

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT**

**AUTO CITY SERVICE, ET AL,
Petitioners,**

v.

**Case No. 13-137670-AV
Hon. James M. Alexander**

**JP MORGAN SECURITIES, INC, ET AL,
Respondents.**

OPINION AND ORDER CONFIRMING ARBITRATION AWARD

This matter is before the Court on Petitioners’ motion to confirm arbitration award and Respondents’ motion to vacate arbitration award.¹

Petitioners underlying claim is that, between August 15 and late October 2008, the economy and stock markets were experiencing volatility and declined significantly. During this time, Petitioners alleged that Respondents “failed to properly effectuate account transfers, erroneously computed account assets, and did not properly advise regarding [Petitioners’] margin and default concerns” after Petitioners transferred financial accounts and loans to Respondents. As a result, Petitioners claim that Respondents contributed to significant losses. Petitioners sought damages in excess of \$6 million. Respondents, not surprisingly, denied Petitioners’ allegations.

The parties’ dispute went to arbitration – where a three-member panel conducted a five-day evidentiary hearing. On November 11, 2013, the unanimous arbitration panel issued its award –

¹ On December 2, 2013, JP Morgan Securities, Inc. and JP Morgan Securities, LLC filed an action to vacate the arbitration award, which was assigned case number 13-137670-AV. The next day, December 3, 2013, Auto City Service, Inc.; Auto City Clark, Inc.; and Fowlerville Exit Shell Service, Inc. filed an action to confirm the arbitration award, which was assigned case number 13-137676-CZ. These two actions are hereby consolidated into case number 13-137676-CZ.

finding that Respondents JP Morgan Securities, Inc. and JP Morgan Securities, LLC “are jointly and severally liable for and shall pay to [Petitioners] . . . the sum of \$1,680,000.00 in compensatory damages.” The panel further ordered Respondents to pay: (1) interest on this amount at 5% per annum from October 9, 2008 through October 21, 2013; (2) \$50,000 in costs; (3) \$300 for the FINRA filing fee; and (4) \$242,000 in attorneys’ fees.² Finally, the panel assessed the total hearing session fees of \$13,500 to Respondents.

The Court will note that the panel specifically found that JPMorgan Chase Bank, NA and JPMorgan Chase & Co were not compelled to arbitrate disputes in this arbitration and, in the absence of their voluntary submission to the same, the panel “[did] not have jurisdiction” over said entities.

Michigan courts have long recognized that “Judicial review of an arbitration decision is very limited. A court may not review an arbitrator’s factual findings or decision on the merits.” *Byron Center Public Schools Bd of Educ v Kent County Educ Ass’n*, 186 Mich App 29, 31; 463 NW2d 112 (1990), citing *Port Huron Area School Dist v Port Huron Ed Ass’n*, 426 Mich 143, 150; 393 NW2d 811 (1986).

Under MCR 3.602(I), this Court has three options in reviewing an arbitration award. The Court may (i) confirm, (ii) vacate, or (iii) correct or modify the award. *Gordon Sel-Way, Inc v Spence Bros, Inc*, 438 Mich 488, 495; 475 NW2d 704 (1991).

Our Supreme Court has reiterated that:

Courts . . . favor awards made by tribunals of the parties’ own choosing, and are reluctant to set them aside, and **every presumption will be made in favor of their fairness**, and the burden of proof is upon the party seeking to set them aside, and **the proof must be clear and strong.**” *DAIIE v Gavin*, 416 Mich 407, 437; 331 NW2d 418 (1982) (emphasis added); quoting *Brush v Fisher*, 70 Mich 469, 473, 478; 38 NW 446 (1888).

² The panel also dismissed Petitioners’ claims against non-party Respondents Nicole Moten, John Bueno, and David Maksymetz with prejudice.

Respondents suggest that the arbitrators exceeded their powers. The Uniform Arbitration Act provides, at MCL 691.1703(1):

On motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if any of the following apply:

...

(d) An arbitrator exceeded the arbitrator's powers.

An arbitrator exceeds his authority when he acts "in contravention of controlling principles of law." *DAIIE*, 416 Mich at 434. Where the ground for seeking to vacate the award is an error of law, the reviewing court must confirm the arbitration award unless the error is apparent on its face. *Id.* at 428-429.

Under the Code of Arbitration Procedure Rule 12904(g), the panel will only issue an explained decision when so requested by all parties jointly. In this case, the parties did not request an explained decision. As a result, the arbitration award does not contain an explanation for the panel's decision.

Respondents base the majority of their arguments on the notion that the panel somehow, "impermissibly, expanded [its] jurisdiction, assessing damages against JP Morgan Securities for the alleged damages incurred by [Petitioners] in accounts and transactions with JPMorgan Chase Bank, NA." As stated, however, the panel specifically noted that it had no jurisdiction over JPMorgan Chase Bank, NA and JPMorgan Chase & Co. As a result, the Court rejects Respondents' several arguments that these entities' actions served as a basis for any award against our Respondents, who offer nothing more than unsubstantiated speculation to the contrary.

Respondents also argue that the value of the damages award is evidence that the panel exceeded its powers by considering accounts outside of the JP Morgan Securities accounts. The Court

disagrees. As Petitioners point out, there was expert testimony and documentary evidence that supported the award.³

Respondents also argue that the panel's consideration of MCL 451.2509(7)(a) constituted a clear error of law. Again, this argument is premised on the assumption that the panel did so. Respondents argue "the [panel] **apparently** adopted [Petitioners'] 'control person' theory of liability." This, however, is not apparent. There is no reference as much in the award, and Respondents offer only convenient speculation to the contrary.

Finally, Respondents argue that the panel exceeded its power by granting equitable remedy to Petitioners. The Court, again, disagrees. This argument is simply a rehashing of Respondents' other damages argument. As stated, there was sufficient expert testimony and documentary evidence to support the award.

Conclusion

For the foregoing reasons, the Court concludes that the panel did not exceed its powers, and did not act in contravention of controlling law. Respondents' arguments, at best, simply suggest other possible alternatives for the basis of the award – none more likely than Petitioners' reasoned arguments – and none supported by any semblance of proof. As this Court is bound to make every presumption in favor of the decision's fairness absent clear and strong proof, Respondents have failed to carry their burden to set aside the award.

The Court, therefore, GRANTS Petitioners' motion to confirm the arbitration award and DENIES Respondents' motion to vacate the same. A proposed judgment approved as to form

³ The Court will also note that many of Respondents' arguments in support of this claim are couched with conditioning words like "**appears to** have formed the basis," "**[i]f** the panel sought to assess damages," and "the arbitrators **apparently** reviewed." (emphasis added). Respondents' argument is founded on a guess at how the panel arrived at its award.

shall be submitted by Petitioners by **June 11, 2014**. If approval as to form cannot be secured, all parties shall appear for a hearing on that date at 8:30 am.

IT IS SO ORDERED.

May 23, 2014

Date

/s/ James M. Alexander

Hon. James M. Alexander, Circuit Court Judge

**THIS ORDER CONTAINS A DATE SET BY THE COURT.
YOU WILL NOT RECEIVE FURTHER NOTICE OF THIS DATE.**