USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 11/18/09

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA.,

Petitioner,

-against-

ODYSSEY AMERICA REINSURANCE CORP.,

Respondent.

----------X

05 Cv. 7539 (DAB)
MEMORANDUM & ORDER

DEBORAH A. BATTS, United States District Judge.

Petitioner National Union Fire Insurance Company of Pittsburgh, PA. moves to vacate a supplemental arbitration award of attorneys' fees to Respondent Odyssey America Reinsurance Corporation. Respondent cross-moves to request attorneys' fees for its defense of the instant motion. For the following reasons, both motions are DENIED.

I. BACKGROUND

On July 1, 1997, American International Group, Inc. ("AIG") affiliates and subsidiaries, National Union Fire Insurance Co. ("National Union") and Starr Excess Liability Insurance Co. ("Starr"),[1] entered into a reinsurance contract (the "Treaty")[2]

---

[1] Starr was acquired by National Union on August 1, 1998. (Petitioner's Prehearing Brief, Pet's Mem., Ex. H-1 at 7.) Starr is also reinsured by National Union. (Id.)

[2] "Treaty" is a shorthand title adopted by both National Union and Odyssey. The Treaty's actual title is "Miscellaneous Errors and Omissions Excess of Loss Reinsurance Contract." (Pet's Mem., Ex. A-1.) (See also Pet's Mem. at 2 & Resp's Mem. at

with Odyssey America Reinsurance Corp. ("Odyssey"). (See the Treaty, Pet's Mem., Ex. A-1.) Under the Treaty, after an initial $5,000.000.00 paid by National Union, Odyssey would reinsure up to 19% of National Union's remaining ultimate net losses, up to $20,000,000.00 per insured, per year. (Id.) The Treaty defined ultimate net loss as "losses sustained by [National Union]" minus any recoveries. (Id.). The Treaty further states that, "[a]ll disputes or differences arising out of the interpretation of this Contract shall be submitted to [arbitration]". (Id.) The Treaty provides that, "[t]he arbitration proceeding shall take place in New York, New York" and "[t]he arbitrators and umpire are relieved from all judicial formality and may abstain from the strict rules of the law; however, punitive damages shall not be awarded. They shall settle any dispute under the Contract according to an equitable rather than a strict legal interpretation of its terms". (Id.)

The Treaty's reinsurance coverage included a malpractice insurance policy issued by National Union and Starr to Towers, Perrin, Forster & Crosby, Inc. ("Towers Perrin"), an actuarial consulting firm. (Pet's Mem. at 3; Resp's Mem. at 3.) During January of 2001, Towers Perrin's pension fund client, the Los

---

3.) The Treaty was originally a contract between National Union, Starr, and TIG Reinsurance Company. However, TIG was acquired by Odyssey. (Pet's Mem. at 2.)

Angeles County Employees Retirement Association ("LACERA"), brought a $528,000,000.00 malpractice suit alleging that Towers Perrin made two calculation errors while acting as LACERA's actuary which resulted in an under-estimation of projected liabilities. (Pet's Mem., Ex. H-1 at 4-5.) In November, 2002, following the denial of a motion for summary judgment by Towers Perrin, LACERA and Towers Perrin pursued settlement. (Id.) On January 29, 2003, LACERA made a $151,900,000.00 settlement demand. (Id. at 6.)

Facing "a potentially firm-destroying judgment at trial", Towers Perrin began negotiating a structure for paying LACERA's settlement demand with its insurers, National Union and Starr (Resp's Mem. at 6; Pet's Mem., Ex. H-1 at 5-6), and National Union retained counsel to investigate LACERA's claim against Towers Perrin." (Resp's Mem. at 3-4.) Based on its investigation, National Union notified Towers Perrin that National Union had a "known loss" defense which might permit denial of coverage for the LACERA settlement. (Resp's Mem. at 4; Balmuth Email, Resp's Mem., Ex. 76; Settlement Proposal Letter, Resp's Mem., Ex. 89.)

