IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL

POWERWEB ENERGY, INC. and POWERWEB, INC.,	:	May Term 2010
Plaintiffs,	:	No. 1903
v.	:	
GE LIGHTING SYSTEMS, INC., and GENERAL ELECTRIC COMPANY,	:	COMMERCE PROGRAM
Defendants.	:	Control Number 10051723

ORDER

AND NOW, this 27th day of June, 2012, upon consideration of Powerweb Energy, Inc. and Powerweb, Inc.'s Petition to Vacate Arbitration Award and all responses in opposition, it hereby is **ORDERED** that the Petition to Vacate Arbitration Award is **Denied.** The Award of May 12, 2010 is Confirmed.

BY THE COURT,

ALBERT JOHN SNITE, JR., J.

Powerweb, Inc. Etal Vs -ORDOP

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CIVIL

POWERWEB ENERGY, INC. and POWERWEB, INC.,	:	May Term 2010
Plaintiffs,	:	No. 1903
v.	:	
GE LIGHTING SYSTEMS, INC., and GENERAL ELECTRIC COMPANY,	:	COMMERCE PROGRAM
Defendants.	:	Control Number 10051723

OPINION

Presently before the court is Powerweb Energy, Inc. and Powerweb, Inc.'s (hereinafter collectively referred to as "Powerweb") Petition to Vacate an Arbitration Award made May 10, 2010. Powerweb is a company based in Philadelphia, Pennsylvania which develops and patents technologies and operational techniques which enable commercial customers to monitor and reduce the amount of electricity consumed. Lothar Budike is an owner of Powerweb.

Respondent General Electric Company (hereinafter "GE") is a multinational technological, industrial, financial and services company providing a wide array of products and services, including appliances, electrical equipment, aircraft jet engines, lighting products, entertainment services, financial services, medical imagining equipment, motors, railway locomotives, security systems and industrial automation. Respondent GE Lighting Systems, Inc. (hereinafter "GELS") is a wholly owned subsidiary of GE which manufactures high intensity discharge and specialty fluorescent lighting systems, energy saving ballasts and lighting control options. GELS buys or sources products from other businesses.

In 2003, Powerweb began to develop Light-Wav, a cutting edge technology to incorporate wireless lighting control and wireless energy monitoring into a comprehensive approach to managing energy systems. Light-Wav was designed to permit customers to control

light systems, turning them on, off or dimming them on customized schedules. In 2005, Powerweb presented Light-Wav technology to GELS. [1] On January 19, 2005, Powerweb and GELS entered into a Mutual Non-Disclosure Agreement ("MNDA") regarding the Light-Wav technology which provided as follows:

> Non-Disclosure of Confidential Information. Recipient and its Representatives shall hold in strict confidence and trust all Confidential Information and shall not disclose, sell, rent or otherwise provide or transfer, directly or indirectly, any Confidential Information or anything related to the Confidential Information to any person or entity ("Person") without the prior written consent of the Disclosing Party....

Confidential information is defined by the MNDA as follows:

> ...the term "Confidential Information" means any information disclosed to Recipient or its affiliates, subsidiaries, representatives, counsel, shareholders, directors, officers, employees, agents or consultants ('Representatives"), regardless of format or medium, by Disclosing Party or its Representatives, including, without limitation, the Disclosing Party's financial information, services, products, processes, operations, drawings, reports, prints, technology, samples, products, specifications, performance standards, product formations, processes, know-how, trade secrets, trade practices, marketing plans and materials, analyses, strategies, forecasts, research, concepts, ideas, and names, addresses and any other characteristics or identifying information of the Disclosing Party's existing or potential customers, suppliers, employees or any information derived from the foregoing. Without limiting the generality of the foregoing, the parties acknowledge and agree that the Powerweb Products and Powerweb Technologies shall constitute Confidential Information of GE, hereunder. ...The parties further acknowledge and agree that all analyses, compilations, studies or other materials prepared by Recipient or its Representatives containing or based in whole or in part upon information furnished by the Disclosing Party or its Representatives containing or based in whole or in part upon information furnished by the Disclosing Party or its Representatives shall constitute Confidential Information hereunder. Confidential Information shall not include any information which (i) is or becomes available to the public other than as the consequence of a breach of any obligation of confidentiality; (ii) is actually known to or in possession of Recipient without any limitation on use or disclosure prior to receipt from the Disclosing Party; (iii) is rightfully received from a third party in possession of such information who is not under obligation to Disclosing Party not to disclose the information; or (iv) is

