingly, the Arbitrator misread a crucial term of the operative Employment Agreement when she described Nowak's inquiries to soccer agent Shep Messing about other coaching positions as "a violation of his employment agreement." *See* Joint Appendix G, p. 44. This finding is simply not supported by the contract. While the Employment Agreement prohibited Nowak from seeking employment with other *teams,* it contained nothing prohibiting Nowak from discussing potential opportunities with agents. *See* Confid. App. O, Employment Agreement, p. ¶ VII. Not only was this "incident" outside the very time frame the Arbitrator putatively relied on, the Arbitrator simply misread the contract.

In the Award, Arbitrator Brogan comes to numerous other conclusions that are contrary to the submissions by the Parties, and not reasonable given the evidence. For instance, Brogan finds that the hazing of rookies was "completely unacceptable" and justifies termination. *See* Joint Appendix G, pp. 43-44. However, Brogan acknowledges that the decision to terminate Nowak was solely that of Nick Sakiewicz, also acknowledges that Sakiewicz laughed at the hazing rituals, and heard Sakiewicz' arbitration testimony that such rituals are part of the "bonding" experience. *See* Joint Appendix G, p. 26; *See* Confid. App. M, May 29, 2014 Transcript, Sakiewicz Testimony, p. 514:24. The position that Sakiewicz terminated Nowak for activities that he condoned and encouraged is simply not rational. Another example of the Arbitrator's acceptance of demonstrably false claims is her reference to the complaint by players that May 31, 2012 was being "very humid." *See* Joint Appendix G, p. 20.[1] The Arbitrator repeated the players' contention without any statement to the contrary, *even after* Nowak's counsel introduced the Quality Controlled Local Climatological Data for the Philadelphia area on May 31, 2012, which shows comfortable and non-humid temperatures.[2] *See* Confid. Appendix O, Tab 13, Climatology Data.

In perhaps the most perplexing finding in the Award, Arbitrator Brogan acknowledges that after the Nowak was confronted about denying players' water on May 31, 2012, Nowak "cured" the defect by allowing them to hydrate with limited amounts of water. *See*, Joint Appendix G, p. 42. Nonetheless, on the same page of the Award, the Arbitrator still concludes that "Claimant's conduct could not have been 'cured.'" *Id*. This finding is simply unreasonable.

[1] MLS Players' Union Director Bob Foose baselessly testified that it was "extremely humid" on May 31, 2012. (Confid. App. M, May 30, 2014 Transcript, at p. 713).

[2] The data shows a temperature of 78 degrees with 44% humidity at 9:54 a.m.; a temperature of 81 degrees with 34% humidity at 10:54 a.m.; 81 degrees with 33 % humidity at 11:54 a.m.; and 80 degrees with 33% humidity at 12:54 p.m.

First of all, if Nowak provided water after being confronted for denying water, his denial of water was hardly "incurable." Second, there were no complaints about the limited water Nowak subsequently allowed after the May 31, 2012 run. Therefore, there is no plausible reason to suggest that Nowak's efforts to cure the purported defect came up short. Nowak's denial of drinking water to his players was a one-time problem that was corrected immediately. The Arbitrator's finding does not match the facts.

Additionally, in the Award, Arbitrator Brogan also makes unreasonable and unjustified applications of the law. Importantly, the Arbitrator relied on unauthenticated hearsay statements made by Dr. Hummer, the team physician, in a letter apparently written following the run. *See* Joint Appendix G, p. 24. Dr. Hummer did not testify before the Arbitrator or authenticate this letter. *See* Joint Appendix G, list of witnesses on pp. 3 and 4. Because there was no way to confirm the veracity of the statements, Nowak could not confront the declarant on the content of the letter, and the letter was given significant weight, the Arbitrator's reliance on Dr. Hummer's letter denied Nowak a fair hearing.