On April 11, 2003, National Union, Starr, and Towers Perrin formed an agreement (the "Agreement") in which National Union and Starr would pay $30,000,000.00 and $25,000,000.00 towards the

LACERA settlement, respectively. (Agreement, Pet's Mem., Ex. B at 2.) The Agreement also stipulated that National Union and Starr would insure Towers Perrin from July 1, 2002 through July 1, 2005, and that Towers Perrin would pay a total of $12,900,00.00 in annual insurance premiums through July 2004.[3] (Pet's Mem., Ex. B at 5-6.) Towers Perrin also agreed to "pay a one-time additional premium" of $15,000,000.00 which could be characterized, upon Towers Perrin's option, as made to National Union or AIG and Starr. (Id. at 6.) According to Odyssey, $12,000,000.00 of that additional premium went to National Union. (Prehearing Brief of Odyssey America Reinsurance Corporation, Pet's Mem., Ex. H-2 at 23, 31.) Thereafter, with National Union and Starr's approval, Towers Perrin and LACERA settled for $150,000,000.00 on March 20, 2003. (Pet's Mem., Ex. H-1 at 7.)

Pursuant to the Treaty's requirement that Odyssey reinsure National Union for 19% of National Union's ultimate net losses up to $20,000,000.00 - - on April 29, 2003, National Union billed Odyssey for $3,800,000.00 (the "bill"). (Guy Carpenter & Co.

---

[3] The annual insurance premium option specifically provided that the following payments would be made: $4,200,000.00 upon execution of the Agreements to provide coverage for July 1, 2002 through July 1, 2003; $4,200,000.00 by July 16, 2003 to provide coverage for July 1, 2003 through July 1, 2004 and $4,500,000.00 by July 16, 2004 to provide coverage for July 1, 2004 through July 1, 2005. (Pet's Mem., Ex. B at 5-6.) Alternatively, Towers Perrin had the option of making a one-time premium payment of $12,110,000.00 upon execution of the Agreement. (Id.)

Invoice, Resp's Mem., Ex. 142.) National Union asserts that it paid a total of $55,000,000.00 toward the LACERA settlement - - $30,000,000.00 for its own coverage under the Agreement and, as Starr's reinsurer,[4] $25,000,000.00 for Starr's coverage. (Pet's Mem. at 3.) As a result, "[N]ational Union billed Odyssey for $3,800,000.00, Odyssey's 19% share of a full limits loss of $20,000,000.00 [under] the [T]reaty." (Resp's Mem. at 4.)

After receiving the bill, Odyssey "asked to review the files relevant to [National Union's reinsurance] claim" in order to validate the bill. (Resp's Mem. at 9; Pet's Mem., Ex. H-2 at 16.) "On June 12, 2003, Odyssey's claim handler reviewed [National Union's] files and discovered a draft of the Agreement." (Resp's Mem. at 9; Pet's Mem., Ex. H-2 at 16.) Thereafter, a dispute arose between National Union and Odyssey regarding what amount Odyssey should have been billed.

National Union contends that it did not deduct the payment it received from Towers Perrin because National Union concluded that the payment was ". . . additional premium for providing . . . going forward coverage over three years." (Pet's Mem. at 5.) In contrast, Odyssey asserts that "National Union . . . improperly inflated its bill to Odyssey for the LACERA loss by

---

[4] "Pursuant to a Quota Share Reinsurance Treaty between Starr and National Union . . ., National Union agreed to reinsure Starr for [l]osses paid under policies issued by Starr." (Pet's Mem., Ex. H-1 at 7.)

failing to offset" Towers Perrin's $12,000,000.00 payment to National Union. (Resp's Mem. at 4; see also Resp's Mem. at 9.) National Union did not respond to Odyssey's request for further information, (Resp's Mem. at 9-10; Pet's Mem., Ex. H-2 at 17), and instead invited Odyssey to a meeting to discuss the Towers Perrin claim. (Resp's Mem. at 10; Pet's Mem., Ex. H-2 at 18.) At the August 27, 2003 meeting, Odyssey requested information regarding the Agreement and, according to Odyssey, none was given. (Resp's Mem. at 10; Wacek Letter, Resp's Mem., Ex. 160.)

