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District Court Vacates Award Based on Violation of FINRA Rules for Manifest Disregard of the Law

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A district court has decided against giving an arbitration panel a third chance to get it right after the court found that the panel manifestly disregarded the law in its initial and modified arbitration awards.

The arbitration was initiated after claimants lost all of the money they had put into a set of investment accounts that they had opened with respondent Interactive Brokers LLC. Claimants alleged, among other things, that Interactive should not have allowed them to engage in the types of trades they did using the portfolio margin account they had with Interactive, as this violated FINRA Rule 4210. The panel issued an arbitration award in claimants' favor, and claimants moved for confirmation. The court declined to do so, however, finding that it could not make sense of the award of compensatory damages, in part because the award stated that "[a]ny and all claims for relief not specifically addressed herein . . . are denied," without explaining which claims had been specifically addressed. The court remanded the case to the arbitration panel with instructions to clarify the basis for its award.

The panel then issued a second award, and once again claimants moved to have it confirmed, while Interactive moved to have it vacated. The court found that the panel had done little to clarify its original award and focused on the panel's emphasis on Interactive's alleged violations of FINRA Rule 4210, which the court determined was the predicate for finding Interactive liable and denying its counterclaim.

Interactive argued that this reliance on Rule 4210 met the stringent standards for vacating an arbitral award based on manifest disregard for the law. Under Fourth Circuit precedent, this requires that the law at issue be “clearly defined and . . . not subject to reasonable debate, and that arbitrator was “aware of the law, understood it correctly, found it applicable to the case before [him], and yet chose to ignore it in propounding [his] decision.” The court found this standard was met based on the following:

- it is clearly established that there is no private right of action for violations of FINRA Rules;
- based on Interactive’s briefs explaining this law and the panel’s own references to that briefing, the panel was aware of that law;
- the court’s own instructions to the panel to make clear the predicate for liability, to which the panel responded by further emphasize the alleged violation of FINRA Rule 4210, established that the panel understood the law, found it applicable to the case, and chose to ignore it.

The court thus vacated the award and reinstated Interactive’s counterclaims. Finding that the panel had both flagrantly ignored the law and struggled to follow the court’s prior order, the court remanded the matter to a new panel of arbitrators for reconsideration of Interactive’s counterclaims.

Interactive Brokers LLC v. Saroop et al., Civil Action No. 3:17-cv-127 (E.D. Va. Dec. 19, 2018)