STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

PETER KARAMANOS, JR.,
Plaintiff,

v

Case No. 13-014776-CK
Hon. Daniel P. Ryan

COMPUWARE CORPORATION,
Defendant.

13-014776-CK
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CATHY M. GARRETT
/s/ Michelle Howard

Consolidated with

COMPUWARE CORPORATION,
Plaintiff,

v

Case No. 15-003350-CB

Hon. Daniel P. Ryan

PETER KARAMANOS, JR.,
Defendant.
_____/

OPINION AND ORDER RE: MOTION TO VACATE OR MODIFY ARBITRATION AWARD and TO CONFIRM THE ARBITRATOR'S FINAL AWARD AND ENTER JUDGMENT

At a session of Court
Held in Detroit, Michigan
5/11/2015

This matter comes before the Court on Defendant, Compuware Corporation's (Compuware) *Motion to Vacate or Modify Arbitration Award*. Plaintiff, Peter Karamanos, Jr., (Karamanos) counters with a *Motion to Confirm the Arbitrator's Final Award and Enter Judgment*. The Court having considered the motions, responses, and replies finds the following:

As indicated in the caption, there are two cases pending before the Court. The first action was filed by Karamanos in 2013 following Karamanos' dismissal from Compuware in September 2013. Karamanos presented three claims in his suit: breach of contract, conversion, and unjust enrichment. The parties agreed to submit the matter to arbitration before Gene J. Esshaki. Critically, the parties agreed, although presently complain, that Mr. Esshaki would issue an arbitration award without findings of facts, in part, to maintain the confidentiality of the proceedings. The award was issued on February 25, 2015. The award provides that:

> The undersigned Awards to Claimant, PETER J. KARAMANOS, JR., and against Respondent, COMPUWARE CORPORATION, the total amount of $16,500,000, inclusive of all interest costs and legal fees incurred. All other claims, demands and defenses are hereby specifically DENIED.

Final Award of Arbitration, February 25, 2015, p. 2.

Compuware filed a *Motion for Clarification of Award* that Mr. Esshaki denied *in toto* in a ruling dated March 10, 2015. Compuware then filed the present *Motion to Vacate or Modify Arbitration Award.*

In reviewing this matter, the Court notes that in Michigan it is well-settled law that arbitration is intended as a substitute, not a warmup for litigation. Put another way, a Court is not permitted to substitute its judgment for that of the arbitrator. *Gordon Sel-Way, Inc. v Spence Bros., Inc.* 438 Mich 488, 497; 475 NW2d 704 (1991). The party seeking to challenge the arbitration award bears the burden of proving the existence of a substantial error. *DAIIE v Gavin*, 416 Mich 407, 434-435; 331 NW2d 418 (1982); See also *Gordon*, 438 Mich at 497. For only when a substantial error is shown, may a court invade the province of the arbitrator. *Id.*

Here, Compuware repeatedly asserts that there is only one explanation of the arbitrator's award: the conversion claim provides for treble damages and attorney fees. Facially, Compuware's claim appears reasonable. However, after reviewing the extensive record and considering the arguments of counsel, the Court cannot declare that this is the only explanation of the arbitrator's award. Indeed, the Court is hampered in its review by the very stipulation that Compuware now implicitly challenges. For if such findings had been permitted, Compuware would not find itself in its present predicament. Instead, the basis for Mr. Esshaki's award would be facially clear.

Simply put, Compuware's argument may be summarized as follows: Mr. Esshaki issued an arbitration award without findings of fact that is fatally defective because it can only be based on the conversion claim and must therefore be vacated. The Court finds that the record supports alternate theories which could also justify the arbitrator's award. Without engaging in impermissible fact finding, the Court offers the following plausible explanation based on its review. Mr. Esshaki may have found that Compuware committed two separate and distinct wrongs. The first wrong is the breach of contract in wrongfully terminating Karamanos. The second is the conversion of the stock options by subsequently and intentionally interfering with the execution of the options following the wrongful termination. Damages under such a finding could be established as follows:

Breach of contract claim:	$11,400,000
Conversion claim:	$4,100,000
Costs and attorney fees:	$1,000,000
Total:	$16,500,000

The Court does not find that this is the basis for the award but only offers this in response to the argument that there is only one possible explanation for the award. Regardless, the court may not invade the province of the arbitrator. *Gordon, Id.* Furthermore, in the absence of a record as stipulated to by the parties, it is extremely difficult if not impossible to meet the burden of proving the existence of a substantial error by the arbitrator. *Gavin*, 416 Mich. at 434-435. In fact, as both parties acknowledge in their extensive briefing of the motions before the Court, neither the parties nor the Court can know the basis for Mr. Esshaki's findings due to the very terms of the agreement to arbitrate. However, this explanation, or any of a myriad of others that the Court could propose are equally as likely under the record presented to this Court. Compuware acknowledges its predicament. It cannot ask the Court to circumvent its earlier arbitration agreement and require Mr. Esshaki to make findings of fact as to the underlying reasoning for the award, because the reasoning may demonstrate that the award was not flawed as alleged by Compuware. Thus, Compuware argues that the only appropriate ruling is to vacate the award and order a new arbitration. In light of the record, the Court finds no basis to second guess, modify, or vacate Mr. Esshaki's award nor is it permitted to do so. *Gordon*, 438 Mich. at 497.

Therefore, the Court denies Compuware's *Motion to Vacate or Modify Arbitration Award* and grants Karamanos' *Motion to Confirm the Arbitrator's Final Award and Enter Judgment* in the amount of $16,500,000. The cross motions for attorney fees are both denied.

This is a final order and resolves both cases.

It is so ordered.

5/11/2015
Date

/s/ Daniel P. Ryan
Hon. Daniel P. Ryan
Circuit Court Judge