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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. CV 12-08493 JGB (VBKx) Date: March 21, 2013

Title: CINDY BRAGGS, et al. -*v*- MAXINE JONES, et al.

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PRESENT: HONORABLE JESUS G. BERNAL, U.S. DISTRICT JUDGE

Maynor Galvez Courtroom Deputy	None Present Court Reporter

PROCEEDINGS: ORDER (1) GRANTING PLAINTIFFS' APPLICATION TO ENFORCE ARBITRATION AWARD (DOC. NO. 9); (2) DENYING DEFENDANTS' COUNTER-APPLICATION TO VACATE ARBITRATION AWARD (DOC. NO. 13); AND (3) VACATING THE MARCH 25, 2013 HEARING (IN CHAMBERS)

I. BACKGROUND

A. Procedural Background

On October 3, 2012, Cindy Braggs and Terry Ellis ("Plaintiffs") brought this action against Maxine Jones and Dawn Robinson ("Defendants") for trademark infringement. (Complaint (Doc. No. 1).) On January 25, 2013, Plaintiffs filed an Application to Enforce Arbitration Award (Doc. No. 6), which they amended on February 13, 2012 ("Application") (Doc. No. 9) and to which they attached the

Declaration of George L. Mallory (Doc. No. 10).

On February 25, 2013, Defendants opposed the Application (Doc. No. 11), filed evidentiary objections to the Application (Doc. No. 12), and filed a Counter-Application to Vacate, Correct, or Modify Arbitration Award ("Counter-Application") (Doc. No. 13.) Plaintiffs opposed the Counter-Application on March 8, 2013 (Doc. No. 16),[1] and Defendants filed their Reply on March 11, 2013 (Doc. No. 17).

B. Factual Background

On May 23, 2006, Jones, Braggs, and Ellis entered into an Operating Agreement for En Vogue Enterprises, LLC ("Agreement") with regard to their musical group, En Vogue.[2] (Application, Ex. A (Doc. No. 6-1).) The Agreement provides in the clause titled "Arbitration,"

> Except as otherwise provided in this Agreement, any controversy between the parties arising out of this Agreement shall be submitted to the American Arbitration Association for arbitration in Los Angeles, California. . . . The provisions of Sections 1282.6, 1283, and 1283.05 of the California Code of Civil Procedure apply to the arbitration. The arbitrator shall not have any power to alter, amend, modify or change any of the terms of this Agreement nor to grant any remedy which is either prohibited by the terms of this Agreement, or not available in a court of law.

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[1] The Court GRANTS Plaintiffs' Request to Enlarge Time (Doc. No. 18) and, finding good cause for the Request, accepts Plaintiffs' late-filed document, which serves as both a Reply in support of their Application and an Opposition to the Counter-Application.

[2] The "Agreement" refers to the controlling document as found and construed by the Arbitrator. (See Arbitrator's Findings and Award at 2-3 (discussing the different versions of the operating agreements and the missing pages of the original version).) As such, the Court finds Defendants' evidentiary objection immaterial and does not rule on it. The Court construes the Agreement as the Arbitrator found proper in his Findings and Award.

(Id. ¶ 12.6.)

On January 22, 2013, Robert M. Nau ("Nau" or "Arbitrator"), the arbitrator agreed upon by the parties, issued his Findings and Award ("Award"). (Doc. No. 6-2.) Nau determined that (1) Jones's membership interest in En Vogue Enterprises, LLC is terminated; and (2) En Vogue Enterprises, LLC owns all rights to the trademark "En Vogue" and Plaintiffs have the right to issuance of a permanent injunction prohibiting Jones's use of the "En Vogue" mark and stage name in a manner inconsistent with the Award. (See Award at 9.)

