UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

MED TRANS CORPORATION,

Plaintiff,

vs.

CAPITAL HEALTH PLAN, INC. and C2C INNOVATIVE SOLUTIONS, INC.,

Case No. 3:22-cv-01077-TJC-JBT

Defendants

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DEFENDANT CAPITAL HEALTH PLAN'S REPLY TO PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Defendant, CAPITAL HEALTH PLAN, INC. ("CHP"), by and through undersigned counsel, and files this Reply to Plaintiffs' ("Med-Trans") Response in Opposition ("Response") to Defendant's Motion to Dismiss Plaintiff's Complaint ("Motion") [Dkt. No. 40]. In further support of its Motion, Defendant states:

ARGUMENT

Plaintiff's Response raises two arguments CHP wishes to address here: a) that CHP's Motion cites an incorrect standard for dismissal of Plaintiff's request for vacatur of an arbitration award; and b) that neither the Federal Arbitration Act's ("FAA") procedural requirements nor its substantive standards should apply in an action challenging an arbitration award from an Independent Dispute Resolution Entity under the No Surprises Act ("NSA"). Both of these arguments fail, for the reasons set forth more fully below.

I. Plaintiff Cannot Rely on Rule 12(b)(6)'s Low Threshold To Survive Dismissal.

Plaintiff argues that CHP's Motion cites an incorrect standard, that Rule 12(b)'s standard applies to this matter, and that CHP's Motion ought to be denied for "failure to cite" Rule 12(b)(6) and to meet that rule's attendant burden. [Dkt. No. 40, pp. 3-4]. However, 11th Circuit precedent expressly negates this argument. A request that a Court order an arbitration award vacated falls under Fed. R. Civ. P. 7(b), which provides that "an application to the court for an order shall be by motion which … shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought." *O.R. Sec., Inc. v. Prof'l Plan. Assocs.*, 857 F.2d 742, 745 (11th Cir. 1988) (citing *World Brilliance Corp. v. Bethlehem Steel Co.*, 342 F.2d 362, 365-66 (2d Cir. 1965). The policy behind Rule 7(b)'s application to vacatur requests "is to expedite judicial treatment of matters pertaining to arbitration." In this context, the distinction between a motion and a complaint (and the threshold standards for each at the response stage) is significant and intentional. *Id.* As the Eleventh Circuit explained:

> The manner in which an action to vacate an arbitration award is made is obviously important, for the nature of the proceeding affects the burdens of the various parties as well as the rule of decision to be applied by the district court. If, as [petitioner] contends, the application to vacate the award may be brought in the form of a complaint, then the burden of dismissing the complaint would be on the party defending the arbitration award. The defending party would be forced to show that the movant could not prove any facts that would entitle him to relief from the arbitration award. … If the defending party did not prevail on its motion to dismiss, the proceeding to vacate the arbitration award would develop into full scale litigation, with the attendant discovery, motions, and perhaps trial. This is the procedure which [petitioner] argues the district court should have applied.

> We disagree. *It is well-established that 'the purpose of the Federal Arbitration Act was to relieve congestion in the courts and to provide parties with an alternative method for dispute resolution that would be speedier and less costly than litigation.' … The policy of expedited judicial action expressed in section 6 of the Federal Arbitration Act, 9 U.S.C. § 6, would not be served by permitting parties who have lost in the arbitration process to file a new suit in federal court*. The proper procedure, as discussed above, is for the party seeking to vacate an arbitration award to file a Motion to Vacate in the district court.

O.R. Sec., 857 F.2d at 745-46 (emphasis added, internal citations omitted). Yet here Med-Trans urges the Court to apply the exact standard rejected in *O.R. Sec.* A party seeking vacatur does not get the benefit of the liberal pleading standard to which Med Trans cites. *Id.* Clearly a motion seeking dismissal of a deficient application for vacatur need not invoke the standard for dismissal of complaints and other pleadings in order to have effect[1].