On January 20, 2004, National Union served Odyssey with an arbitration demand. (Pet's Mem. at 4.) On April 6, 2004, Odyssey notified National Union that it had seen a draft of the Agreement. (Resp's Mem. at 10; Rubin Letter, Resp's Mem., Ex. 169.) Then, in a letter dated April 29, 2004, National Union acknowledged the Agreement's existence, and stated that the Agreement was confidential information that required Towers Perrin's approval before being disclosed to Odyssey. (Resp's Mem. at 10; Keogh Letter, Resp's Mem., Ex. 171.)

An arbitration hearing was held between April 4 and April 8, 2005 (the "Hearing") in order to determine the amount of losses, if any, for which the Treaty required Odyssey to reimburse National Union. (Resp's Mem. at 12.) The Hearing included pre-hearing brief submissions, testimony from eight witnesses, ten

deposition submissions, and over 200 exhibits. (Resp's Mem. at 12.)

In its prehearing Brief, Odyssey asserted that National Union attempted to hide its $12,000,000.00 payment from Towers Perrin, that National Union breached its contractual duty of good faith by overbilling Odyssey, and that Odyssey should be awarded attorneys' fees covering its arbitration costs, "with the exception of those costs that were required to be shared under the arbitration agreement." (Id.; See also Pet's Mem., Ex. H-2 at 2.) In National Union's Prehearing Reply Brief, it asserted that Odyssey sought unsubstantiated "punitive damages in the form of a request to get out of paying millions of dollars it had been contractually obligated to pay . . . plus attorneys' fees." (Petitioners' Prehearing Reply Brief, Pet's Mem., Ex. H-3 at 14.)

After the hearing ended on April 8, 2005, "the Panel deliberated" and, on April 12, 2005, issued a ruling in Odyssey's favor, providing National Union with an award of $2,470,000.00. (Resp's Mem. at 12; Final Award, Pet's Mem., Ex. K.) The Panel also ordered that (1) National Union "reimburse [Odyssey] for its legal fees and costs expended during . . . arbitration," (2) Odyssey "submit its statement of legal fees and costs to National Union and the Panel," and (3) National Union raise any objections

to Odyssey's statment of legal fees and costs. (Pet's Mem., Ex. K.)

On April 27, 2005 Odyssey submitted a Statement of Fees and Costs for $702,901.00" (the "Fee Statement"). (Resp's Mem. at 12; Pet's Mem. at 10; Odyssey's Statement of Fees and Costs, Pet's Mem., Ex. L.) Odyssey's Fees Statement included a letter from Odyssey's counsel, Butler Rubin, generally describing the legal work performed for arbitration and resultant expenses, a spreadsheet showing Butler Rubin's document and deposition discovery, and invoices of Butler Rubin's legal work. (Pet's Mem., Ex. L.) Rubin's invoices described legal work according to American Bar Association activity codes - - such as, "review/analyze" or "draft/revise" - - but all narrative descriptions were redacted. (Id.)

Butler Rubin's letter explained that the narrative invoice descriptions were redacted because "Buter Rubin's invoices reveal how Butler Rubin and Odyssey prepared the case for trial and are therefore privileged." (Id.) In addition, Butler Rubin stated that, "because Butler Rubin and [opposing counsel represent] Odyssey and [National Union], respectively, in other arbitrations, production of Butler Rubin's complete invoices . . . would provide [National Union] with unfair insight into Butler

Rubin/Odyssey's thought process and method of case preparation." (Id.)