In another misapplication of the law, Arbitrator Brogan comes to a baffling conclusion regarding the failure of the Team to allow Nowak to respond to the allegations in the MLS report. The Arbitrator acknowledges that it "would have been better if Respondent had allowed Claimant to review the report when he was terminated." *See* Joint Appendix G, p. 45. However, she concludes that this was cured during the arbitration proceeding when Nowak "had the full opportunity to respond to the report and to cross-examine his accusers" *See* Joint Appendix G, p. 46. Given that this suit is for wrongful termination, the notion that an arbitration proceeding two years after the termination "cures" a violation does not make logical sense.

Because the Arbitration Award was unreasonable, internally inconsistent, not supported by the submissions and shows evident bias, Nowak moves this Court to vacate the Award.

III. ARGUMENT

A. Standard of Review

In 1925 Congress enacted the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* ("FAA"), which set out a comprehensive plan for arbitrating controversies, and granting U.S. District Courts the authority to vacate arbitration awards in specified circumstances. Specifically, a district court may make an order vacating the award upon the application of any party to the arbitration:

> (1) where the award was procured by corruption, fraud, or undue means;
>
> (2) where there was evident partiality or corruption in the Arbitrators, or either of them;
>
> (3) where the Arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
>
> (4) where the Arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10(a)(1)-(4).

There is a presumption of enforceability of arbitration agreements, and an award is presumed valid unless it is affirmatively shown to be otherwise. *Brentwood Med. Assocs. v. United Mine Workers of Am.*, 396 F.3d 237, 241 (3d Cir. 2005). Despite the presumption of enforceability, when analyzing a motion to vacate an arbitration award, district courts are "neither entitled nor encouraged to simply rubber stamp the interpretations and decisions of Arbitrators." *See PMA Capital Insurance Co. v. Platinium Underwriters Bermuda, Ltd.* 659

F.Supp.2d 631, 635 (E.D. Pa. 2009) quoting *Matteston v. Ryder Sys.*, 99 F.3d 108, 113 (3d Cir. 1996). The principal question for the district court on review of an arbitration award is whether the Arbitrator's award "draws its essence from the parties' agreement…since the Arbitrator is not free merely to dispense of his own brand of justice." *See PMA Capital,* F.Supp.2d 631, 637 quoting *Osceloa County Rural Water Sys., Inc. v. Subsurfco, Inc.*, 914 F.2d 1072 (8th Cir. 1990) (internal quotations omitted). If an award shows evident bias by the Arbitrator, is internally inconsistent, irrational or unsupported by the evidence, and a party is materially prejudiced, then the district court may vacate the arbitration award pursuant to 9 U.S.C. § 10.

B. The Arbitrator Adopted Rulings That Were Unreasonable, Internally Inconsistent and Contradicted by the Evidence. Therefore, Nowak Was Denied a Fair Hearing and the Award Must Be Vacated Under 9 U.S.C. §§ 10(a)(3) and 10(a)(4).

Upon review of the AAA Interim Opinion and Award, it is apparent that Arbitrator Brogan adopted findings that were irrational, internally inconsistent, contradicted by undisputed evidence and showed a disregard to the law. As a result of the Arbitrator's inconsistencies and unreasonable findings, Piotr Nowak was denied a fair hearing, and the arbitration award should therefore be vacated under 9 U.S.C. § 10(a)(3) and 9 U.S.C. § 10(a)(4) of the FAA.

1. Vacatur should be granted under 9 U.S.C. § 10(a)(3).

Section 10(a)(3) of the FAA allows for vacatur of an arbitration award "where the Arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced." 9 U.S.C. § 10(a)(3). An Arbitrator's failure to hear or consider evidence must affect the rights of a party so as to deprive him of a fair hearing for an award to be vacated on the basis of Arbitrator "misconduct" under 9

U.S.C. § 10(a)(3). *Newark Stereotypers Union No. 8 v. Newark Morning Ledger Co.*, 397 F.2d 954 (U.S. 1968).