II. IDRE Determinations Under the NSA are Clearly Arbitrations.

Med Trans's mantra goes that the FAA's procedures and standards for vacatur should not apply because "the IDR process is not arbitration—far from it." [Dkt. No. 40, p. 5]. In support, Med Trans relies chiefly on comparing the IDR process to other arbitral schemes outside the FAA and to the fact that IDR determinations do not spring from written agreements. However, the IDR process most certainly is arbitration - and therefore subject to the FAA's limitations on judicial review – because: a) Congress so intended; b) Congress enacted other statutes with mandatory dispute resolution procedures subject to even less judicial review; and c) Plaintiff's own Complaint contradicts its argument that only a single section of the FAA, Section 10(a), applies in actions for vacatur under the NSA.

[1] Motions are not pleadings. Fed. R. Civ. P. 7.

a. Congress Intended that the IDRE Process Take the Form of Baseball Arbitration.

Plaintiff asserts that the FAA should not govern judicial review of the IDR process because the process itself is "far from" arbitration. However, Congress gave every indication that it meant the IDR process to be "arbitration" as that term is typically understood. In its December 2020 report on the legislation that ultimately became the NSA, the Committee on Education and Labor used the term "arbitration" no fewer than fourteen times when discussing the legislation's approach on establishing the payment rate for out-of-network services (such as the air ambulance services in the instant case). H.R. REP. 116-615 (Dec. 2, 2020). Critically, the Committee described the IDR process as arbitration:

> A key element of any solution to address surprise billing comprehensively is the payment rate, which is the amount that payers must remit to providers for out-of-network items and services. Two payment rate options have emerged as the predominant contenders to correct the market failure associated with surprise billing: (1) the benchmark rate model, and (2) *the IDR process, also referred to as arbitration*.

Id, at p. 56 (emphasis added).

Plaintiff counters that the IDR process cannot be arbitration because of procedural differences between it and the rules of certain arbitral bodies, including the American Arbitration Association ("AAA") and the American Health Law Association ("AHLA"). For example, Plaintiff observes that, distinct from the IDR process, the AAA rules require service of all filings on other parties, including briefs on the merits. See Dkt. 40, p. 7. However, Congress's adoption of certain arbitral concepts over others was by design. For

example, it deliberately selected "baseball-style" arbitration, a style particularly suitable to pricing disputes such as those between out-of-network providers and health plans[2]:

> A common approach is to use ''baseball-style'' arbitration, under which each side submits a price, and the arbitrator chooses one, with both sides bound by the decision.

Id, at 56-57.[3] Plaintiff cites no authority that dispute resolution processes lacking the rules of the AAA or AHLA are not arbitrations. Indeed, none of those components, procedures, rules, etc. are elements necessary to establish that a process is or is not an arbitration. In contrast, the Eleventh Circuit has set forth what it calls the "common incidents of classic arbitration": "(i) an independent adjudicator; (ii) who applies substantive legal standards; (iii) considers evidence and argument *(however formally or informally)* from each party; and (iv) renders a decision that purports to resolve the rights and duties of the parties." *Advanced Bodycare Sols., LLC v. Thione Int'l, Inc.*, 524 F.3d 1235, 1239 (11th Cir. 2008) (emphasis added). It is beyond dispute that the IDR includes all these "common incidents of classic

[2] As discussed by the agencies charged with implementing the NSA:
"The Federal IDR process relies on a "baseball-style" arbitration, in which each party submits their desired amount, and the certified IDR entity selects one of the two offers submitted. This differs from other types of arbitration, in which the arbitrator would often select a value between the two submissions. Accordingly, this process encourages each party to submit a reasonable offer." Requirements Related to Surprise Billing; Part II, 86 Fed. Reg. 55,980, 56,050 (Oct. 7, 2021).

