UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JAMES CHELMOWSKI,	)	
	)	
Plaintiff,	)	No. 15 C 10980
	)	
v.	)	
	)	Judge Edmond E. Chang
AT&T MOBILITY, LLC,	)	
	)	
Defendant.	)	

ORDER

Invoking the Federal Arbitration Act, James Chelmowski seeks to vacate an arbitration award that rejected his claims and found for AT&T Mobility, LLC.[1] Chelmowski argues that the arbitration was unfair because the Arbitrator was biased against him, committed misconduct, and exceeded her power. Chelmowski relies on the fact that the Arbitrator stayed discovery and evaluated Chelmowski's claims on briefing alone, instead of holding an evidentiary hearing. AT&T has filed a dueling motion to confirm the award. For the reasons explained below, the Court confirms the arbitration award, because the Arbitrator acted well within her legitimate authority.

I. Background

In February 2013, James Chelmowski, an Illinois resident and former AT&T customer for seventeen years, initiated an arbitration against AT&T with the American Arbitration Association, pursuant to his cell phone contract. R. 3-1,

[1]The Court has subject matter jurisdiction over this case under 28 U.S.C. § 1332 and 9 U.S.C. § 1 *et seq*.

Compl. ¶¶ 1-3.[2] (The Court will refer to this arbitration as *Chelmowski I*.) Chelmowski asserted claims for breach of contract, conversion, fraud, intentional infliction of emotional distress, and regulatory violations after AT&T allegedly failed to port Chelmowski's telephone number to another carrier and deleted some of his voicemails. *See Chelmowski v. AT&T Mobility LLC*, 2015 WL 231811, at *1 (N.D. Ill. Jan. 15, 2015), *aff'd*, 615 Fed. App'x 380 (7th Cir. 2015). AT&T also asserted a counterclaim to recover unpaid charges. *Id.* On July 14, 2014, the AAA Arbitrator denied both parties' claims after holding a hearing and determining that neither side had met its burden of proof. *Id.*; R. 3-1, Compl., Exh. 2 at 57, 7/14/14 Award. The district court confirmed this award and the Seventh Circuit affirmed that decision. *Chelmowski*, 2015 WL 231811, at *1; *Chelmowski* 615 Fed. App'x at 380.

On November 24, 2014, Chelmowski filed another arbitration demand against AT&T. Compl. ¶ 3; R. 3-1, Compl., Exh. 1 at 34, Pl.'s 11/24/14 Demand. This second arbitration (call it *Chelmowski II* for convenience's sake) is the proceeding at issue in these motions. In this second demand (also filed with the AAA), Chelmowski asserted claims for fraud and for violations of various consumer protection statutes, such as the Fair Credit Reporting Act, Fair Debt Collection Practices Act, and the Illinois Fraud and Deception Business Act. Pl.'s 11/24/15 Demand. Four months later, on March 16, 2015, AT&T answered the demand. R. 3-1, Compl., Exh. 9 at 176, Def.'s 3/16/15 Answer. AT&T asserted that the dispute in

[2]Citations to the record are noted as "R." followed by the docket number and the page or paragraph number.

Chelmowski II was based on the same underlying allegations in *Chelmowski I*—that is, dissatisfaction with AT&T's alleged deletion of Chelmowski's voicemails and failure to port his cell phone number. *Id.* AT&T asserted, among other defenses, that Chelmowski's action was barred by res judicata (or claim preclusion) because there had already been a merits decision on the same claims, and also by collateral estoppel (or issue preclusion) because the same issues had been raised and litigated in the prior arbitration. *Id.*

On March 23, 2015, AAA Arbitrator Mary Patricia Benz held a preliminary hearing and determined "that certain issues might be appropriate for resolution on the basis of documents only." R. 3-1, Compl., Exh. 2 at 55, 3/23/15 Email. She then set a briefing schedule for the issue of whether Chelmowski's claims "are appropriate for resolution on documents only, i.e., by a dispositive motion." *Id.* She explained that, after reviewing the parties' positions, she would decide whether the case would proceed on the documents only (in which case she would ask the parties to submit additional documentary evidence and briefs), or instead if the arbitration would require an in-person hearing. *Id.* In the meantime, she suspended all discovery. *Id.*

On June 23, 2015, after reviewing the parties' arguments, the Arbitrator permitted AT&T to file a dispositive motion because Chelmowski's claims could be decided as a matter of law without an evidentiary hearing. R. 3-1, Compl., Exh. 2 at 52, 6/23/15 Arbitration Order. The pertinent issue was whether "all of the claims [in *Chelmowski II*] involve a prior arbitration … and … are barred under the doctrines

of *res judicata*, and collateral estoppel." *Id.* The Arbitrator then set a briefing schedule for this dispositive motion and continued the discovery stay. *Id.* When Chelmowski moved to lift the stay and strike AT&T's answer, the Arbitrator denied the motion "as moot." R. 3-1, Compl., Exh. 2 at 54, 6/29/15 Arbitration Order.