Additionally, if a party is harmed by a misapplication of the law, then the arbitration award may be vacated under 9 U.S.C. § 10(a)(3). *See Rita's Water Ice Franchise Co., LLC v. Simply Ices., Inc. et al*, 08-cv-2011 (E.D. Pa. Sept 30, 2008). In this matter, Arbitrator Brogan makes unjustified applications of the law. For instance, the Arbitrator relied on unauthenticated hearsay statements made by Dr. Hummer, despite the fact that Dr. Hummer did not testify before the Arbitrator or authenticate this letter. *See* Joint Appendix G, p. 24, and list of witnesses on pp. 3 and 4. Without the hearsay letter, the contentions regarding this dangerous run are hollow- no player reported heat exhaustion, dehydration or other serious complaints. *See* Joint Appendix G, p. 42. Nowak was prejudiced by the Arbitrator's decision to allow an unauthenticated statement, for which the veracity could not be confirmed. Additionally, Arbitrator Brogan's finding that Nowak "had the full opportunity to respond to the [MLS] report and to cross-examine his accusers" cannot be logically explained, as this "opportunity" was two years after the relevant termination. *See* Joint Appendix G, p. 46.

Because Nowak was materially prejudiced by the Arbitrator's misapplication of the law, vacatur is warranted under 9 U.S.C. § 10(a)(3).

2. Vacatur should be granted under 9 U.S.C. § 10(a)(4).

Section 10(a)(4) of the FAA allows courts to vacate an arbitration award "where the Arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." 9 U.S.C. § 10(a)(4). Courts have interpreted § 10(a)(4) of the FAA to allow vacatur when the Arbitrator's award (1) cannot be rationally derived from the parties' submissions to the arbitator(s); and (2) the terms of the

award are "completely irrational." *PMA Capital Insurance Co.*, 659 F.Supp.2d 631, 635 quoting *Swift Indus., Inc. v. Botany Indus, Inc.*, 466 F.2d 1125, 1130 (3d Cir. 1972).

If an Arbitrator has ruled in a manner that is not consistent with the submissions that are presented by the parties, the arbitator has exceeded her authority and the award must be vacated. *PMA Capital Insurance Co.*, 659 F.Supp.2d 631, 636 citing *Courier-Citizen Co. v. Boston Electrotypers Union No. 11*, 702 F.2d 273, 281 (1st Cir.1983). In *PMA Capital Insurance Co.*, the arbitration panel applied a non-existent and material term while simultaneously ignoring an existing term to a resinsurance contract. 659 F. Supp. 2d 631. When the insurance company petitioned to vacate the arbitration award, this District granted a vacatur under § 10(a)(4) of the FAA on the grounds that the Arbitrators' decision exhibited a "manifest disregard" of the underlying agreement and was therefore "completely irrational." *See PMA Capital Insurance Co.*, 659 F.Supp.2d 631, 638-39.

If an Arbitrator's decision is contradictory or internally inconsistent and the inconsistencies are materially prejudicial to a party, then vacatur of the award is warranted on the grounds of being "completely irrational." *See Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Schwarzaelder*, 11-cv- 0107 (W.D. Pa. May 17, 2011). In *Shcwarzaelder*, after the arbitrators cited conflicting years for an employee's departure in an employment-disability case, the Western District of Pennsylvania vacated the arbitration award, finding that because "*the award does not follow its own internal logic, it is 'completely irrational' and must be vacated*." *Schwarzaelder*, 11-cv- 0107, p. 4 (emphasis added) (internal citations omitted).

In addition to the aforementioned misapplications of the law regarding the doctor's letter and Nowak's opportunity to address the MLS report, it is apparent that Arbitrator Brogan adopted findings that were internally inconsistent, contradicted by undisputed evidence and

showed a disregard to the law. For instance, the Arbitrator highlights the several months prior to the June 2012 termination as the crucial period of events leading to the termination, *See* Joint Appendix G, pp. 7-9, yet accepts testimony about Nowak's inquiries about overseas teams in 2010 and 2011 as the justification. Additionally, inquiries about other opportunities were *not* contrary to the Employment Agreement, despite the Arbitrator's finding on p. 44. Joint Appendix G.

Arbitrator Brogan also accepted the Team's submissions at face-value without even acknowledging that much of it had been objectively discredited. An example of this is when she accepts that the conditions on May 31, 2012 were dangerous, and references the players' complaints about it being very "humid," despite being presented with data reflecting comfortable temperatures and low humidity. *See* Joint Appendix G, p. 20; Confid. App. O, Tab 13.