[1] Light-Wav is also referred to as GE Wireless Energy Management System ("GEWEMS). The court will refer to technology as GEWEMS in this opinion.

> independently developed by Recipient or its Representatives without use of or reference to the Confidential Information.[2]

On January 6, 2006, GELS and Powerweb executed a Purchase Contract and Reseller's Agreement ("Reseller's Agreement"). The Reseller's agreement gave GELS and its distributors the exclusive right to sell GEWEMS in all lighting control applications. The Purchase Contract also provided Powerweb the right to immediately sell GEWEMS as an authorized representative of GELS and gave Powerweb the right to use GE's logos and marks.

On January 9, 2006, GELS and Powerweb executed a Sourced Products Purchase Contract ("The Sourced Products Agreement"). The Sourced Products Agreement provided that Powerweb would sell the products, defined to mean the controller, router, meter and other components of the Light-Wav system to GELS for a term of three years. Seventy five percent of the revenue from GELS sales to its customers would go to Powerweb for the first 18 months, afterwards, GELS would get seventy-five percent of the revenue.

Paragraph 6 (B) of the Sourced Product Agreement, entitled "Product Qualification", contained GELS' testing requirements. Paragraph 6 (B) provided as follows:

> Buyer shall advise Seller in writing if the Product samples meet its criteria, at which time the Product shall be qualified for sale under the Contract... Buyer shall have no obligation to purchase any Product until it is qualified pursuant to the above process.

Paragraph 4 of the Sourced Product Agreement required that Powerweb respect the GE trademarks. It provided that Powerweb would, when requested, brand the products with GE trademarks "only for the purpose of Seller's manufacture of the Products for sale to Buyer and for no other purpose." Powerweb and GELS agreed "not to market or use such Products, Brands, trademarks, patent designs, patent relating to the Products or packing either for its own use or for third parties except as set forth in the agreement."

[2] Mutual Non Disclosure Agreement p. 1.

The Source Contract Agreement and the Reseller's Agreement contained identical arbitration provisions. The arbitration provision provided as follows:

> The parties shall attempt in good faith to resolve any Dispute promptly by negotiation. If the matter has not been resolved within sixty (60) days after a party's request for negotiation, either party may initiate arbitration as provided herein. Any Dispute which has not been resolved as provided above, shall, at the request of either party, be finally settled by arbitration under the Center for Public Resources for Non-Administered Arbitration of Business Disputes in effect on the date of this Contract, by an independent and impartial arbitrator. The validity of this arbitration provision, the conduct of the arbitration, any challenge to or enforcement of any arbitral award or order, or any other question of arbitration law or procedure shall be governed exclusively by the Federal Arbitration Act, 9 U.S. C. sections 1-16; however, the award can be modified or vacated on grounds cited in the Federal Arbitration Act or if the arbitration panel's findings of facts are not supported by substantial evidence or the conclusions of law are erroneous under the laws of the State of New York. The place of arbitration shall be in Louisville, Kentucky. Notwithstanding the foregoing sentence, whether a party may apply to any court of competent jurisdiction, wherever situated, for enforcement of any judgment on an arbitral award. [3]

The parties worked to market GEWEMS under the Purchase Contract and Reseller's Agreement. GEWEMS never met GE's standards for product life, dependability and performance. Concerns also arose in regard to potential patent infringement. On December 5, 2007, Powerweb received GELS' proposed termination and release Agreement purporting to release GELS from its responsibilities under the Purchase Contract, the Reseller's Agreement and the MNDA. Powerweb refused to sign the release.