After reviewing the parties' submissions on AT&T's dispositive motion, the Arbitrator concluded that Chelmowski's claims were an impermissible attack on the earlier arbitration and were therefore barred by both res judicata and collateral estoppel. R. 3-1, Compl., Exh. 2 at 50, 10/6/15 Arbitration Award. She also held that the claims asserted in *Chelmowski II*, including the Fair Credit Reporting Act, Fair Debt Collection Practices Act, and Illinois Consumer Fraud and Deceptive Business Practices Act claims, "did not allege, or provide competent evidence of, a legally cognizable right to relief." *Id.*

At the end of the second arbitration, Chelmowski filed a complaint, which was styled as a motion to vacate the October 2015 Award, in the Circuit Court of Cook County. *See* Compl. After AT&T removed this case to federal court, R. 3, Notice of Removal, AT&T moved to confirm the award, R. 11.

II. Legal Standard

Under the Federal Arbitration Act, courts may only "overturn the arbitrator's award on very narrow grounds." *Flexible Mfg. Sys. Pty. Ltd. v. Super Prods. Corp.*, 86 F.3d 96, 99 (7th Cir. 1996). Parties are not entitled to reargue their original claims in a proceeding to vacate an arbitral award, *Widell v. Wolf*, 43 F.3d 1150 (7th Cir. 1994), and "[f]actual or legal errors by arbitrators—even clear or gross errors—

do not authorize courts to annul awards," *Flexible*, 86 F.3d at 100 (citation and quotations omitted); *see also Baravati v. Josphthal, Lyon & Ross, Inc.*, 28 F.3d 704, 706 (7th Cir. 1994) ("By including an arbitration clause in their contract the parties agree to submit disputes arising out of the contract to a nonjudicial forum, and we do not allow the disappointed party to bring his dispute into court by the back door, arguing that he is entitled to appellate review of the arbitrators' decision." (citations omitted)). The FAA identifies four limited circumstances where an arbitral award may be set aside:

> (1) where the award was produced by corruption, fraud, or undue means;
>
> (2) where there was evident partiality or corruption in the arbitrators, or either of them;
>
> (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, 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)(1)-(4). To warrant vacatur under § 10(a), the party challenging the arbitration award must "overcome, with clear and convincing evidence, the presumption of validity that an arbitral award enjoys." *Flexible*, 86 F.3d at 100. If the award is not vacated under § 10(a), then it is confirmed. *See* 9 U.S.C. § 9 ("[A]ny party to the arbitration may apply to the court … for an order confirming the

award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected … .").

III. Analysis

Chelmowski argues that the Court should vacate the October 2015 award because Arbitrator Benz improperly decided Chelmowski's claims on a dispositive motion without discovery or an evidentiary hearing, and because she allegedly broke AAA rules. *See generally* Compl. As explained next, the Court rejects each of these arguments.

A. Ruling on a Dispositive Motion

Chelmowski first argues that the Arbitrator improperly stayed discovery and issued a decision without holding an evidentiary hearing. *See* Compl. ¶¶ 10, 15, 17, 19, 21, 23, 31; R. 19, Pl.'s Resp. at 7 ("Chelmowski was never required [to] present evidence or proofs … ."). According to Chelmowski, the Arbitrator did not allow him to develop or present pertinent evidence. *See* Pl.'s Resp. at 5 ("[The Arbitrator] knew Chelmowski was denied all discovery and third party subpoenas and/or witnesses. She knew … Chelmowski had absolutely NO opportunity to prove his MATERIAL FACTS through discovery … ." (capitalization in original)).

