2015 IL App (1st) 150566-U
No. 1-15-0566
December 29, 2015

SECOND DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

FW ASSOCIATES, LLC, a Nevada limited liability company, SMART BAR USA, LLC, an Illinois limited Liability company, FW ASSOCIATES INTERNATIONAL, LLC, a Nevada limited liability company, SMART BAR INTERNATIONAL, LLC, an Illinois limited liability company, BARRY FELDMAN, and JUANITA WASSERMAN, Petitioners-Counter-Respondents-Appellees, v. WILLIAM METROPULOS, Respondent-Counter-Petitioner-Appellant.	)	Appeal from the Circuit Court Of Cook County. Nos. 14 CH 19696 The Honorable Sophia Hall, Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Justices Simon and Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court correctly dismissed a petition for confirmation and a counterpetition for partial vacation of an arbitrator's nonfinal award.

¶ 2 In the course of the arbitration of a dispute between FW Associates and William Metropulos, the arbitrator issued an "Interim Award." FW Associates filed a petition in the circuit court for confirmation of the award, and Metropulos filed a counterpetition for partial confirmation and partial vacation of the award. The circuit court dismissed both the petition and the counterpetition because the arbitrator had not entered a final award. Metropulos argues on appeal that the arbitrator had entered a final award, and that even if the award was not final, the circuit court should have reviewed it. We find that the arbitrator's award was not final, and the circuit court correctly dismissed the case. Therefore, we affirm the trial court's judgment.

¶ 3 BACKGROUND

¶ 4 In 2012, Metropulos persuaded Barry Fieldman and Juanita Wasserman to invest $3 million in an invention Metropulos sought to market. For purposes of the investment, Metropulos created two entities, one named Smart Bar USA (SB USA), and the other named Smart Bar International (SBI). SB USA would market the invention domestically and in Canada, while SBI would market the invention in other countries. Fieldman and Wasserman created two entities, one named FW Associates, LLC (FWA) and the other named FW International, LLC (FWI), to invest in SB USA and SBI, respectively. In the operating agreements for SB USA and SBI, the parties agreed that "any controversy or claim arising out of or relating to this Agreement or any alleged breach of Agreement shall be settled by arbitration in Chicago, Illinois, in accordance with the rules of the American Arbitration Association then in force."

¶ 5 The parties soon found themselves in conflict. In December 2013, SB USA filed a complaint against FWA, Fieldman and Wasserman, in an Illinois court. Also in December 2013, Metropulos filed suit against the same three defendants, in a lawsuit which was removed to federal court. In March 2014, Fieldman, Wasserman, FWA and FWI (collectively, the Claimants) filed a demand for arbitration. The Claimants sought resolution of both lawsuits, and they requested the further relief of dissolution of both SB USA and SBI. The Claimants specified that they sought to have "the Arbitrator *** retain jurisdiction *** during the dissolution process." Metropulos and SB USA agreed to orders staying proceedings on both of their complaints against the Claimants pending arbitration. Metropulos, SB USA and SBI did not object to the request for the arbitrator to retain jurisdiction throughout the dissolution process.

¶ 6 The parties presented testimony at arbitration hearings held in November 2014. On December 2, 2014, the arbitrator sent to the parties a document he titled, "Interim Award." In the document, he denied all of the claims presented by Metropulos and SB USA. He found that the Claimants had presented sufficient evidence to show grounds for dissolving SB USA and SBI.

¶ 7 The arbitrator then addressed the Claimants' request for appointment of a receiver. He said:

> "My conclusion is that the parties should try to wind up [SB USA and SBI] on their own. To aid the winding up process and prevent undue interference with it, Mr. Metropulos is hereby disassociated from [SB USA and SBI] ***.
>
> * * *

*** [The Claimants have] proven that Mr. Metropulos is guilty of a gross[] derelict[ion] of duties that has caused material and irreversible harm to the Smart Bar Entities. ***

* * *

After reviewing the Complaints in the State Court Action and the Federal Action, as well as having reviewed all the pleadings and legal memoranda in this case and considered the evidence and the arguments of counsel, it is my ruling that this arbitration has disposed of all of the claims in the State Court Action and the Federal Action.

