

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

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

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO VACATE THE APRIL 21, 2015 AAA INTERIM AWARD AND DEFENDANTS' CROSS MOTION TO CONFIRM THE INTERIM AWARD AS WELL AS THE AAA FINAL OPINION AND AWARD ENTERED ON NOVEMBER 5, 2015¹

Defendants, Pennsylvania Professional Soccer, LLC ("PPS") and Keystone Sports and Entertainment, LLC ("Keystone") (collectively, "Defendants" or the "Philadelphia Union"), by and through their attorneys, Buchanan Ingersoll & Rooney PC, hereby file this Response to Plaintiff, Piotr Nowak's, Motion to Vacate the April 21, 2015 American Arbitration Association ("AAA") Interim Award (hereinafter, the "Interim Award").

Defendants also file a Cross-Motion to Confirm, which seeks an Order confirming the Interim Award as well as the November 5, 2015 AAA Final Opinion and Award (hereinafter, the "Final Award").

¹ After consulting with opposing counsel, it is Defendants' understanding that Plaintiff will be re-filing his Motion to Vacate (Doc. No. 18) (previously stricken) today, January 5th, with redactions consistent with the Court's December 18, 2015 Order (Doc. No. 42). This Response is intended to replace Doc. No. 35 (previously stricken) in response to Plaintiff's re-filed Motion to Vacate and seeking to confirm the AAA Final Opinion and Award entered on November 5, 2015.

Incorporated by reference and being filed contemporaneously herewith is the attached Memorandum of Law in Opposition to Plaintiff's Motion to Vacate the Interim Award and in Support of Defendants' Cross-Motion to Confirm the Interim Award and the Final Award.

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO VACATE

Defendants' respond to Plaintiff's Motion to Vacate the Interim Award as follows. Each numbered paragraph below responds to the identically numbered paragraph of Plaintiff's Motion to Vacate. To the extent an averment within Plaintiff's Motion to Vacate has not been admitted, it is hereby denied.

1. Admitted in part, with clarification; denied in part. It is admitted that, pursuant to an expansion agreement, Defendant PPS operates the Major League Soccer team currently known as the "Philadelphia Union." The remaining averments of this paragraph refer to an Employment Agreement, which is a written document that speaks for itself, and Defendants deny Plaintiff's characterizations with respect to the nature or content of such writing. By way of further response, on or about June 1, 2009, Defendant PPS entered into a Manager Employment Agreement with Plaintiff (hereinafter, the "Employment Agreement"), which employed Mr. Nowak as the Manager of the Philadelphia Union potentially through December 31, 2012.

2.-3. Denied. The averments of this paragraph refer to an Employment Agreement, which is a written document that speaks for itself, and Defendants deny Plaintiff's characterizations with respect to the nature or content of such writing.

4. Denied. By way of further response, on or about December 20, 2010 (less than two (2) years from the execution of the Employment Agreement), Defendant PPS and Plaintiff executed a Letter Agreement Addendum, which, *inter alia*, potentially extended the term of the Employment Agreement to December 31, 2015 (hereinafter, the "2010 Extension"). On

December 20, 2011, Defendant PPS and Plaintiff entered a formal Addendum to the Employment Agreement, which, *inter alia*, expressly nullified the 2010 Extension, and provided specific detail regarding compensation and other matters tied to the extending of the term of the Employment Agreement potentially through December 31, 2015.

5. Admitted in part; denied in part. It is admitted that several players, through and together with the Major League Soccer Players Union (“MLSPU”), lodged significant complaints to Major League Soccer (“MLS”) concerning Plaintiff engaging in reprehensible conduct relative to the players. This reprehensible conduct included, but was certainly not limited to: (1) requiring the players to run extensive distances on hot, humid days while, contrary to the advice of the Athletic Trainers, denying the players the ability to drink water during the run; (2) Plaintiff interfering with and retaliating against players for exercising their rights to engage in Union Activities; (3) Plaintiff’s violation of Team and League Rules (including his initiating of physical contact with an opposing player); (4) Plaintiff’s jeopardizing of the health and safety of the players by refusing to follow the medical directives of the Athletic Trainers by, *inter alia*, requiring injured players to participate in activities and ridiculing players who sustained concussions; and (5) Plaintiff’s hazing of players, which included Plaintiff physically slapping rookie players. It is also admitted that, as a result of the aforementioned player/MLSPU complaints, the MLS did perform an investigation that culminated in the issuance of a formal MLS Report. The MLS Report is a written document that speaks for itself, and Defendants deny Plaintiff’s characterizations with respect to the nature or content of such writing. Defendants further deny the remaining averments of this paragraph.

6. Denied. By way of further response, Plaintiff was notified on June 13, 2012 that Defendant PPS was left with no choice, but to exercise its discretionary right to terminate the Employment Agreement (and subsequent Addendum).