On December 11, 2007, Powerweb delivered a letter demand for negotiations to GELS. On May 16, 2008, after receiving a response from GELS and waiting the mandatory sixty (60) day waiting period, Powerweb filed a Notice of Arbitration. The Notice of Arbitration was filed with the International Institute for Conflict Prevention and Resolution (the "CPR") as required by the parties' agreement.

[3] Purchase Contract ¶ B; Reseller Agreement ¶ 14 C.

Powerweb's Notice of Arbitration contained claims for breach of contract against GELS, breach of the implied covenant of good faith and fair dealing against GELS, breach of best efforts in an exclusive dealings contract against GELS (pursuant to UCC), misrepresentation against GELS, tortious interference with contract against GE, tortious interference with prospective economic advantage against GE, constructive trust against both GE and GELS, breach of the MNDA against GE and GELS, and fraud against GE.

Powerweb also filed a claim for permanent injunctive relief against GE and GELS following discovery of the existence and status of GE's new wireless lighting control project known as Smart Energy Lighting Management System ("SELMS"). On April 3, 2009, GE counterclaimed seeking damages and injunctive relief for violation of its trademark and to recoup revenue for sales Powerweb made to "beta sites" testing the products.

Unable to agree on an arbitrator, CPR was asked to intervene and initiate the process for assisting the parties in choosing an arbitrator. CPR ran a conflict check with names from the parties as well as potential arbitrators and provided each party a list of fourteen names and a biography of each arbitrator including a statement of any possible conflict with either party or witnesses. During the selection process CPR disclosed to Powerweb that GE contributed to CPR and was a Platinum Sponsor ($50k). Powerweb requested clarification of GE's relationship with CPR from respondent's counsel. In response, GE stated it was independent of CPR and that the arbitrators are independent of CPR.

Peter Michaelson, Esquire ("the Arbitrator"), an engineer and intellectual property lawyer was named as the arbitrator for the case. The Arbitrator, in a disclosure consisting of fourteen pages revealed he prepared two US patents applications for GE's Research and Development laboratory in Schenectady, New York in 1991-92. One application concerned combustion

control in jet engines and the other concerned a silicon carbide photodiode. The Arbitrator stated no other conflicts existed with the parties. Powerweb did not object to Michaelson's appointment as arbitrator and the parties executed an arbitration agreement. The arbitration agreement provided in part that

> Each party and its Counsel have made a reasonable effort to learn and have disclosed to the other Party and the Arbitrator, in writing, any relationships of the nature described in paragraphs (a)-(e) immediately above, not previously disclosed and identified by the Arbitrator.
>
> The Parties and the Arbitrator are satisfied that any relationships that have been so disclosed will not affect the Arbitrator's independence or impartiality. Notwithstanding such relationships with the Arbitrator and the Parties did not discover despite good faith efforts to do so, the Parties wish the Arbitrator to serve in this Arbitration, waiving any claim based on those relationships, and the Arbitrator agrees to so serve.

As discovery progressed, Powerweb discovered GE was actively working on a lighting control system called SELMS, a system that had the very same functional attributes as Powerweb's GEWEMS system. Powerweb propounded discovery requests directed GE regarding the SELMS system and requested an opportunity to observe and inspect the system. GE objected to the request to observe and inspect. Powerweb appealed to the Arbitrator who denied Powerweb and its experts the right to inspect the actual SELMS system as unnecessary.