Chelmowski appears to invoke all four subsections of § 10(a), Compl. ¶¶ 16, 20, 31, 39, but the Arbitrator acted reasonably when she determined that the validity of Chelmowski's claims and AT&T's defenses were *legal*, and not factual questions, and could be decided on briefing alone. After considering the parties' arguments "identifying those legal issues which … are appropriate for resolution on

documents only, i.e., by a dispositive motion," 3/23/15 Email, the Arbitrator reasonably determined that she needed only to compare the claims of *Chelmowski I* and *Chelmowski II* in order to determine the validity of AT&T's claim preclusion and issue preclusion defenses, 6/23/15 Arbitration Order. In other words, the dispositive issue was whether the second action was barred for attempting to arbitrate the same claims and issues that were already litigated, or could have been litigated, in the first. *Id.* As a result, the Arbitrator decided that neither an in-person hearing nor additional discovery was necessary, so she allowed AT&T to file a dispositive motion and asked the parties to submit additional briefs on the merits of the preclusion defenses. *Id.* The Arbitrator left open the option for a hearing: "[i]f the issues [of preclusion] are decided adversely to AT&T, a hearing can be held at which both parties can present evidence." *Id.* But ultimately, no such hearing was needed.

The decision to decide the dispositive motion without discovery or an evidentiary hearing did not show fraud or corruption under § 10(a)(1). Nor did the Arbitrator demonstrate partiality under § 10(a)(2), which requires that bias be "direct, definite and capable of demonstration rather than remote uncertain or speculative." *Health Servs. Mgmt. Corp. v. Hughes*, 975 F.2d 1253, 1264 (7th Cir. 1992) (citations omitted). Deciding to forgo discovery and an evidentiary hearing when they are time-consuming and expensive, and most importantly, when they would not be needed to decide the claims, is not evidence of partiality. Similarly, the Arbitrator's procedural decisions did not constitute misconduct for "refusing to hear

evidence pertinent and material to the controversy" under § 10(a)(3). An award can only be vacated on this ground if the evidence is relevant to the ultimate issue and if the "arbitrator's handling of … evidence rendered the [proceeding] unfair." *See Flender Corp. v. Techna-Quip Co.*, 953 F.3d 273, 281 (7th Cir. 1992) (arbitrator's refusal to hear evidence about mitigation of damages was "irrelevant to the ultimate issue: whether [the sales representative] was entitled to commissions" in the first place). The key is that the evidence must be pertinent and material, 9 U.S.C. § 10(a)(3), but here, no additional discovery or evidentiary presentation would have been needed to develop the issues relevant to the preclusion defenses. Everything needed to decide the case was in the record from *Chelmowski I* and in the parties' briefs in *Chelmowski II*. Additionally, federal courts defer to an arbitrator's procedural decisions because she "enjoys wide latitude in conducting an arbitration hearing. Arbitration proceedings are not constrained by formal rules or procedure or evidence[.]" *Generica Ltd. v. Pharm. Basics, Inc.*, 125 F.3d 1123, 1130 (7th Cir. 1997) (citation omitted). And "[a]n arbitrator is not bound to hear all of the evidence tendered by the parties," as long as each litigant has "an adequate opportunity to present its evidence and arguments." *Id.* (citation and quotations omitted). Here, the Arbitrator allowed both parties to fully present their arguments and evidence on the preclusion defenses in their briefs. 6/23/15 Arbitration Order.

Finally, the Arbitrator did not "exceed[] [her] powers, or so imperfectly execute[] them that a mutual, final, and definite award upon the subject matter submitted was not made." 9 U.S.C. § 10(a)(4). This ground allows a court to vacate

an award only when there is a "manifest disregard of law." *Butler Mfg. Co. v. United Steelworkers of Am., AFL-CIO-CLC*, 336 F.3d 629, 636 (7th Cir. 2003) ("That the arbitrator in this case may have misunderstood the FMLA is simply not relevant." (citation omitted)); *Eljer Mfg., Inc. v. Kowin Dev. Corp.*, 14 F.3d 1250, 1256 (7th Cir. 1994) (vacatur under § 10(a)(4) proper only when there is a "deliberate disregard of the law"). But a "factual or legal error, no matter how gross, is insufficient to support overturning an arbitration award," *Halim v. Great Gatsby's Auction Gallery, Inc.*, 516 F.3d 557, 563 (7th Cir. 2008) (citation omitted), much less "a mere error in the law or failure to understand or apply the law," *Cremin v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 434 F. Supp. 2d 554, 564 (N.D. Ill. 2006) (citation and quotations omitted). The rationale is that a party who has "agreed to resolve [a] dispute in arbitration … cannot now complain that the bargained-for result—an arbitrator's resolution of the dispute—is not what it would have obtained in court." *Butler*, 336 F.3d at 636. Because there is no evidence of a factual or legal error—much less a manifest one—in the Arbitrator's decisions on the merits, the Court cannot disturb the Arbitrator's decision to allow the parties to resolve the dispute through briefing alone, *see* 6/23/15 Arbitration Order, or the ultimate Award deciding that Chelmowski's claims were precluded, *see* 10/6/15 Award.[3]