[3] In fact, Congress based this aspect of the NSA on New York's statute prohibiting surprise medical bills, which includes mandatory baseball arbitration:
"[U]nder New York's surprise billing law, arbitration entities are instructed to consider several factors in baseball-style arbitration … " *Id*, at p. 57, n. 43 (citing Loren Adler, Experience with New York's Arbitration Process for Surprise Out-of-network Bills, Brookings Institution (Oct. 24, 2019), https://www.brookings.edu/blog/usc-brookingsschaeffer-on-health-policy/2019/10/24/experience-with-new-yorks-arbitration-process-for-surpriseout-of-network-bills.")

arbitration". The IDRE applies legal standards set forth in the NSA and its implementing regulations, considers evidence and argument submitted by the parties, and renders a decision by selecting one of the two prices submitted, thereby resolving the parties' rights and duties.

b. Other Federal Statutes Mandate Binding Arbitration with Greater Limits on Judicial Review than the NSA

Plaintiff's argument that the IDRE process should essentially be reviewed de novo without regard for the narrow strictures of the FAA relies extensively on the fact that no written contract to arbitrate exists between the parties to the IDR Process. [Dkt. No. 40, pp. 6 and 8.] Greater due process, asserts Plaintiff, is required where arbitration is mandatory. However, Plaintiff overlooks Federal statutes requiring binding arbitration that make the same allowance for judicial review as IDR (or less). The Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136 *et seq.*, for example, provides that manufacturers of chemicals used in pesticides which had provided the EPA with data on their products could compel pesticide permit applicants whose applications were based on the manufacturers' data to submit disputes over compensation for the data use to binding arbitration. *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 105 S. Ct. 3325, 3329 (1985). As with the IDR process, arbitration is the second step after failed informal negotiations. FIFRA forbids U.S. Courts from accepting jurisdiction over FIFRA arbitration awards except in cases of "fraud, misrepresentation, or other misconduct." *Id.* at 573-575. A permit applicant sued, contending that such a

mandatory arbitration provision violated Article III of the Constitution. The Supreme Court held that "Congress is not barred from acting pursuant to its powers under Article 1 to vest decision-making authority in tribunals that lack the attributes of Article III Courts." *Id.* at 583. More recently, the U.S. District Court for the Southern District of New York reached the same result concerning the Dealership Arbitration Act, in which a party to a franchise agreement may invoke an arbitration process for which there is *no* judicial review. *Rally Auto Grp., Inc. v. Gen. Motors LLC (In re Motors Liquidation Co.)*, No. M-47-(RPP), 2010 U.S. Dist. LEXIS 118166, at *12 (S.D.N.Y. Oct. 29, 2010) ("Congress may establish under statute the right to the resolution of certain disputes by binding arbitration without a right of substantive judicial review").

c. Plaintiff's Own Complaint Relies on Sections of the FAA Outside the Section Explicitly Referenced in the NSA.

Plaintiff's own Complaint cuts against its argument that only FAA Section 10(a) applies to the NSA. Plaintiff uses 9 U.S.C. § 10(c) to invoke venue in this Court[4]. [Dkt. No. 1, ¶ 10]. Additionally, Plaintiff prays that this Court remand this case to the IDRE because "[t]he FAA permits this Court not only to vacate an award but to 'direct a rehearing by the arbitrators' so long as the parties' agreement does not preclude it. *9 U.S.C. § 10(b)*" *Id.* at ¶¶ 38, 42 (emphasis added). Plaintiff invokes multiple provisions of the FAA outside Section 10(a) and cannot disavow the rest.

[4] In what appears to be a scrivener's error, Plaintiff attributes the FAA's venue provision to Section 10(a) when it is found in Section § 10(c).

WHEREFORE, the Defendant, CAPITAL HEALTH PLAN, INC., requests this Court enter an Order Dismissing Plaintiff's Complaint and Striking Plaintiff's Attorney Fee Demand, and for such other and further relief as is just and proper.

CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2023, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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Respectfully submitted,

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