As the arbitration hearing approached, GE discovered that Powerweb was using GE's registered trademarks in contravention of the parties' agreements and the Lanham Act. Intially, Powerweb agreed to remove GE Mark's from the web site however, in January 2008, Powerweb began using the Marks once again and ignored GE's request to stop using its marks. In April 2009, GE brought a motion for preliminary injunction to stop Powerweb from continuing to violate GE's trademarks. On September 16, 2009, the Arbitrator granted the motion for preliminary injunction and barred Powerweb from making directly or indirectly any authorized

use of the GE trademarks, including displaying those trademarks on any website hosted by or sponsored by or affiliated with Powerweb, holding itself out directly or indirectly orally or in writing as a partner with GE and undertaking any activity to suggest, directly or indirectly that Powerweb is affiliated with GE.

The arbitration took place over ten consecutive days from October 15 through October 24, 2009 in Atlanta, Georgia. On February 1, 2010, the Arbitrator issued a 56 page Interim Award. The Interim Award denied Powerweb's requests for relief on its claims for breach of the MNDA, denied Powerweb's request for relief regarding GE's conduct under the Governing Agreements, denied GE's requests for monetary relief under its Lanham Act counterclaim and required Powerweb to provide an accounting of Powerweb GEWEMS sales during period when the Governing Agreements were in force, and remit to GE its contracted share of net profits. The permanent injunction remained in full force and effect and provided sufficient relief.

The parties had thirty (30) days to request from the Arbitrator an additional award, clarification or correction of the Interim Award or challenge net profit accounting. The parties submitted supplemental submissions regarding the net profits issue only.

On February 16, 2010, Powerweb filed a motion to disqualify the Arbitrator and to set aside his February 1, 2010 Award. Powerweb identified the following four grounds for disqualification: (1) the Arbitrator and CPR failed to disclose that the Arbitrator in 2008 was a member of a 2009 CPR Advisory Committee for which one other committee member was a GE manager; (2) the Arbitrator failed to disclose that an attorney in his five attorney firm, Michael Luccarelli, Jr. sits on a external advisory board at Columbia University with the Vice President at GE who in 1999 through 2004, was the Vice President and General Manger of Global Technology for GE Lighting, (3) the Arbitrator's firm and GE are both members of the New

York Chapter of the Association for Corporate Growth, a networking group that facilitates relationship building and focused education and (4) the Arbitrator failed to disclose that an attorney left his firm in 2006 and went in-house at GE's Global Patent Operations. The Arbitrator responded to the motion stating disclosure was not necessary since no relationship existed which would have any bearing on the Arbitrator's impartiality.[4] The CPR panel after review of the parties' submissions which included sworn declarations from the various individuals implicated, rejected Powerweb's bias challenge.

On May 1, 2010, the Arbitrator entered a final award. The Final Award adopted all provisions of the Interim Award including the provision that the permanent injunction remained in full force and effect. The Arbitrator however declined to require Powerweb to remit its contracted share of net profits from sales of GEWEMS because GE had not proven that Powerweb received any net profits during the period at issue.

On May 13, 2010, Powerweb filed a petition to vacate an arbitration award in this court. GE and GELS filed a notice of removal to the United States District Court for the Eastern District of Pennsylvania. Powerweb filed a motion to remand. On September 2, 2011, the United States District Court for the Eastern District of Pennsylvania granted Powerweb's motion and the matter was remanded to this court. Presently pending before the court is Powerweb's petition to vacate the arbitration award.

[4] Arbitrator's response to Motion to Disqualify.

DISCUSSION

Review of arbitration awards is "extremely deferential," and vacatur is appropriate only in "exceedingly narrow" circumstances.[5] Section 10 of the Federal Arbitration Act (FAA) in 9 U.S.C. § 10 sets forth four (4) narrow grounds to vacate.[6] The grounds are as follows:

> (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. [7]

In the case at bar, Powerweb argues the Arbitrator's Award should be vacated because the Arbitrator failed to address a majority of Powerweb's claims, unilaterally imposed a "use" requirement without basis, denied a request to inspect a competing lighting system and the Arbitrators failed to disclose certain relationships with GE to Powerweb before and during the arbitration which may evidence evident partiality. Each of these grounds will be discussed.

