

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

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

ORDER

AND NOW, this day of , 2016, upon consideration of Plaintiff, Piotr Nowak's Motion to Vacate the Interim Arbitration Award entered on April 21, 2015, and any response thereto, it is hereby ORDERED and DECREED that Plaintiff's Motion is Granted and the Interim Arbitration Award is hereby VACATED.

BY THE COURT:

Kearney, U.S.D. J.

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AND ENTERTAINMENT, LLC,	:	
	:	
<i>Defendants.</i>	:	

PLAINTIFF’S MOTION TO VACATE THE AAA ARBITRATION
AWARD ENTERED ON APRIL 21, 2015

Plaintiff, Piotr Nowak, through his undersigned counsel, hereby submits this Motion to Vacate the AAA Arbitration Award entered on April 21, 2015:

1. Defendant Pennsylvania Professional Soccer, LLC which operates as Philadelphia Union Soccer Club (“the Team”) entered into an Employment Agreement, which employed Mr. Nowak as Team Manager through the end of 2012.
2. 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.”
3. The contract 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.
4. After over two years of serving as Team Manager, due to his exemplary performance in December of 2011, the Team extended Nowak’s existing contract until December 31, 2015.
5. After several players and the players’ union complained to Major League Soccer (“MLS”) about their unhappiness with Nowak’s coaching methods, on June 12, 2012, MLS

published a report, which found Nowak to be in violation of League policy, primarily for making players run 10 miles without water during a hot and “humid” day.

6. On June 12, 2012, Mr. Nowak was notified verbally and in writing that he was being terminated by the Soccer Club “for cause.”

7. The termination letter did not state with specificity which allegations relate to which termination clause in the contract.

8. As stated at greater length in the memorandum of law (which is to be filed under seal), the termination was predicated on pretextual, contradictory and false justifications.

9. The termination was fundamentally unfair and contrary to the terms of the contract because it was made: (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.

10. As a result of the Team’s breach of contract, on July 20, 2012, Nowak filed this lawsuit. *See* Doc. No. 1.

11. On September 11, 2013, this Court sent this matter to the American Arbitration Association’s Employment Arbitration Tribunal.

12. On May 28, 29 and 30, as well as August 19 and 20 of 2014, arbitration hearings were held.

13. On April 21, 2015, an Interim Award was entered by the AAA Arbitrator, in favor of the Team. A copy of this Award will be filed under seal.

14. In the Interim Award, the AAA arbitrator erred in her application of the law and ignored irrefutable evidence that was critical and directly contrary to her findings.

15. Accordingly, Nowak files this motion to vacate the AAA arbitration award.

16. The Federal Arbitration Act (“FAA”) provides an award may be vacated when there is evidence of partiality by the arbitrator, a failure to hear relevant evidence by the arbitrator or the arbitrator imperfectly executed her power. 9 U.S.C. § 10(a)(2); 9 U.S.C. § 10(a)(4).

17. 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).

18. 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. Platinum 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).

19. 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).

20. 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).

21. 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).

22. 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 arbitrator(s); and (2) the terms of the award are "completely irrational." *PMA Capital Insurance Co.*, 659 F.Supp.2d 631, 635.

23. For reasons stated at greater length in the memorandum of law (to be filed under seal), the Arbitration Award should be vacated pursuant to 9 U.S.C. § 10(a).

24. It is apparent that the Arbitrator adopted findings that were internally inconsistent, contradicted by undisputed evidence and showed a disregard to the law.

25. 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).

26. 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.

27. For these reasons and those stated at length in the memorandum of law (to be filed under seal), vacatur of the April 21, 2015 Arbitration Award is warranted under 9 U.S.C. § 10(a) of the FAA.

WHEREFORE, Plaintiff, Piotr Nowak respectfully asks this Honorable Court to grant his Motion to Vacate the AAA Arbitration Award Entered April 21, 2015.

Respectfully submitted,

HAINES & ASSOCIATES,

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