UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ORACLE CORPORATION, Petitioner, -against- FELICIA WILSON, an Individual, Respondent.	Case No. _____ **PETITION TO VACATE ARBITRATION AWARD**

Petitioner Oracle Corporation ("Petitioner" or "Oracle"), by and through its undersigned attorneys, Sheppard, Mullin, Richter & Hampton, LLP, as and for its Petition to vacate an arbitration award served on the parties on November 1, 2016, pursuant to the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 10 and 12, alleges as follows[1]:

INTRODUCTION

1. This is an action pursuant to the FAA to vacate an arbitration award (the "Award") issued against Oracle in an arbitration commenced against it by Respondent Felicia Wilson ("Respondent" or "Wilson"), a current Oracle employee, alleging that she was denied commissions in breach of a written compensation agreement.

2. As explained more fully below, the Award was issued without any discovery, without an evidentiary hearing, and without affording Oracle the opportunity to present "evidence pertinent and material to the controversy." 9 U.S.C. § 10(a)(3).

[1] In support of this Petition, Petitioner also submits herewith a Memorandum of Law in Support of its Petition and the Declaration of Christopher J. Collins, Esq., dated January 24, 2017, with exhibits ("Collins Declaration").

3. More specifically, at the outset of the arbitration, Oracle filed a motion to dismiss in accordance with the rules of the arbitral forum (JAMS) arguing that the terms of the applicable compensation agreement precluded the claims asserted by Wilson. Only one of two outcomes should have resulted from this motion to dismiss: if the motion were granted, the arbitration would be dismissed; if the motion were denied, the parties would then proceed to discovery followed by an evidentiary hearing conducted in accordance with JAMS procedures. The Arbitrator did neither. Rather, in response to Oracle's motion to dismiss, she denied the motion *and simultaneously issued a Final Award against Oracle*, relying on extra-contractual parol evidence (including unsworn oral statements Wilson made during the oral argument on Oracle's motion to dismiss) to which Oracle had no opportunity to respond. This constitutes grounds for vacatur under the FAA, 9 U.S.C. § 10(a)(3).

4. Separate from these procedural defects and the failure to afford Oracle even minimal due process, the Award refused to apply a contract term because, in the Arbitrator's view, it was "draconian" and "manifestly unfair." She neither interpreted nor applied a contract term; rather, she re-wrote the parties' contract by striking a contractual term that, in her opinion, was unfair. In so doing, the Arbitrator manifestly disregarded the terms of the parties' agreement, which constitutes independent grounds for vacatur under the principle articulated by the Second Circuit in *Yusuf Ahmed Alghanim & Sons v. Toys "R" Us, Inc.*, 126 F.3d 15, 25 (2d Cir. 1997) and its progeny.

PARTIES

5. Oracle is a corporation organized under the laws of the State of Delaware. Its principle place of business is located in Redwood Shores, California.

6. Wilson is an Oracle employee. Upon information and belief, is domiciled in Westchester County, New York State, within the Southern District of New York.

JURISDICTION AND VENUE

7. This Court has subject-matter jurisdiction based on the diversity of citizenship of the parties, as Petitioner is a citizen of Delaware and California, and Respondent is domiciled in the State of New York, and the amount in controversy exceeds $75,000. 28 U.S.C. § 1332(a)(1).

8. Venue is proper in the Southern District of New York because a substantial portion of the events giving rise to Petitioner's claims, and the underlying arbitration filing and award were made in this District. 9 U.S.C. § 10.

FACTUAL BACKGROUND

9. At all relevant times, Oracle employed Wilson as a salesperson. In this positon, she sold Oracle software products and services to Oracle business customers.

10. In connection with her employment with Oracle, Wilson signed an Employment Agreement & Mutual Agreement to Arbitrate (the "Arbitration Agreement") (attached to the Collins Declaration as Exhibit 1). With certain exceptions not relevant here, the Arbitration Agreement requires Wilson to submit all "claims arising out of or related to your Oracle employment" to arbitration.

11. The Arbitration Agreement further provides that "The arbitration proceedings shall be conducted pursuant to the Federal Arbitration Act, and in accordance with . . . the Employment Arbitration Rules and Procedures adopted by Judicial Arbitration & Mediation Services ('JAMS')."

12. On or about December 2015, Wilson commenced an arbitration proceeding against Oracle with JAMS in accordance with the Arbitration Agreement. On or about April 18, 2016, Wilson submitted a Statement of Claim in the arbitration proceeding, alleging causes of

action for breach of contract and breach of the covenant of good faith and fair dealing based on Oracle's alleged failure to pay her the full amount of commissions on a sale to Oracle client Pearson, Inc. to which Wilson claimed she was contractually entitled (attached to the Collins Declaration as Exhibit 2).