---

[5] Dluhos v. Strasberg, 321 F.3d 365, 370 (3d Cir. 2003).

[6] Ario v. Underwriting Members of Syndicate 53 at Lloyds, 618 F.3d 277, 295 (3d Cir. 2010).

[7] 9 U.S.C. § 10.

A. The Arbitrator's award was final and definite.[8]

Powerweb claims the Arbitration Award should be vacated because the Arbitrator failed to render a mutual, definite and final award on its claims for breach of implied covenant of good faith and fair dealing against GELS, breach of best efforts under the UCC for an exclusive dealings contract against GELS, misrepresentation against GELS, tortious interference with contract against GE, tortious interference with prospective contractual economic advantage against GE, and fraud against GE. The FAA's authorization to vacate an arbitration award under § 10(a)(4) is consistently accorded the narrowest of readings especially where that language has been invoked in the context of arbitrators' alleged failure to correctly decide a question which all concede to have been properly submitted in the first instance.[9] The inquiry under § 10(a)(4) focuses on whether the arbitrators had the power, based on the parties' submissions or the arbitration agreement, to reach a certain issue, not whether the arbitrators correctly decided that issue.[10] Here, the record before the court conclusively reveals the Arbitrator ruled on all issues presented by Powerweb.

In analyzing the claims, the Arbitrator found GE and GELS were in possession of confidential information as defined by the MNDA. Yet, the Arbitrator found there was no record evidence that GE or GELS used the confidential information it possessed to design SELMS, the alleged competitive system. As such, since there was no evidence demonstrating use of the

---

[8] Respondent's in a footnote address the issue of whether Powerweb waived its right to object to the Arbitration Award since it failed to do so during the Arbitration process itself. The court notes that the Arbitrator gave Powerweb an opportunity to object to the Interim Award. The record shows subsequent submissions were made by Powerweb concerning the net profit evaluations and disqualification of the Arbitrator. Since the record presented to the court is incomplete as it pertains to the issue of waiver, the court chooses to decide this matter on the merits.

[9] Westerbeke, 304 F.3d at 220 (2d Cir. 2002) (quoting In re Andros, 579 F.2d 691, 703 (2d Cir. 1978)).

[10] DiRussa v. Dean Witter Reynolds, Inc., 121 F.3d 818, 824 (2d Cir. 1997), cert denied, 522 U.S. 1049, 118 S. Ct. 695, 139 L. Ed. 2d 639 (1998).

confidential information in contravention of the MNDA, the claims for breach of contract, breach of implied covenant of good faith and fair dealing against GELS, breach of best efforts under the UCC and misrepresentation were non-existent. The Arbitrator also decided that GELS satisfied the good faith and best efforts obligation under the various contracts and that the failure to bring the product to market was the fault of Powerweb. [11] Consequently, the Arbitrator found GELS had no obligation to continue to use good faith or best efforts under the various agreements.[12]

Having determined that no breach or threat of breach occurred, the claim for tortious interference of contract became legally impossible to prove since such a claim requires the existence of a contract to interfere with. [13] Moreover, the Arbitrator considered Powerweb's fraud claim based on the timing of qualification testing documentation and rejected same after analyzing the record.[14] Since the Arbitrator fully and completely evaluated Powerweb's claims, the motion to vacate based on incompleteness is denied.

B. The Arbitrator did not exceed his authority in ruling that GE never used Powerweb Confidential Information.

Powerweb argues the Arbitrator exceeded his powers by overstepping the requirements identified in the parties' agreements by basing the Award on a single element for proving a common law claim of misappropriation of trade secrets under New York law, use. As discussed supra., the focus in challenges to an arbitration award under section 10(a)(4) is "whether the arbitrators had the power, based on the parties' submissions or the arbitration agreement, to reach

---

[11] Interim Award p. 38. 39.