INTERIM AWARD

For the foregoing reasons, I find in favor of Claimants and against Respondents on all of Respondents' counterclaims and any other affirmative claims. Accordingly, all of Respondents' counterclaims are hereby dismissed with prejudice.

For the foregoing reasons, I find in favor of Claimants and against Respondents on the following claims and make the following Interim Award:

1. [SBI and SB USA] are hereby dissolved and directed to wind up their affairs unless they can take advantage of the other possibilities provided under Illinois law;

2. William Metropulos is hereby disassociated from [SB USA and SBI] and removed as a manager from each company ***.

> ***
>
> All of the claims asserted in the State Court Action and the Federal Action have been resolved through this arbitration, and the parties are directed to so inform the respective courts and seek to have both lawsuits dismissed with prejudice.
>
> ***
>
> This Award fully resolves all claims and counterclaims submitted to date in this arbitration and any and all claims and counterclaims not granted herein are hereby denied.
>
> The prior sentence and anything herein to the contrary notwithstanding, I heard no evidence or argument and made no rulings as to any loans that William or Suzanne Metropulos may have made or caused to be made to either of the Smart Bar Entities and any claims, defenses or requests for relief relating to any such loans are preserved.
>
> In addition, I retain jurisdiction to hear any future claims that may arise during the dissolution and winding up process or that otherwise fall within the provisions of the Operating Agreements."

¶ 8 On December 9, 2014, the Claimants filed a petition in the circuit court for confirmation of the interim award. In his answer, Metropulos asked the court to "declare the arbitration concluded, that the designation as an 'interim' award is a misnomer, and that any retained jurisdiction by the arbitrator is improper and void." Metropulos also filed a counterpetition for enforcement of the arbitrator's award of dissolution, and correction of the award to set aside the provision for disassociating Metropulos from SB USA and SBI.

¶ 9 On February 2, 2015, Claimants filed a motion to stay proceedings in court pending the arbitrator's issuance of a final award. Metropulos responded that the arbitrator had already entered a final award, and lacked authority to retain continuing jurisdiction.

¶ 10 In an order dated March 4, 2015, the circuit court denied all pending motions and dismissed the petition and counterpetition because the arbitrator had not entered a final arbitration award. Metropulos now appeals.

¶ 11 ANALYSIS

¶ 12 Metropulos raises two arguments for reversal of the circuit court's order. First, he contends that the arbitrator entered a final arbitration award, mislabelled as an interim award, and, second, he argues that the Claimants waived any right to further arbitration by petitioning for confirmation of the interim award.

¶ 13 To address Metropulos's arguments, we note first that precedent from other states and from federal courts has particular value in arbitration cases. "[T]he Illinois Supreme Court has stated that judicial opinions from other jurisdictions are given greater than usual deference in construing the Uniform Arbitration Act since the purpose of the act is to make uniform the laws of those states which enact it. [Citation.] Because of the common origin of the federal and uniform acts, and the fact that the Illinois Uniform Arbitration Act is patterned after the Uniform Arbitration Act, we proceed to interpret our statute with the aid of decisions from other states and federal courts." *J & K Cement Construction, Inc. v. Montalbano Builders, Inc.*, 119 Ill. App. 3d 663, 668 (1983).

¶ 14 The applicable rules of the American Arbitration Association expressly provide that "[i]n addition to a final award, the arbitrator may make other decisions, including interim,

interlocutory, or partial rulings, orders, and awards." Courts have upheld arbitrators' assertion of authority to enter interim awards while retaining jurisdiction to enter a final award. See, *e.g.*, *BFN-Greeley, LLC v. Adair Group, Inc.*, 141 P.3d 937, 941 (Colo. App. 2006).