13. On May 20, 2016, Oracle filed in the arbitration a Motion to Dismiss Based on Express Contractual Terms, pursuant to Rule 18 of JAMS's Employment Arbitration Rules and Procedures, which permits, upon notice to the parties, summary disposition of a claim or issue. (Attached to the Collins Declaration are copies of Oracle's Motion to Dismiss (Exhibit 3), Wilson's Opposition to the Dismissal Request of Oracle (Exhibit 4), and Oracle's Reply in Support of its Motion to Dismiss (Exhibit 5).

14. Oracle's Motion to Dismiss argued that Wilson's commissions on the sale to Pearson, Inc. were properly calculated according to the terms of her Individualized Compensation Plan – in particular, in accordance with the following language in that Plan: "Commission for any sales credit from a single customer in excess of 250% of quota in the given fiscal year will be calculated at 0.2% of the tier 1 rate" (the "Single Customer Provision"). The gravamen of Oracle's motion was that this contractual language, on its face and without resort to parol evidence, precluded Wilson's claims in the arbitration as a matter of law.

15. In opposition to Oracle's motion, Wilson argued that the Single Customer Provision did not apply because "1) Pearson is not a single customer, for purposes of these transactions; 2) Oracle can show no quota at all, and therefore no limit to commissions on Sales Credit exceeding 250% of that non-existent quota; and 3) the term 'tier 1 rate' is, at best ambiguous, and would require parol [evidence] for construction, if it is applicable at all." (Collins Declaration, Ex. 4, p. 3). Although Wilson requested a summary award in her favor

based on these three discrete contract interpretation arguments, as explained more fully below, the Arbitrator did not adopt any of them in the Award.

16. On August 30, 2016, the Arbitrator heard oral argument on Oracle's Motion to Dismiss. Several days before the oral argument, Wilson's counsel asked the Arbitrator to compel witnesses to testify at the oral argument. The Arbitrator denied this request, ruling that she would hear argument from attorneys at the oral argument, but that no fact witnesses would testify. She further explained that, if she denied the motion, an evidentiary hearing would then be scheduled at which witnesses could testify.

17. Nevertheless, at the oral argument, the Arbitrator asked questions of Wilson, who attended the argument. Oracle had no advance notice that, contrary to her ruling a few days earlier, the Arbitrator was going to hear unsworn testimony from Wilson at the oral argument. During a subsequent conference call with the Arbitrator, Oracle reiterated the point of its Motion to Dismiss – that the express language of Wilson's Individualized Compensation Plan precluded her breach of contract claim, as a matter of law, and that parol evidence could not vary the express contract terms. Oracle chose not to cross examine Wilson, and allowed the Arbitrator to consider Wilson's unsworn statements at the oral argument for purposes of deciding whether there was an issue of fact warranting denial of Oracle's Motion to Dismiss. Yet, Oracle never waived its right to an evidentiary hearing in the event its motion were denied.

THE ARBITRATION AWARD

18. On November 1, 2016, JAMS electronically served the parties with the Arbitrator's Award, which is attached to the Collins Declaration as Exhibit 6 and hereto as Appendix A). The Award denied Oracle's motion to dismiss, but simultaneously ruled in Wilson's favor on the merits of her claims, and did so without permitting discovery or

conducting an evidentiary hearing. Importantly, the Arbitrator did not rule in Wilson's favor based on any of the three contract interpretation arguments Wilson made in opposition to Oracle's Motion to Dismiss. Rather, in ruling against Oracle, the Arbitrator did not interpret, but rather effectively struck, a contractual term (the Single Customer Provision) she considered unfair: "I find it would be manifestly unfair to apply the draconian 'over 250% quota rule' and I will not do so." (Award, p. 4).

19. Especially problematic, the Award found that Oracle's denial of Wilson's request for an exception to the Single Customer Provision (via a "CERT application") was "incompressible and contrary to rational business practices" without hearing evidence from Oracle as to why it denied Wilson's application. Moreover, she did so despite Wilson's acknowledgement, in her opposition brief, that this claim "probably requires hearing, and that Oracle, if it chooses to do so, will be entitled to present fact witnesses as to its rejection of the application." Nevertheless, the Arbitrator ruled in Wilson's favor without conducting an evidentiary hearing.

20. In sum, the following is evident from the face of the Award:

a. The Award was issued in response to Oracle's "Motion to Dismiss." (Award, p. 2).

b. The Arbitrator asked questions of Wilson during the oral argument on Oracle's Motion to Dismiss, because Wilson happened to be present at the oral argument, and then considered Wilson's unsworn responses in issuing the Award: "When I inquired of Ms. Wilson on the oral argument of Respondent's motion to dismiss why she didn't split the sale into two separate parts . . . ." (Award, p. 3).

c. The Arbitrator concluded that Wilson "was entitled to rely on the assurances and guidance of her supervisors and should not be penalized for doing so" without affording Oracle the opportunity to present evidence regarding the purported "assurances and guidance." The Arbitrator only considered Wilson's unrebutted statement about those "assurances and guidance" at the oral argument. (Award, p. 3).

d. The Arbitrator found it "incomprehensible and contrary to rational business practices" for Oracle's management to have denied Wilson's request for an exception to the Single Customer Provision (the CERT application) without hearing testimony from Oracle witnesses as to why the application was denied. (Award, p. 4).