[12] Interim Award p. 38, 39, 40-41.

[13] Interim Award p. 41,

[14] Interim Award p. 41.

a certain issue, not whether the arbitrators correctly decided that issue." [15] Section 10(a)(4) does ot permit vacatur for legal errors.[16] Courts will uphold an award so long as the arbitrator construes or applies the contract and acts within the scope of his authority.

In the case *sub judice*, the arbitration agreements between the parties gave the Arbitrator authority to resolve all disputes between them. The CPR rules give an arbitrator the authority under the CPR to:

> grant any remedy or relief, including but not limited to specific performance of contract which is within the scope of the agreement of the parties and permissible under the law(s) or rules of law applicable to the dispute.

Based on the broad powers granted the Arbitrator the court finds that he acted within the scope of his authority in issuing the Award.

Powerweb also relies upon the "manifest disregard of the law" doctrine to vacate the Arbitration Award. Specifically, Powerweb argues the Arbitrator failed to utilize the applicable legal principles for a breach of contract claim under New York law to determine whether GE breached or threatened to breach the parties' written agreements and instead utilized a misappropriation of trade secrets standard. The manifest disregard of the law doctrine is a judicially created doctrine used in exceedingly rare circumstances where some egregious impropriety on the part of the arbitrators is apparent, but where none of the four FAA vacatur provisions apply. [17]

---

[15] Westerbeke Corp. v. Daihatsuv Motor Co., 304 F.3d 200, 220 (2d. Cir.2002).

[16] Westerbeke, supra. 304 F.3d at 220.

[17] *See* Black Box Corp. v. Markham, 127 Fed. App'x 22, 25 (3d Cir. 2005) (citation omitted).

The manifest disregard for the law doctrine means more than mere legal error or misunderstanding. [18] Rather, the decision must fly in the face of clearly established legal precedent, such as where an arbitrator appreciates the existence of an unambiguous governing legal principle but decides to ignore or pay no attention to it.[19] The party seeking vacatur on the basis of manifest disregard of the law doctrine bears the burden of proving the arbitrators were fully aware of the existence of a clearly defined governing legal principle, but refused to apply it.[20] However, a court may never vacate an arbitration award merely because it views the merits of the claims differently or because the court feels that the arbitrator made a factual or legal error.[21]

In Hall Street Associates, L.L.C. v. Mattel, Inc., the United States Supreme Court held §10 of the FAA provides the exclusive grounds for vacatur of an FAA decision. [22] Hall Street recognized that a number of Circuit Courts had previously held that "manifest disregard of the law" was a further ground for vacatur on top of those listed in § 10 but stopped short of explicitly saying that manifest disregard of the law was no longer a valid ground for vacatur. Instead, the Supreme Court indicated that, to the extent it remained valid, it should be interpreted as fitting within the parameters of § 10 of the FAA.[23] Presently, the Circuits are split on the interpretation

---

[18] *See* Tanoma Mining. Co., Inc. v. Local Union No. 1269, United Mine Workers, 896 F.2d 745, 749 (3d Cir. 1990) (stating that an arbitration award may not be vacated merely because the arbitrator made an error of law).

[19] Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Jaros, 70 F.3d 418, 421 (6th Cir. 1995).

[20] Black Box Corp. v. Markham, 127 Fed. App'x 22, 25 (3d Cir. 2005) (citation omitted).

[21] Local 853 Int'l Bhd of Teamsters v. Jersey Coast Egg Producers, Inc., 773 F.2d 530, 534 (3d Cir. 1985) ("The court may not reevaluate supposed inconsistencies in the arbitrator's logic or review the merits of the arbitrator's decision.").

[22] 552 U.S. 576, 128 S. Ct. 1396, 1404-06, 170 L. Ed. 2d 254 (2008).