On May, 12, 2005, National Union submitted [a] Memorandum in Opposition to Odyssey's Statement of Fees and Costs ('Opposition to Fee Statement'). (National Union's Memorandum in Opposition to Odyssey's Statement of Fees and Costs, Pet's Mem., Ex. M-1.) In its Opposition to Fee Statement, National Union asserted that an "attorneys' fee award constituted an impermissible award of punitive damages" under the Treaty, New York law, and federal law. (Pet's Mem., Ex. M-1 at 3-4.). National Union also asserted that (1) Odyssey's requested attorneys' fees were punitive damages that are impermissible under the Treaty, (2) Odyssey did not prevail at the hearing and was, therefore, not entitled to attorneys' fees under both New York and federal law, and (3) Odyssey could not have received attorneys' fees because, under New York and federal law, attorneys' fees must be supported by detailed time records. (Pet's Mem. at 11.)

On May 19, 2005, "Odyssey submitted a Reply in Support of Statement of Fees and Costs . . ." which included an offer "to provide the Panel with unredacted invoices for an in camera [review]." (Odyssey's Reply in Support of Its Statement of Fees and Costs, Resp's Mem., Ex. U at 6, n.4.) The Panel ordered Odyssey to provide invoices for in camera review and, on June 21,

2005, Odyssey complied. (Email From Arbitrator Tobin, Pet's Mem., Ex. N-2; Butler Rubin Cover Letter, Resp's Mem., Ex. X.)

On June 28, 2005, the Panel issued a $702,091.00 supplemental award for attorneys' fees and costs to Odyssey "less 50% of the amounts billed for travel time previously billed at 100% of attorneys' billing rates." (Pet's Mem. at 12; Resp's Mem. at 14.) In dissent, Arbitrator Ronald S. Gass stated that (1) the Panel did not have the power to award attorneys' fees, (2) Odyssey and National Union did not agree to submit the issue of attorneys' fees to the Panel, (3) the Panel was awarding punitive damages which were impermissible under the Treaty, and (4) there was a sufficient connection to New York to justify the application of New York procedural and substantive law which, if applied, would make an award for attorneys' fees impermissible (Supplemental Order, Pet's Mem., Ex. O.)

On "the same day that the supplemental award was issued, National Union sent the Panel a letter, asserting that National Union had a due process right to obtain Odyssey's unredacted invoices "to verify the accuracy, reasonableness and necessity of the attorneys' fees." (Kushner Letter, Pet's Mem., Ex. P-1.) Similarly, on June 30, 2005, National Union sent the Panel an email noting National Union's continued objections to not being provided access to Odyssey's unredacted invoices. (Kushner

Email, Pet's Mem., Ex. P-3.) Despite such objections, the Panel denied National Union's requests. (Supplemental Order No. 2, Pet's Mem., Ex. R.)

On July 8, 2005, Odyssey submitted a $682,938.85 amended invoice that, as ordered, incorporated a 50% reduction in Odyssey's billed travel costs. (Odyssey's Amended Invoice, Pet's Mem., Ex. Q.) National Union paid Odyssey the $682,938.85 supplemental award on August 9, 2005. (Resp's Mem. at 14.) On August 25, 2005, National Union filed the instant Motion to vacate the Panel's Supplemental Award with this Court. (Resp's Mem. at 14.)

II. DISCUSSION

A. Standard of Review

The Second Circuit has established that an arbitrator's award will be given great deference. Duferco Intl. Steel Trading v. T. Klaveness Shipping A/S, 333 F.3d 383, 388 (2d Cir. 2003). An arbitral award will not be vacated "merely because [the court] is convinced that the arbitration panel made the wrong call on the law." Wallace v. Buttar, 378 F.3d 182, 190 (2d Cir. 2004). The court should enforce the award, despite any "disagreement with it on the merits, if there is a barely colorable justification for the outcome reached." Id. (internal quotation

marks omitted). The very limited review of arbitral awards is based on the belief that "[t]o interfere with this process would frustrate the intent of the parties, and thwart the usefulness of arbitration." Duferco, 333 F.3d at 389. The Federal Arbitration Act provides four bases on which a court may vacate an arbitral award,

> (1) where the award was procured by corruption, fraud, or undue means;
> (2) where there was evident partiality or corruption in the arbitrators. . .;
> (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing. . . 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).