¶ 15 Usually, when an arbitrator makes "an interim ruling that does not purport to resolve finally the issues submitted to [him], judicial review is unavailable." *In re Arbitration between Michaels and Mariforum Shipping, S.A.*, 624 F.2d 411, 414 (2d Cir. 1980). The United States Court of Appeals for the Sixth Circuit collected cases concerning review of interim awards in *Savers Property & Casualty Insurance Co. v. National Union Fire Insurance Co.*, 748 F.3d 708, 717-18 (6th Cir. 2014):

> "Over the years, our court and several of our sister circuits have interpreted *** the FAA to preclude the interlocutory review of arbitration proceedings and decisions. See *Quixtar, Inc. v. Brady*, 328 Fed. Appx. 317, 320 (6th Cir. 2009) ('[C]ourts generally should not entertain interlocutory appeals from ongoing arbitration proceedings.'); see also, *e.g.*, *Blue Cross Blue Shield of Mass., Inc. v. BCS Ins. Co.*, 671 F.3d 635, 638 (7th Cir. 2011) (observing 'that judges must not intervene in pending arbitrations' and noting that '[r]eview comes at the beginning or the end, but not in the middle' of arbitration); *Gulf Guar. Life Ins. Co. v. Conn. Gen. Life Ins. Co.*, 304 F.3d 476, 488 (5th Cir. 2002) ('We find no authority under the FAA for a court to entertain such challenges [to the arbitrator selection process or the unfairness of an arbitration] prior to [the] issuance of the arbitral award.'); *Hooters of Am., Inc. v. Phillips*, 173 F.3d 933, 941 (4th Cir. 1999)

('[F]airness objections should generally be made to the arbitrator, subject only to limited post-arbitration judicial review as set forth in section 10 of the FAA.'); *LaPrade v. Kidder Peabody & Co., Inc.*, 146 F.3d 899, 903 (D.C.Cir. 1998) ('The Arbitration Act contemplates that courts should not interfere with arbitrations by making interlocutory rulings....'); *Folse v. Richard Wolf Med. Instruments Corp.*, 56 F.3d 603, 605 (5th Cir. 1995) ('By its own terms, § 10 [of the FAA] authorizes court action only after a final award is made by the arbitrator.'); [*Michaels*,] 624 F.2d 411, 414 & n. 4 (2d Cir.1980) ('Under the Federal Arbitration Act ... a district court does not have the power to review an interlocutory ruling by an arbitration panel.... Similarly, it is well established that a district court cannot entertain an attack upon the qualifications or partiality of arbitrators until after the conclusion of the arbitration and the rendition of an award.'); *Travelers Ins. Co. v. Davis*, 490 F.2d 536, 541-42 (3d Cir.1974) (same).

In addition to these textual and structural considerations, there are sound policy reasons — all of which support the purposes underlying the FAA — for generally withholding judicial review until the conclusion of an arbitration proceeding. See, e.g., *Trustmark Ins. Co. v. John Hancock Life Ins. Co.*, 631 F.3d 869, 874 (7th Cir. 2011) (observing that if parties could obtain interlocutory review of arbitral decisions, '[t]hat would be the end of arbitration as a speedy and (relatively) low-cost alternative to litigation'); *Gulf Guar. Life Ins.*, 304 F.3d at 492 ('[A] prime objective of arbitration law is to permit a just and expeditious result with a minimum amount of judicial interference ... any other such rule could spawn

> endless applications to the courts and indefinite delay....' (internal quotation marks omitted)); *Michaels*, 624 F.2d at 414 ('[A] district court should not hold itself open as an appellate tribunal during an ongoing arbitration proceeding, since applications for interlocutory relief result only in a waste of time, the interruption of the arbitration proceeding, and delaying tactics in a proceeding that is supposed to produce a speedy decision.' (Internal quotation marks and ellipsis omitted))."

