

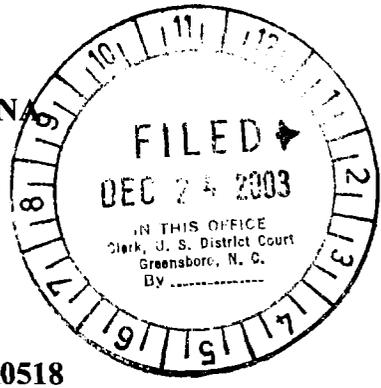
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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



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BERNICE E. VINCENT,)
)
 Plaintiff,)
)
 v.)
)
 AMERICAN GENERAL LIFE AND)
 ACCIDENT INSURANCE COMPANY,)
)
 Defendant.)

1:01CV00518

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This matter is before the Court on (1) the motion of Plaintiff Bernice E. Vincent to reopen an arbitration award and for trial de novo (Pleading No. 15); and (2) the motion of Defendant American General Life and Accident Insurance Company ("American General") to confirm the arbitration award and to dismiss this case with prejudice (Pleading No. 17). Defendant American General responded in opposition to Plaintiff Vincent's motion. Plaintiff has not responded to Defendant's motion, and the time for response has expired. The motions are ready for a ruling.

I. Procedural History

Plaintiff Vincent is an African-American former employee of Defendant American General who resigned her employment with American General in August 2000. Vincent filed suit against American General in May 2001, asserting claims of race discrimination and harassment under Title II of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e *et seq.*, constructive discharge, wrongful discharge in violation of public policy, intentional infliction of emotional distress, negligent infliction of emotional distress, negligent retention and negligent supervision.

At the time Plaintiff commenced her employment with American General, she entered into a written agreement to arbitrate all disputes arising from her employment. Based on this agreement, in October of 2001 the Court granted American General's motion to compel arbitration and stayed this action pending the arbitration.

The matter was arbitrated before Arbitrator James Meath from May 19 to May 21, 2003. Following the arbitration, the parties submitted post-arbitration briefs, and on August 7, 2003, Arbitrator Meath issued a written award finding in favor of American General on all claims.

A. Plaintiff's Motion to Reopen the Arbitration Award and For Trial De Novo

Plaintiff moves the Court to reopen the arbitration award in favor of American General on the grounds that Arbitrator Meath "erred in fact and law" by finding that Plaintiff did not establish a prima facie case of either race discrimination or harassment and that Plaintiff was not constructively discharged. Plaintiff further asserts that Arbitrator Meath failed to consider the United States Supreme Court's recent decision of *Desert Palace, Inc. v. Costa*, ___ U.S. ___, 123 S. Ct. 2148 (2003), and that had the arbitrator applied the "test" of *Desert Palace*, the arbitrator would have found in Plaintiff's favor on these claims.

The arbitration agreement between Plaintiff and American General is governed by the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 *et seq.* See Pleading No. 9, Def.'s Brief in Supp. of its Motion to Compel Arbitration, Ex. B, Ron O'Mara Aff., Attachment 3, §§ 2B, 8A, Attachment 4, § 34, Attachment 8. Section 10 of the FAA provides that arbitration awards may be vacated only on the following grounds:

- (1) where the award was procured 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)(2003). In addition, the Court must determine whether the award evinces a "manifest disregard" of applicable law. *Wilko v. Swan*, 346 U.S. 427, 436-37, 74 S. Ct. 182, 187-88, 98 L. Ed. 168 (1953), *overruled on other grounds*, *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 109 S. Ct. 1917, 104 L. Ed. 2d 526 (1989); *Gallus Investments, L.P. v. Pudgie's Famous Chicken, Ltd.*, 134 F.3d 231, 233 (4th Cir. 1998). Thus, it is not enough for a party challenging an arbitration award to show faulty legal reasoning or erroneous legal conclusions by the arbitrator. Similarly, a court cannot vacate an arbitration award even if it would have reached a different result than the arbitrator. *Richmond, Fredericksburg & Potomac R.R. Co. v. Transp. Comms. Int'l Union*, 973 F.2d 276, 281 (4th Cir. 1992). Moreover, the factual findings of the arbitrator cannot be challenged. *See Wonderland Greyhound Park, Inc. v. Autotote Sys., Inc.*, 274 F.3d 34, 36-37 (1st Cir. 2001).