[23] *Id.* at 128 S. Ct. at 1404.

of *Hall Street* as it pertains to manifest disregard doctrine. [24] Notwithstanding the current uncertainty among the courts regarding the manifest disregard of the law doctrine but accepting the continued viability of the manifest disregard of the law doctrine for purposes of this Petition, the Arbitrator did not manifestly disregarded the law.

C. The Arbitrator did not refuse to hear evidence.

Powerweb also argues the award should be vacated because the Arbitrator refused to hear evidence that was pertinent and material to the arbitrator's analysis as to whether GEWEMS and the SELMS systems were similar. Powerweb argues the Arbitrator denied it a fair hearing because it was not given the opportunity to inspect and test the actual physical SELMS system and effectively cross examine witnesses or challenge certain documentary references.

A review of the record demonstrates Powerweb was given ample means to discover evidence concerning SELMS. GE produced pages of documents concerning SELMS, its product designs, specifications and component list. Powereweb was given the opportunity to depose the GE project leader and to subpoena the GE vendor who created some of the software intended to drive the new system. Powerweb was also given an opportunity to inspect the

[24] *See* Bapu v. Choice Hotels Int'l Inc., No. 09-1011, 371 Fed. Appx. 306, 2010 (3d Cir. 2010) ("While our sister circuits are split on this question of whether manifest disregard of the law by an arbitrator would continue to exist as an independent basis for vacatur, we have yet to rule on it."). The Second and Ninth Circuits have held that manifest disregard survives *Hall Street* as a valid ground for vacatur, because arbitrators who exhibit manifest disregard for the law have "exceeded their powers" under 9 U.S.C. § 10(a)(4). Comedy Club Inc. v. Improv W. Assocs., 553 F.3d 1277, 1290 (9th Cir. 2009); Stolt-Nielsen SA v. AnimalFeeds Int'l Corp., 548 F.3d 85, 93-95 (2d Cir. 2008), overruled on other grounds, U.S. , 130 S. Ct. 1758, 176 L. Ed. 2d 605; *see also* Coffee Beanery, Ltd. v. WW, L.L.C., 300 F. App'x 415, 418-19 (6th Cir. 2008) (holding, in an unpublished opinion, that manifest disregard survives Hall Street as a non-statutory ground for vacatur). On the other hand, the Fifth and Eleventh Circuits have held that manifest disregard of the law is no longer a valid ground for vacatur post-*Hall Street*. Frazier v. CitiFinancial Corp., LLC, 604 F.3d 1313, (11th Cir. 2010); Ramos-Santiago v. United Parcel Serv., 524 F.3d 120, 124 n.3 (1st Cir. 2008) (stating, in dictum, that manifest disregard is no longer a valid ground for vacating or modifying an arbitral award).

system during the hearing. Powerweb also objected to GE's request to introduce a controller prototype in evidence or its use as a demonstrative aid. Based on the foregoing, Powerweb's petition is denied.

D. No Evidence of "Evident Partiality" Exists to Find the Arbitrator Acted with Bias.

The FAA provides that district courts may vacate an arbitral award where there was evident partiality or corruption in the arbitrators, or either of them.[25] "Evident partiality" within the meaning of 9 U.S.C. § 10 will be found where a reasonable person would have to conclude that an arbitrator was partial to one party to the arbitration.[26] Proof of actual bias is not required.[27]

A showing of evident partiality may not be based on speculation.[28] The burden of proving evident partiality rests upon the party asserting bias. [29] Among the circumstances under which the "evident partiality" standard is likely to be met are those in which an arbitrator fails to disclose a relationship or interest that is strongly suggestive of bias in favor of one of the parties.[30]

In the case *sub judice*, Powerweb argues the Arbitrator failed to disclose material connections to GE during the pendency of the arbitration which necessitates vacating the award. As evidence of evident partiality, Powerweb contends the Arbitrator granted GE relief which was

---

[25] 9 U.S.C. § 10(a)(2).