7. Denied. The averments of this paragraph refer to a “termination letter,” which is a written document that speaks for itself, and Defendants deny Plaintiff’s characterizations with respect to the nature or content of such writing.

8. Denied. By way of further response, as noted in more detail within Defendants’ Memorandum in Opposition to Plaintiff’s Motion to Vacate and in Support of Defendants’ Motion to Confirm, the independent Arbitrator specifically chosen by the parties correctly held within the Interim Award that Defendant PPS, in accordance with the terms of the Employment Agreement, appropriately exercised its discretionary right to terminate Plaintiff as a result of Plaintiff’s “egregious conduct.”

9. Denied. By way of further response, see Defendants’ Response to Paragraph No. 8.

10. Denied. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent a response is required, such averments are denied. By way of further response, see Defendants’ Response to Paragraph No. 8.

11. Denied. By way of further response, this Honorable Court entered a Memorandum and an Order on September 26, 2012, directing the parties to “submit the dispute to arbitration according to the terms of the employment agreement between the parties...” (Doc. No.’s 11 and 12.)

12. Admitted.

13. Admitted. More specifically, the Arbitrator, which, again, was agreed to by the parties, entered an Order denying Plaintiff's Demand for Arbitration in its entirety. The Arbitrator also awarded Defendants' attorneys' fees and costs as the prevailing party.

14. Denied. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent a response is required, such averments are denied.

15. Denied. After reasonable investigation, Defendants lack the knowledge necessary to either admit or deny the averments of this paragraph relating to the rationale surrounding Plaintiff's filing of his Motion to Vacate, and, as such, Defendants deny such averments and leave Plaintiff to his proofs.

16.-27. Denied. The averments of this paragraph constitute conclusions of law to which no response is required. To the extent a response is required, such averments are denied. By way of further response and outlined in more detail within the Memorandum of Law in Opposition to Plaintiff's Motion to Vacate and Defendants' Cross-Motion to Confirm, judicial review of an arbitration award is extremely narrow and severely limited. *Brown v. Allstar Drywall & Acoustics, Inc.*, 195 F.Supp.2d 681 (E.D. Pa. 2002) (citing *Coltec Industries, Inc. v. Elliott Turbocharger Group, Inc.*, Nos. Civ. A. 99-1400, 99-MC-36, 1999 WL 695870, at *3 (E.D. Pa. Sept.9, 1999)) (additional citations omitted). A court may not overrule an arbitrator simply because it disagrees with the arbitrator's construction of the contract or because it believes its interpretation of the contract is better than that of the arbitrator. *Id.* (citing *News America Publications, Inc. v. Newark Typographical Union, Local 103*, 918 F.2d 21, 24 (3d Cir.1990)). District courts have very little authority to upset arbitrators' awards and an award will be properly vacated only if there is absolutely no support at all in the record justifying the arbitrator's determinations. *Id.* (citing *United Transp. Union Local 1589 v. Suburban Transit*

Corp., 51 F.3d 376, 379 (3d Cir.1995); *Personnel Data Systems, Inc. v. OpenPlus Holdings Pty Ltd.*, No. Civ. A. 00–MC–166, 2001 WL 52546 at *1 (E.D. Pa. Jan.18, 2001)).

WHEREFORE, Defendants hereby request that this Honorable Court enter an Order denying Plaintiff's Motion to Vacate the Interim Award, granting Defendants' Cross-Motion to Confirm the Interim Award and the Final Award, awarding Defendants attorneys' fees and costs incurred herein, and granting such other relief as this Honorable Court deems just and equitable.

**DEFENDANTS' CROSS-MOTION TO CONFIRM THE INTERIM AWARD AND THE
FINAL AWARD ENTERED IN THE AAA ON APRIL 21, 2015
AND NOVEMBER 5, 2015, RESPECTIVELY**

1. In accordance with a Memorandum and an Order entered by this Honorable Court on September 26, 2012 – which simply enforced the plain language of the Employment Agreement entered into between Defendant PPS and Plaintiff – Plaintiff, on December 5, 2012, filed a Demand for Arbitration within the American Arbitration Association, alleging that he was wrongfully terminated by Defendants. (Demand for Arbitration, included in the Joint Appendix and Confidential Appendix as Exhibit “A.”)

2. On or about January 8, 2013, Defendants filed an Answering Statement, denying that Plaintiff was wrongfully terminated, as well as a Counterclaim Demand for Arbitration against Plaintiff as well as Pino Sports, LLC (“Pino Sports”), which is a limited liability company owned by Plaintiff and which holds the marketing rights to Plaintiff's name and likeness. (Answering Statement and Counterclaim Demand for Arbitration, included in the Joint Appendix and Confidential Appendix as Exhibit “B.”)