Plaintiff has neither argued nor offered evidence that the arbitration award was rendered in violation of any of the bases for vacatur of awards under the FAA. Even if the Court generously construes Plaintiff's motion and memorandum to assert that the arbitrator's award is based upon a "manifest disregard" of applicable law, Plaintiff cannot prevail. In order to establish a "manifest disregard" of applicable law, Plaintiff must show that the arbitrator (1) was aware of the law; (2) understood the law; (3) found the law applicable to the case before him; and (4) nonetheless ignored the law when deciding the case. *Remmey v. Paine Webber, Inc.*, 32 F.3d 143, 149-50 (4th Cir. 1994).

The only law Plaintiff alleges the arbitrator disregarded is the *Desert Palace* decision, *supra*. Even assuming that Arbitrator Meath was aware of *Desert Palace*, which was decided after the arbitration hearing but before the award was issued, Plaintiff has not shown that *Desert Palace* is applicable to this case. In *Desert Palace*, the Supreme Court held that a plaintiff in a Title VII disparate treatment case does not have to offer “direct evidence” of discrimination in order to be entitled to a “mixed-motive” jury instruction. ___ U.S. ___, 123 S. Ct. at 2153-55. If a plaintiff demonstrates by a preponderance of the evidence, either direct or circumstantial, that an illegitimate criterion, e.g., race, was a motivating factor in any employment practice, even if other factors also played a role in the practice, then the burden of proof shifts to the defendant to demonstrate by a preponderance of the evidence that it would have taken the same action in the absence of the illegitimate criterion. *Id.*; see also 42 U.S.C. §§ 2000e-2(m), 5(g)(2)(B)(2003). However, *Desert Palace* has no bearing on this case, as the arbitrator found absolutely no evidence, direct or circumstantial, that Plaintiff’s race played a role in any of American General’s employment practices with regard to Plaintiff. Thus, Plaintiff would not have been entitled to a mixed-motive, burden-shifting proof scheme even if Arbitrator Meath had been aware of *Desert Palace* and considered it in rendering his award.

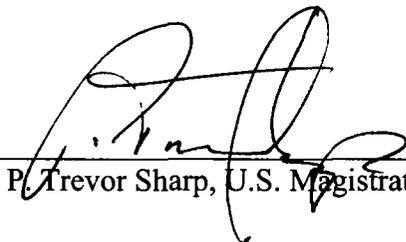
For the foregoing reasons, **IT IS RECOMMENDED** that Plaintiff’s motion to reopen the arbitration award and for trial de novo (Pleading No. 15) be **DENIED**.

B. Defendant’s Motion to Confirm the Arbitration Award and to Dismiss

Defendant American General moves the Court to confirm the arbitration award pursuant to section 9 of the FAA. In addition, American General moves the Court to dismiss this case with

prejudice because the arbitration award disposed of all of Plaintiff's claims against American General.

Section 9 of the FAA provides that a party to an arbitration agreement, under which an award has been rendered, may seek confirmation of that award in the United States District Court in which the award was entered. 9 U.S.C. § 9 (2003). Proceedings under this provision are summary in nature and confirmation may only be denied if the award has been corrected, vacated, or modified in accordance with the FAA. *Taylor v. Nelson*, 788 F.2d 220, 225 (4th Cir. 1986). As the Court has recommended that Plaintiff's motion to reopen the arbitration award and for trial de novo be denied, and there is no other evidence before the Court that the arbitration award has been or should be corrected, vacated or modified, **IT IS RECOMMENDED** that Defendant's motion to confirm the arbitration award, to enter judgment on the award, and to dismiss Plaintiff's complaint (Pleading No. 17) be **GRANTED**.



P. Trevor Sharp, U.S. Magistrate Judge

December 24, 2003