II. DISCUSSION

A. The Arbitrator Did Not Exceed His Powers

California law allows a court to correct or vacate a contractual arbitration award if the arbitrators "exceeded their powers." (Code Civ.Proc., §§ 1286.2(d), 1286.6(b).) Advanced Micro Devices, Inc. v. Intel Corp., 9 Cal. 4th 362, 366 (1994). "[T]he remedy an arbitrator fashions does not exceed his or her powers if it bears a rational relationship to the underlying contract as interpreted, expressly or impliedly, by the arbitrator." (Id. at 367.) "[A]rbitrators exceed their powers in this regard not when they merely interpret or apply the governing law incorrectly, but when the award is completely irrational, or exhibits a manifest disregard of law." Kyocera Corp. v. Prudential-Bache Trade Services, Inc., 341 F.3d 987, 997 (9th Cir. 2003).

The Court finds that Nau did not exceed the powers granted to him by the Agreement. Defendants argue that Nau's award is outside the scope of the claims asserted for arbitration by the Plaintiffs. (Opp'n to Application at 8-9.) This argument is unavailing as "[t]he scope of the arbitrator's jurisdiction extends to issues not only explicitly raised by the parties, but all issues implicit within the submission agreement." Schoenduve Corp. v. Lucent Technologies, Inc., 442 F.3d 727, 733 (9th Cir. 2006). Nau found that he had "jurisdiction to determine ownership of the trademark, trade name, service mark and/or stage name 'En Vogue.'" (Award at 5.) See id. ("[T]he arbitrator's interpretation of the scope of his powers is entitled to the same level of deference as his determination on the merits.") Here, Nau

determined a remedy that bore a rational relationship to the underlying Agreement, which controlled matters related to the name of the company and any name under which business could be conducted (Agreement ¶ 1.1) and matters related to membership in En Vogue Enterprises (id. ¶¶ 3.1-3.3). Defendants have failed to establish that Nau's award is "completely irrational" or "exhibits a manifest disregard for the law." Kyocera Corp., 341 F.3d at 997; see also Lagstein v. Certain Underwriters at Lloyd's, London, 607 F.3d 634, 641 (9th Cir. 2010) (internal quotation marks and citations omitted) ("Manifest disregard of the law means something more than just an error in the law or a failure on the part of the arbitrators to understand or apply the law. To vacate an arbitration award on this ground, it must be clear from the record that the arbitrators recognized the applicable law and then ignored it.")

B. Defendants Have not Established Arbitrator Partiality or That They Were Denied a Fair Hearing

Defendants state that "Jones' prior counsel rightfully sought the right to conduct discovery and take depositions in the arbitration consistent with 1282.6, 1283 and 1283.05 but *was denied the right to do so by the arbitrator.*" (Opp'n to Application at 12) (emphasis in original). As Defendants have submitted no evidence to support their claims of an unfair hearing, the Court finds that this is not a proper ground for vacating the Award.

Similarly, Defendants submit no evidence indicating "evident partiality" on the part of Nau. (See Opp'n to Application at 13-16.) An "arbitrator's failure to disclose to the parties any dealings that might create an impression of possible bias is sufficient to support vacatur." New Regency Productions, Inc. v. Nippon Herald Films, Inc., 501 F.3d 1101, 1105 (9th Cir. 2007). Defendants do not cite any of Nau's "dealings" that would make his Award subject to vacatur. Defendants essentially argue that Nau once worked at a firm that is located in the same building as the firm that employs Plaintiffs' counsel. (See Opp'n to Application at 13-16.) Defendants allege facts that only show an overlap among people working in the entertainment law industry in Los Angeles; these facts do not establish "evident partiality" requiring vacatur.

For the reasons described above, the Court also finds no grounds for modifying Nau's Award as Defendants request. (Id. at 17.)

III. CONCLUSION

For the foregoing reasons, the Court GRANTS Plaintiffs' Motion to Enforce Arbitration Award (Doc. No. 9); DENIES Defendants Counter-Application to Vacate or Modify Arbitration Reward (Doc. No. 13); and VACATES the March 25, 2013 hearing.

IT IS SO ORDERED.