In addition to the statutory bases, a court may also vacate an award when it "exhibits a 'manifest disregard' of the law." Stolt Nielsen SA v. AnimalFeeds Intl. Corp., 548 F.3d 85, 91 (2d Cir. 2008).

B. 9 U.S.C. §10(a)(4)

A court may overturn an arbitral award, when "the arbitrators exceeded their powers". 9 U.S.C. §10(a)(4) See also Banco de Seguros, 344 F.3d 255, 262 (2d Cir. 2003) (same). The

principal question for the court to consider in making this determination is "whether the arbitrator's award draws its essence from the agreement to arbitrate. . ." Reliastar Life Ins. Co. v. EMC Nat'l Life Co., 564 F.3d 81, 85 (2d Cir. 2009) (internal quotation marks omitted).

In Reliastar, the Second Circuit overruled a District Court's judgment that had vacated a portion of an arbitration award due to its finding that the inclusion of attorneys' fees in the award exceeded the arbitrator's authority. The Second Circuit overturned the decision below despite the fact that the arbitration agreement explicitly stated that each party was to bear the expense of its own "'outside attorneys' fees". Id. at 84. In determining that the arbitrators were within their authority in awarding attorneys' fees, the court emphasized the broad language encompassed in the agreement to arbitrate. Id. at 86 ("a broad arbitration clause, such as the one in this case, confers inherent authority on arbitrators to sanction a party . . . and that such sanction may include an award of attorneys' or arbitrators' fees") (internal citations omitted). The language in the Reliastar agreement called for arbitration, "[i]n the event of any disputes or differences arising . . . between the parties with reference to any transactions under or relating in any way to this Agreement." Id. at 84.

The Treaty in the instant case contains similarly broad language, providing that "[a]ll disputes or differences arising out of the interpretation of this Contract shall be submitted to [arbitration]." (Ex. A-1 at 14.) However, unlike the agreement in Reliastar, the Treaty does not contain a provision stipulating that each party is to bear the expense of its own outside counsel. A fortiori in this matter, where there is no such provision, the arbitrator's award of attorneys' fees "drew its essence" from the broad language of the agreement to arbitrate. Accordingly, the arbitrators here did not exceed their authority in awarding attorneys' fees to Odyssey.

C. Purported Putativeness and Excessiveness of the Award

National Union further contends that because "there is no contractual basis for the award of attorneys' fees, the award must necessarily be based on a finding of punitive damages." (Pet's Mem. at 18.) Nevertheless, under similar circumstances the Second Circuit has determined that attorneys' fees awarded in an arbitration proceeding were more properly characterized as compensatory damages. Synergy Gas Co. v. Sasso, 853 F.2d 59, (2d Cir. 1988) (finding that attorneys' fees issued in arbitration, even where arbitrator found party to have acted in bad faith, were not punitive damages prohibited under New York state law);

Americredit Fin. Servs. v. Oxford Mgmt. Servs., 627 F. Supp. 2d 85, 96 (E.D.N.Y. 2008) (citing to Synergy for the same proposition). Here, the arbitration panel made no finding of bad faith. (Final Award, Pet's Mem., Ex. K.) Further, National Union's contention that the Court should infer that the fees were punitive from the mere fact that they were awarded despite National Union's supposed success on the merits, (Pet's Mem. at 17-19), is unavailing. Here, the $2,470,000.00 was the precise amount that Odyssey would have paid under the Treaty had the $12,000,000.00 portion of the premium been deducted from the $30,000,000.00 insurance payments of National Union to Towers Perrin.[5] Accordingly, the arbitration panel clearly agreed with Odyssey that the $12,000,000 premium should have been deducted from the $30,000,000.00 insurance loss, and thus it was Odyssey and not National Union that prevailed on the issue that was the primary basis for the dispute.