[3]The Arbitrator also acted reasonably in dismissing Chelmowski's consumer protection claims without a hearing or discovery. She concluded that "[w]ith respect to Claimant's claims based upon the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, and the Illinois Consumer Fraud and Deceptive Business Practices Act and other claims, Claimant did not allege, or provide competent evidence of a legally cognizable right to relief." 10/6/15 Arbitration Award. This is akin to a dismissal under Rule 12(b)(6), in which a federal court accepts a plaintiff's allegations as true, and determines, without any hearing or discovery, whether a plaintiff has stated a claim as a matter of law.

B. AAA Rules

Chelmowski also argues that the Award should be set aside because the Arbitrator allegedly broke AAA rules when she allowed AT&T to file a late answer to the arbitration demand. Compl. ¶¶ 11, 13, 22, 57-59. The AAA rules provide that "[t]he respondent may submit a written response to the Demand, known as an 'answer' … within 14 calendar days after the date the AAA notifies the parties that the Demand for Arbitration was received and all filing requirements were met." AAA Consumer Arbitration R-2(c). AT&T filed its answer on March 16, 2015. Def.'s 3/16/15 Answer. Although it is unclear when the AAA notified the parties about the arbitration demand, AT&T's answer was filed 112 days after Chelmowski filed his demand on November 24, 2014. Pl.'s 11/24/14 Demand. In any event, this is not a ground for vacatur under any provision of § 10(a) because the Arbitrator did not actually break the AAA rules; as noted earlier, arbitrators have discretion to extend deadlines given their "wide latitude" to conduct arbitrations. *See Generica*, 125 F.3d at 1130.

Chelmowski nevertheless argues that the extension was prejudicial because the answer was filed only seven days before a preliminary hearing, and the Arbitrator did not postpone this hearing so that Chelmowski could reply to the answer. Compl. ¶¶ 64, 69. But an opportunity to reply to the answer would have accomplished little. The purpose of the preliminary hearing was to discuss whether any "issues might be appropriate for resolution on the basis of documents only," and to set a briefing schedule on this issue. 3/23/15 Email. So Chelmowski had a full

opportunity, after the preliminary hearing, to present his arguments on whether an evidentiary hearing was necessary.

What's more, even if AT&T or the Arbitrator *did* violate R-2(c), there would have been no prejudicial effect on Chelmowski. The AAA rules provide that "[i]f no answer is filed within 14 calendar days, the AAA will assume that the respondent does not agree with the claim filed by the claimant." AAA Consumer Arbitration R-2(e). So when no answer was filed within 14 days, it was automatically assumed that AT&T fully denied all the allegations. And when AT&T filed its late answer several months later, nothing changed because it fully denied the claims again, which was already AT&T's assumed position under AAA rule R-2(e). In any event, neither the Arbitrator nor AT&T broke R-2(c), and no provision of § 10(a) of the FAA applies.

Chelmowski also argues that the Arbitrator violated AAA rules R-32 and R-34. Compl. ¶ 15. R-32 provides that the "claimant must present evidence to support its claim" and that "each party has the right to be heard and … is given a fair opportunity to present its case." AAA Consumer Arbitration R-32. And R-34(a) provides that "[t]he parties may offer relevant and material evidence and must produce any evidence the arbitrator decides is necessary to understand and decide the dispute." *Id.* R-34(a). But as explained above, *see supra* Section III.A, the Arbitrator did not violate these rules because Chelmowski was afforded a full opportunity to present his arguments on the preclusion defenses in his briefing.

IV. Conclusion

For the reasons stated above, the Court grants AT&T's motion to confirm the arbitration award, R. 11, and denies Chelmowski's motion to vacate the arbitration award, R. 3-1. The status hearing of August 15, 2016 is vacated, and judgment shall be entered.

ENTERED:

s/Edmond E. Chang
Honorable Edmond E. Chang
United States District Judge

DATE: July 28, 2016