21. Separate from these procedural defects and failure to afford Oracle even minimal due process, the Award refused to apply a contract term (the Single Customer Provision) because, in the Arbitrator's view, it would be "manifestly unfair" to do so. (Award, p. 4). Significantly, in the Award, the Arbitrator did not adopt any of the three interpretive arguments asserted by Wilson in opposition to Oracle's Motion to Dismiss – she rejected one and ignored the other two. Rather, she accepted Oracle's interpretation of the Single Customer Provision, but refused to apply it because, in her view, it was "draconian" and "manifestly unfair." Thus, the Arbitrator effectively re-wrote the parties' contract to strike a provision governing the calculation of commissions that she viewed as unfair, reaching this conclusion by considering evidence outside of the four corners of the contract.

THE GROUNDS ON WHICH THE AWARD SHOULD BE VACATED

22. Section 10 of the FAA warrants vacatur of an arbitration award "where the arbitrators are guilty of misconduct . . . in refusing to hear evidence pertinent and material to the controversy." 9 U.S.C. § 10(a)(3). In addition, Rule 17 of JAMS Employment Arbitration Rules and Procedures provides for the exchange of information, in discovery, prior to adjudication of an arbitration dispute. (Collins Decl. Ex. 7). Rule 22 of JAMS Employment Arbitration Rules and Procedures provides for an evidentiary hearing at which "The Arbitrator shall determine the order of proof, which will generally be similar to that of a court trial." (Collins Decl. Ex. 8). Rule 22(d) further provided that "The Arbitrator shall consider evidence that he or she finds relevant and material to the dispute, giving the evidence such weight as is appropriate [and] may be guided in that determination by principles contained in the Federal Rules of Evidence or any other applicable rules of evidence." It also provides that "The Arbitrator may limit testimony to exclude evidence that would be immaterial or unduly repetitive, *provided that all Parties are afforded the opportunity to present material and relevant evidence*" (Id. (emphasis added)). These are the rules that that the parties agreed to in the Arbitration Agreement.

23. As explained above, the Arbitrator issued the Award in Wilson's favor in response to Oracle's Motion to Dismiss, without allowing for discovery or conducting an evidentiary hearing, and without allowing Oracle the ability to submit evidence to rebut the extra-contractual evidence on which the Arbitrator based the Award, including, but not only, the purported "assurances and guidance" Wilson claimed she received from Oracle supervisors. This conduct violated Rules 17 and 22 of JAMS Employment Arbitration Rules and Procedures because the Arbitrator did not permit the exchange of information in discovery, did not conduct an evidentiary hearing, and did not afford Oracle "the opportunity to present material and

relevant evidence." It also constitutes grounds on which to vacate the Award under the FAA, because the Arbitrator refused "to hear evidence pertinent and material to the controversy." 9 U.S.C. § 10(a)(3).

24. In addition, an arbitration award adjudicating a breach of contract claim may be vacated for "manifest disregard" of the terms of the contract. *See Yusuf Ahmed Alghanim & Sons v. Toys "R" Us, Inc.*, 126 F.3d 15, 25 (2d Cir. 1997). By refusing to enforce the "Single Customer Provision" in the applicable contract because she found it to be, in her view, "draconian" and "manifestly unfair," the Arbitrator manifestly disregarded the terms of the contract, warranting vacatur under the principle articulated by the Second Circuit in *Yusuf Ahmed Alghanim & Sons* and its progeny. *See also Stolt-Nielson S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 671 (2010) (arbitration award may be vacated where the arbitrator "strays from interpretation and application of the agreement and effectively dispenses with his own brand of industrial justice").

25. The Award has not been confirmed, modified or corrected as prescribed in 9 U.S.C. §§ 9 and 11.

26. The Petition is brought within three months, and within 90 days, after the issuance of the Award.

27. No previous application has been made to vacate or confirm the Award.

WHEREFORE, Petitioner respectfully requests the Court:

(a) Vacate the Award;

(b) Remand the case to JAMS, for assignment to a different arbitrator than the one who issued the Award, for further proceedings, including discovery and an

evidentiary hearing on the merits of the claims asserted in the Statement of Claim; and

(c) Granting such other relief as the Court deems just and proper.

New York, New York
January 25, 2017

Respectfully submitted,

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By: *s/ Christopher J. Collins*

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CERTIFICATE OF SERVICE

I, Christopher J. Collins, hereby certify that on the date set forth below I caused a true and correct copy of the foregoing Petition to be served on Respondent's counsel of record in the Arbitration that is the subject of this Petition via email and regular first class:

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914-907-2234
Attorneys for Respondent

New York, New York
January 25, 2017

s/Christopher J. Collins