Further, Brogan's finding that Nowak's hazing of rookies is a reason for the termination is also inconsistent. *See* Joint Appendix G, pp. 43-44. Arbitrator Brogan states that Nick Sakiewicz made the sole decision to terminate Nowak, and also notes that Sakiewicz laughed at the hazing rituals and heard the CEO's testimony that such rituals are part of the "bonding" experience. *See* Joint Appendix G, pp. 26, 31; Confid. App. M, May 29, 2014 Transcript, Sakiewicz Testimony, p. 514:24. The position that Sakiewicz terminated Nowak for activities that he encouraged is not reasonable.

Because the Arbitrator was internally inconsistent, refused to accept undisputed evidence and made findings that were unreasonable and unjustified by the record, vacatur is warranted under 9 U.S.C. § 10(a)(4).

C. The Arbitrator Showed Evident Partiality. Therefore The Interim Arbitration Award Must Be Vacated Under 9 U.S.C. § 10(a)(2)

The instant arbitration award demonstrates Ms. Brogan's bias in favor of the defendants. This is true not only in these specific erroneous acts, but also in Brogan's failure at every turn to accept any aspect of Nowak's case to include matters that were not in material dispute.

Section 10(a)(2) of the FAA provides grounds for vacatur where there was evident partiality in the Arbitrator(s). 9 U.S.C. § 10(a)(2); *Stone v. Bear, Stearns & Co., Inc*., 872 F.Supp.2d 435 (E.D. Pa. 2012). In order to show 'evident partiality' the challenging party must show that "a reasonable person would have to conclude that the Arbitrator was partial to the other party to the arbitration." *Stone*, 872 F.Supp.2d 435, 444 quoting *Apperson v. Fleet Carrier Corp*., 879 F.2d 1344, 1358 (6th Cir.1989). For the same reasons as stated in Section III(B), the fact that the Arbitrator came to conclusions that were internally inconsistent, refuted by clear evidence, based on misapplications of the law and otherwise irrational, a reasonable person could only come to the conclusion that she was partial to the Team at the expense of Mr. Nowak.

Furthermore, in the Award, Arbitrator Brogan's distaste for Nowak's hard-nosed approach to coaching was so apparent, it could only be described as clear bias. For example, the Arbitrator references alleged "vilification" of players who complained about concussions "unacceptable," yet overlooks the fact that there was *no complained of problem of concussions* on the Team. Soccer is one of the few sports, in which players intentionally play with their heads. Despite this Major League Soccer still does not encourage or require players to use helmets. Nowak on the other hand, *did* encourage players to wear helmets, and Arbitrator Brogan brushes this off as a "mere band-aid." *See* Joint Appendix G, p. 43. Given that Nowak took proactive measures regarding concussions, whereas the league did not, the Arbitrator's position that Nowak had an "unacceptable" attitude toward concussions, when analyzed in the

context of her internal inconsistencies and unreasonable findings, the Award leads to a reasonable conclusion that the Arbitrator was biased against Mr. Nowak.

Because Arbitrator Brogan exhibited bias against Nowak, vacatur is warranted under 9 U.S.C. § 10(a)(2).

IV. CONCLUSION

For the reasons stated herein, Plaintiff, Piotr Nowak respectfully requests that this Honorable Court vacate the AAA Arbitration Award entered on April 21, 2015, pursuant to 9 U.S.C. § 10(a)(2)-(4).

Respectfully submitted,

HAINES & ASSOCIATES

By: */s/ Clifford E. Haines*
CLIFFORD E. HAINES (PA 9882)
Widener Building, 5th Floor
1339 Chestnut St.
Philadelphia, PA 19107
Telephone: 215-246-2200
Fax: 215-246-2211
Attorneys for Plaintiff

Dated: January 5, 2016

CERTIFICATE OF SERVICE

I, Clifford E. Haines, Esquire, certify that on January 5, 2016, I caused a true and correct copy of the foregoing Motion to Vacate Arbitration Award to be served on all counsel of record via the Court's ECF System.

/s/ Clifford E. Haines
CLIFFORD E. HAINES