[26] Morelite Constr. Corp. v. New York City Dist. Council Carpenters Ben. Funds, 748 F.2d 79, 84.

[27] See United States v. Int'l Bhd. of Teamsters, 170 F.3d 136, 147 (2d Cir. 1999).

[28] Id. at 170 F.3d at 147; *see also* Three S Del., Inc. v. DataQuick Info. Sys., Inc., 492 F.3d 520, 530 (4th Cir. 2007) (noting that the "asserted bias" may not be "remote, uncertain or speculative").

[29] Andros Compania Maritima, S.A. v. Marc Rich & Co., A.G., 579 F.2d 691, 700 (2d Cir. 1978).

[30] *See, e.g.*, Applied Industrial Materials Corp. v. Ovalar Makine Ticaret v. Sanayi, A.S., 492 F.3d at 136-39.

not plead. Powerweb's alleged material connections are nothing more than tenuous contacts based on speculation which are insufficient to prove evident partiality.

According to Powerweb, the Arbitrator should have disclosed that his firm and GE were both members of the New York Chapter of Association for Corporate Growth ("Association for Corporate Growth"). The Association for Corporate Growth is a networking group which facilitates relationship building and focuses education for middle market deal making profits in the work's financial markets. The record evidence demonstrates the Arbitrator and his firm were never members of the Chapter for the Association for Corporate Growth. [31] Based on the foregoing, no relationship existed necessitating a disclosure.

The remaining three relationships, which Powerweb claims should have been disclosed, consist of 1) the Arbitrator and a GE employee serving on the same CPR committee in 2009, 2) the Arbitrator's colleague holding a board membership on the External Advisory Board at Columbia University with a Vice President and General Manager of Global Technology for GE Lighting; and 3) the Arbitrator's senior attorney joining GE's Global Patent Operations in 2006.

First, although the Arbitrator and a GE employee did serve on a CPR committee, the committee only met once and the Arbitrator never spoke with the GE employee. [32] The Committee had thirty three members (33) and the GE employee does not recall ever meeting or speaking with the Arbitrator.[33] The Arbitrator had an independent relationship with CPR by virtue of his work as an arbitrator and his service on an annual meeting planning committee with thirty three other members with nothing more fails to satisfy the requisite showing of reasonable evident partiality.

---

[31]Respondent's Exhibit Y p. 8-9.

[32] Respondent's Exhibit X (PH GE EX 7) Daniel Dec. ¶ 5.

[33] Respondent's Exhibit X (PH GE Ex. 7) Daniele Declaration ¶4.

Second, Mr. Luccarelli is of counsel to the Arbitrator's firm and shares expenses in running the office. The Arbitrator is aware of Mr. Luccarelli's service to Columbia University. The Arbitrator was never aware of the specific committees or other organizations within Columbia on which Mr. Luccarelli serves. Mr. Luccarelli had no involvement in the Arbitration including providing advice.

Lastly, Alberta Vitale was never an employee of the Arbitrator's firm. Vitale handled overflow matters for the Arbitrator from 2003 until 2006. The Arbitrator has had no contact with Vitale and was not aware that Vitale sought and obtained full time corporate employment with GE.

Based on the foregoing, Powerweb has failed to show circumstances suggestive of bias that a reasonable person would have to believe the Arbitrator was partial to GE. A failure to disclose, in and of itself, is not a basis for vacating an arbitration award. Instead, non-disclosure has relevance in the vacatur context only to the extent that the non-disclosure reveals evident partiality against Powerweb. The foregoing relationships fail to demonstrate any impartiality on the part of the Arbitrator in favor or GE.[34]

CONCLUSION

Based on the forgoing, Powerweb's Petition to Vacate the Arbitration Award is Denied and the Arbitrator's Award is Affirmed.

BY THE COURT,

ALBERT JOHN SNITE, JR., J.

[34] GE's request for attorney fees is denied.