National Union also argues that the award was patently oppressive and excessive. (Pet's Mem. at 19.) National Union bases this assertion on Sawtelle v. Waddell & Reed, Inc., 754 N.Y.S.2d 264 (N.Y. App. Div. 1st Dep't 2003) (reducing an award of punitive damages for lacking rational relation to compensatory

---

[5] $30 Million (loss) - $12 Million (premium) - $5 Million (retention) = $13 Million x %19 = $2.47 Million.

damages because of disproportion to potential penalties for similar misconduct). Even assuming that New York law is controlling, National Union's reliance on Sawtelle is misplaced given that the award of attorneys' fees in this matter was compensatory and not punitive.

D. Manifest Disregard of the Law

Vacation of an award based on the manifest disregard for the law standard is an extremely difficult burden for the movant to meet and occurs, "only in those exceedingly rare instances where some egregious impropriety on the part of the arbitrators is apparent." Stolt-Nielsen, 548 F.3d at 91-92 (internal quotations omitted)[6]. The Second Circuit has applied a two-prong test to establish manifest disregard for the law, looking first to ensure that the law alleged to have been disregarded was "well defined, explicit, and clearly applicable" and second, that the arbitrator was aware of the law but choose to "ignore or pay no attention to it." Westerbeke Corp. v. Daihatsu Motor Co., 304 F.3d 200, 209 (2d Cir. 2002) (internal citations omitted).

---

[6] In response to the Supreme Court's decision in Hall St. Assocs., L.L.C. v. Mattell, Inc., 552 U.S. 576 (2008), the Second Circuit has found that the manifest disregard doctrine has survived, ". . .reconceptualized as a judicial gloss on the specific grounds for vacatur enumerated in section 10 of the FAA." Stolt-Nielsen, 548 F.3d at 94.

National Union argues that the arbitral award was in manifest disregard of New York law, which does not allow an arbitrator to award attorneys' fees. N.Y. C.P.L.R. §7513 (". . . the arbitrators' expenses and fees, together with other expenses, not including attorney's fees, incurred in the conduct of arbitration, shall be paid as provided in the award.") (emphasis added). See also Kidder, Peabody & Co. v. McArtor, 637 N.Y.S.2d 99, 101 (N.Y. App. Div. 1st Dep't 1996) (". . .attorney's fees may not be recovered in an arbitration under New York law unless they are expressly provided for in the arbitration agreement.") Although the agreement to arbitrate does not contain a choice of law provision, National Union relies on dicta from a Supreme Court case to assert that New York law is controlling. (Pet's Mem. at 21); Mastrobuono v. Shearson Lehman Hutton, 514 U.S. 52, 59 (1995) ("[t]hus, if a similar contract, without a choice-of-law provision, had been signed in New York and was to be performed in New York, presumably 'the laws of the State of New York' would apply, even though the contract did not expressly so state.").

However, even if Petitioner is correct as to choice of law, which the Court need not decide, Mastrobuono shows that attorneys' fees are not precluded under New York law in a context such as this. In Mastrobuono itself, the Supreme Court held that

an arbitration panel, applying New York law pursuant to a choice of law provision, could award punitive damages even though New York law prohibited such an award. Id. at 54-55. Respondents in that case had argued that the choice of law provision, by opting for New York law, evidenced an "express agreement that punitive damages should not be awarded in the arbitration of any dispute arising under their contract." Id. at 56. However, in determining that the agreement did not preclude an award of punitive damages, the Mastrobuono Court found that the choice of law provision only applied to substantive law and not to ". . . decisional law, including that State's allocation of power between courts and arbitrators." Id. at 60. In dicta, the Court also observed that without a choice of law provision, "there would be nothing in the contract that could possibly constitute evidence of the intent to exclude punitive damages claims." Id. at 59.