¶ 16 Thus, in general, the arbitrator must reach a final decision prior to judicial review. *Konicki v. Oak Brook Racquet Club, Inc.*, 110 Ill. App. 3d 217, 222 (1982) (citing *International Harvester v. Industrial Comm.*, 71 Ill. 2d 180, 185 (1978). Courts have carved out some exceptions, allowing for judicial review of interim arbitral awards in limited circumstances. See, *e.g.*, *Hightower v. Superior Court*, 104 Cal. Rptr. 2d 209, 224-25 (Cal. App. 2001) (court reviewed interim award to determine whether to vacate injunction court imposed to facilitate the arbitration). However, courts should review nonfinal arbitration awards "only in the most extreme cases." *Aerojet-General Corp. v. American Arbitration Ass'n*, 478 F.2d 248, 251 (9th Cir. 1973).

¶ 17 For his argument that the arbitrator actually entered a final award, Metropulos relies on the arbitrator's express statement that "[t]his Award fully resolves all claims and counterclaims submitted to date in this arbitration and any and all claims and counterclaims not granted herein are hereby denied." However, the arbitrator labeled the decision an "Interim Award" and clarified that he retained jurisdiction to hear any issues arising during dissolution, or in the course of any other procedure the parties agree to use, as requested in the demand for arbitration. "[T]he arbitrator is in the best position to determine when the

award becomes final, which necessarily involves construing the parties' agreement." *Smola v. Greenleaf Orthopedic Associates, S.C.*, 2012 IL App (2d) 111277, ¶ 28. We agree with the circuit court that the arbitrator entered an interim award, not a final award.

¶ 18 Next, Metropulos argues that by filing a petition for confirmation of the interim award, the Claimants forfeited their right to further arbitration. Again we turn to American Arbitration Association rules, which provide, "[a] request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate." The request for confirmation of the interim award qualifies as a request to a judicial authority for an interim measure. Under some circumstances, a party may seek judicial review and confirmation of an interim arbitration award, even though the arbitrator retains jurisdiction to decide further issues. See *Hightower*, 104 Cal. Rptr. 2d at 224-25. Nothing in the Claimants' submissions to the court shows an intention to treat the interim award as a final award. Neither do the Claimants' submissions to the court imply an intent to forego completion of the arbitration requested in the initial demand for arbitration. We find that the Claimants have not forfeited their right to arbitrate issues left unresolved by the interim award.

¶ 19 In his reply brief, Metropulos advances an argument he did not raise in the trial court or in the initial brief on appeal. He contends that the circuit court should have reviewed the interim award despite the arbitrator's retention of jurisdiction to later enter a final award. However, Metropulos does not show any exceptional circumstances requiring the circuit court's intervention to review the nonfinal award. See *Aerojet-General*, 478 F.2d at 251; *Savers Property*, 748 F.3d at 717-18. Because Metropulos has not shown grounds for the

circuit court to review the interim award, we find that the circuit court correctly dismissed the case.

¶ 20 Finally, the Claimants ask this court to award them fees for the work of their attorneys on this appeal. The operating agreements provide that "should any litigation be commenced *** between the Members *** relating to the terms hereof, *** the party or parties prevailing in such litigation shall be entitled *** to a reasonable sum as and for its or their attorney's fees." We agree with the Claimants that they have prevailed in this appeal. As part of the review of the final award, or in a separate proceeding, the circuit court should address the Claimants' claim for fees for this appeal. See *Warren v. LeMay*, 142 Ill. App. 3d 550, 583-84 (1986).

¶ 21 CONCLUSION

¶ 22 The arbitrator entered only an interim award, not a final award, and Metropulos failed to show exceptional circumstances requiring immediate review of the interim award. Accordingly, we affirm the circuit court's order dismissing of the case.

¶ 23 Affirmed.