3. Defendants' counterclaims against Plaintiff, individually, included: (1) a claim seeking the outstanding balance relative to a loan that was provided to Plaintiff through the Employment Agreement and its subsequent Addendums; and (2) the attorneys' fees and costs

incurred in defending against Plaintiff's Demand for Arbitration as well as the attorneys' fees and costs incurred to collect the outstanding loan balance. (Ex. "B.")

4. Defendants' counterclaims against Pino Sports included: (1) a claim seeking reimbursement of an advanced payment made by Defendant PPS to Pino Sports that was ultimately not earned by Plaintiff; and (2) the attorneys' fees and costs incurred to collect the unearned advance of funds. (Ex. "B.")

5. The parties agreed to retain the services of Arbitrator Margaret R. Brogan, Esquire, to adjudicate both the Plaintiff's Demand for Arbitration as well as the Defendants' Counterclaim Demand for Arbitration.

6. After an extensive discovery process, Arbitrator Brogan held five (5) days of Arbitration Hearings – May 28, 29, and 30, 2014, and August 19, and 20, 2014. (Hearing Transcripts, included in the Confidential Appendix as Exhibit "M.")

7. After the Arbitration Hearings, the parties submitted extensive Post-Hearing Statements and Reply Briefs. (Post-Hearing Statements and Reply Briefs, included in the Joint Appendix and Confidential Appendix as Exhibits "C"-“F.”)

8. On April 21, 2015, Arbitrator Brogan issued an Interim Award, which denied Plaintiff's Demand for Arbitration in its entirety. (Interim Award, included in the Joint Appendix and Confidential Appendix as Exhibit "G.")

9. Within the Interim Award, the Arbitrator also granted the Defendants' Counterclaim Demand for Arbitration in its entirety. (Ex. "G.")

10. More specifically, the Interim Award ordered Plaintiff to pay Defendant PPS \$53,717.00 plus accumulated interest at 7% until paid for the outstanding loan, and Pino Sports

to pay Defendant PPS \$46,680.33 plus accumulated interest at 8% until paid for the unearned advance. (Ex. "G.")

11. The Interim Award also awarded Defendants attorneys' fees and costs, directing Defendants to file a Fee Petition within 60 days. (Ex. "G.")

12. Defendants timely filed their Fee Petition on or about June 19, 2015. (Fee Petition, included in the Joint Appendix and Confidential Appendix as Exhibit "H.")

13. On September 23, 2015, Arbitrator Brogan sent correspondence to the parties outlining that she has failed to receive a response to Defendants' Fee Petition, directing Plaintiff to file a response by October 2, 2015. (Final Award, included in the Joint Appendix and Confidential Appendix as Exhibit "L.")

14. Plaintiff did not file a response to Defendants' Fee Petition until October 6, 2015, however, the Arbitrator agreed to accept and consider Plaintiff's late submission. (Ex. "L.")

15. As Plaintiff's October 6, 2015 Response to Defendants' Fee Petition raised, for the first time, issues concerning the manner in which Defendants produced the invoices establishing their attorneys' fees and costs, the Arbitrator issued an Order on October 7, 2015, requesting the parties to provide additional information/argument by October 23, 2015. (Ex. "L.")

16. On October 23, 2015, Defendants timely submitted the additional information/argument requested by the Arbitrator. (Ex. "L.")

17. Although Plaintiff did not submit the additional information/argument requested by the Arbitrator until October 26, 2015, the information/argument provided by Plaintiff was accepted and considered by the Arbitrator. (Ex. "L.")

18. On November 5, 2015, the Arbitrator, after considering the submissions of all parties, entered a Final Opinion and Award (hereinafter, "Final Award"), which ordered Plaintiff to reimburse Defendants for all attorneys' fees and costs they incurred as a result of the instant litigation. (Ex. "L.")

19. To date, Plaintiff has refused to remit payment to Defendants in accordance with the Interim Award and/or the Final Award.

20. Pursuant to 9 U.S.C. § 9, the Interim Award and/or the Final Award should be confirmed absent an order granting vacatur, modification, or correction of the award.

21. As set forth more fully in the attached Memorandum of Law, Plaintiff's Motion to Vacate the Interim Award should be denied.

22. Also as set forth more fully in the attached Memorandum of Law, Defendants' Motion to Confirm the Interim Award and the Final Award should be granted.

WHEREFORE, Defendants hereby request that this Honorable Court enter an Order denying Plaintiff's Motion to Vacate the Interim Award, granting Defendants' Motion to Confirm the Interim Award and the Final Award, awarding Defendants the additional attorneys' fees and costs incurred herein, and granting such other relief as this Honorable Court deems just and equitable.

Respectfully submitted,

s/Thomas G. Collins

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Attorneys for Defendants

Dated: January 5, 2016

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was transmitted to the Court electronically for filing and for electronic service upon the following attorneys of record this day:

Clifford E. Haines, Esquire
Danielle Weiss, Esquire
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s/Thomas G. Collins _____

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Date: January 5, 2016