While unlike Mastrobuono, the issue here is attorneys' fees rather than punitive damages, the Treaty between National Union and Odyssey contains no choice of law provision that could be construed to evidence a clear intent on the part of the parties to preclude an arbitral award of attorneys' fees. Furthermore, even if the Treaty had contained a choice of law provision designating New York law, the ability of an arbitrator to award

attorneys' fees is similarly not a matter of substantive law which would be subject to the choice of law provision, as the Second Circuit has since expanded on Mastrobuono in holding that a New York choice of law provision does not preclude an arbitral award of attorneys' fees. PaineWebber Inc. v. Bybyk, 81 F.3d 1193, 1202 (2d Cir. 1996) (citing Mastrobuono in holding that "a choice of law provision will not be construed to impose substantive restrictions on the parties' rights under the Federal Arbitration Act, including the right to arbitrate claims for attorneys' fees").[7]

Accordingly, because there is no choice of law provision here, and because Mastrobuono and Bybyk both stand for the proposition that New York law prohibiting an arbitral award of attorneys' fees is not applicable in the instant case, the law cited to by Petitioner is not "clearly applicable" and therefore the arbitrator could not have acted in manifest disregard of it.

---

[7] As with the instant case, the agreement to arbitrate in Bybyk was very broad. Id., at 1202. ("The agreement provides that 'any and all controversies' shall be submitted to arbitration; there is no express limitation with respect to attorneys' fees.").

E. 9 U.S.C. §10(a)(3)

Finally, National Union argues that because its rights were prejudiced by not having access to unredacted invoices of opposing counsel's fees, the award should be vacated. (Pet's Mem. at 24-26.) A court may vacate an arbitral award upon a finding that the arbitrators engaged in "misconduct . . . 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). In order to vacate an arbitral award on these grounds, the "misconduct must amount to a denial of fundamental fairness of the arbitration proceeding." Roche v. Local 32B-32J Service Employees Intl. Union, 755 F. Supp. 622, 624 (2d Cir. 1991) (internal quotations omitted). Furthermore, "[i]n making evidentiary determinations, an arbitrator need not follow all the niceties observed by federal courts." Tempo Shain Corp. v. Bertek, Inc., 120 F.3d 16, 20 (2d Cir. 1997) (internal quotations omitted). "[A}n arbitrator must give each of the parties to the dispute an adequate opportunity to present its evidence and argument." Id.

The decision to prevent National Union's access to unredacted invoices did not amount to a "denial of fundamental fairness". The redacted invoices containing American Bar Association activity

codes, as well as the fact that the arbitration panel conducted an in camera review of the unredacted invoices, provided National Union with "adequate opportunity to present its evidence and argument." Id. Furthermore, National Union was able to submit a Memorandum in Opposition to Odyssey's Statement of Fees and Costs, challenging the fee award on several bases, and the panel subsequently decided to reduce the award by $19,152.15. Accordingly, there is no evidence whatsoever of misconduct or misbehavior on behalf of the arbitration panel.

F. Attorneys' Fees for This Motion

"Under the prevailing American rule, in a federal action, attorney's fees cannot be recovered by the successful party in the absence of statutory authority for the award." International Chemical Workers Union, Local No. 227 v. BASF Wyandotte Corp., 774 F.2d 43, 47 (2d Cir. 1985) (citing Alyeska Pipeline Service Co. v. Wilderness Soc'y, 421 U.S. 240, 247 (U.S. 1975)). Nevertheless, "a court may award attorney's fees when the opposing counsel acts in bad faith, vexatiously, wantonly, or for oppressive reasons." 774 F.2d at 47 (quotation omitted). Although the Court finds no merit to Petitioner's claims, the actions of National Union's counsel did not reach a level of conduct sufficient to give rise to further attorneys' fees in this matter.

III. CONCLUSION

For the foregoing reasons, Plaintiff's Motion to Vacate the Supplemental Arbitration Award is DENIED. Additionally, Defendant's Cross-Motion to Award Attorneys' Fees is DENIED. The Clerk of Court is directed to CLOSE the docket in this matter.

SO ORDERED

DATED: New York, New York

November 18, 2009

Deborah A. Batts

Deborah A. Batts
United States District Judge