UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TERRI TEPPER,

Plaintiff,

v.

OPPENHEIMER & CO., INC.,

Defendant.

No. 25-cv-09985

Judge Franklin U. Valderrama

ORDER

Petitioner Terri Tepper (Petitioner) is the Executor of the Estate of Lawrence Weiner (Weiner). Weiner, before his death, allegedly agreed to a rate increase for his financial accounts with Defendant Oppenheimer & Co., Inc. (Oppenheimer or Respondent). After Weiner's death, Terri Tepper, Weiner's wife and Weiner's son, Jordan Tepper Weiner, challenged the validity of the rate increase on behalf of the Estate in FINRA arbitration, in light of Weiner's cognitive decline at the time he signed the agreement authorizing the fee increase. The FINRA arbitrator found in favor of Oppenheimer. Petitioner now brings this action to vacate the arbitration award. R. 1,[1] Mot. Vacate. Oppenheimer not only opposes the motion, but cross-moves to confirm the arbitration award. For the reasons stated herein, the Court denies the motion to vacate arbitration and grants the cross-motion.

Background[2]

Lawrence Weiner maintained financial accounts with Oppenheimer before his death in 2023. Weiner began experiencing cognitive decline in 2017, which became more acute when he developed stage four lung cancer in 2021. Mot. Vacate ¶ 3. On January 12, 2021, Weiner signed a document authorizing a fee increase from $1.25% to 1.95%. *Id.* ¶ 4. This fee increase was applied to Weiner's accounts on January 1, 2021, twelve days prior to his authorization. *Id.* Weiner passed away nearly two years later, on December 21, 2023. R. 102, Exh. C-2.

[1]Citations to the docket are indicated by "R." followed by the docket number or filing name, and where necessary, a page or paragraph citation.

[2]The Court has subject-matter jurisdiction pursuant to 28 U.S.C § 1332(a)(1) as the decedent of the Estate is a citizen of Illinois and Oppenheimer a citizen of New York and the amount in controversy exceeds $75,000.

Petitioner then initiated FINRA arbitration proceedings against Oppenheimer on October 22, 2024. R. 1-7, Exh. 7. Petitioner claimed, among other things, that the January 2021 fee increase was a violation of FINRA Rule 2165, which requires heightened scrutiny for clients aged 65 or older. Mot. Vacate ¶ 5. Rule 2165 defines financial exploitation as "the wrongful or unauthorized taking, withholding, appropriation, or use of a Specified Adult's funds or securities." *Id.* After an evidentiary hearing, the arbitrator found in favor of Oppenheimer and denied Petitioner's claims in full. Exh. 7 at 4. Petitioner now brings the instant motion to vacate arbitration, R. 1, which is now fully briefed and before the Court. R. 15, Resp; R. 42, Reply.[3]

Legal Standard

The parties agree that the Court's review is pursuant to the Federal Arbitration Act (FAA), 9 U.S.C. § 1 *et seq.* Under the FAA, a district court may vacate an arbitration award in the following circumstances:

> (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).

"Federal court review of arbitral awards is limited," *Renard v. Ameriprise Fin. Servs., Inc.*, 778 F.3d 563, 567 (7th Cir. 2015). "An arbitral award cannot be vacated pursuant to the FAA merely because the petitioner 'show[s] that the panel committed an error—or even a serious error.'" *Renard*, 778 F.3d at 567 (emphasis in original). Rather, "[i]t may be set aside only if one of the criteria specified in 9 U.S.C. § 10 is present." *Id.* The Petitioner bears the burden of establishing the criteria in § 10. *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 569 (2013) ("A party seeking relief under that provision bears a heavy burden.").

Analysis

Petitioner relies on provisions (3) and (4), arguing that the arbitrator intentionally disregarded the law and refused to hear certain evidence. *See generally* Mot. Vacate. Petitioner argues that (1) the arbitrator refused to consider evidence that Weiner was over the age of 65, had actually experienced cognitive decline, and had the fee increase charged to his account two weeks

[3]The Court notes that Jordan Tepper Weinert previously attempted to proceed *pro se* on behalf of the Estate and filed a response and reply. *See* R. 35; R. 21. The Court noted that the Estate could not proceed *pro se* and gave Petitioner time to retain counsel. R. 37. Petitioner did so, and the Court gave counsel the opportunity to either (1) request leave to file a new motion, or (2) file a new reply. R. 39. Counsel informed the Court that he stood on the original motion but filed a reply brief on behalf of the Estate, which the Court considers. R. 42. The Court does not consider the *pro se* briefs, as they are not properly before the Court.

before he gave authorization for the increase, and (2) the arbitrator failed to apply the heightened scrutiny to the transaction under Rule 2165. *Id.* at 5. Further, Petitioner maintains that the following actions support her position: (1) Oppenheimer misrepresented that the rate increase was not effective until 2022, when the rate increase occurred before Weiner signed the agreement, (2) an earlier order of the arbitrator "mischaracterized" the position of Jordan Weiner, Lawrence Weiner's son, by indicating that Jordan had agreed he should not be a claimant, and then denied a motion to correct the record, and (3) the arbitrator denied a motion to compel the discovery of Oppenheimer's client activity reports. *Id.* at 3–4. Petitioner relies on these same arguments for both provisions, so the Court examines them both together, ultimately finding that Petitioner has not met her burden under either § 10(a)(3) or (4).[4]

Recall that § 10(a)(3) allows the Court to vacate an arbitration award "where the arbitrators were guilty of misconduct . . . 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." Mot. Vacate at 2. Under § 10(a)(3), an arbitration award may only be vacated if the arbitrator "deliberately disregards what he knows to be the law." *Renard v. Ameriprise Fin. Servs., Inc.*, 778 F.3d 563, 567 (7th Cir. 2015). "Simple mistake of law is not enough." *Id.* at 568. Further, "§ 10(a)(3) does not provide for substantive review of an arbitrator's decisions." *Hyatt Franchising, L.L.C. v. Shen Zhen New World I, LLC*, 876 F.3d 900, 902 (7th Cir. 2017). Rather, "only misbehavior by the arbitrator comes within the residual clause of § 10(a)(3)." *Id.*

Section 10(a)(4), in turn, requires that "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." "[A] party seeking relief under Section 10(a)(4) 'bears a heavy burden,'" *Kinsella v. Baker Hughes Oilfield Operations, LLC*, 66 F.4th 1099, 1103 (7th Cir. 2023). "Section 10(a)(4) concerns whether the arbitrator interpreted the law or contract submitted by the parties—not whether the arbitrator interpreted it correctly." *Id.* at 1104. In other words, "§ 10(a)(4) does not make legal errors a ground on which a judge may refuse to enforce an award." *Hyatt Franchising, L.L.C.*, 876 F.3d at 902.

I. Evidentiary and Preliminary Rulings

The Court begins with Petitioner's argument that the arbitrator's award should be vacated on the grounds that he denied Petitioner's motion to compel the production of certain client activity reports. In the opening motion, Petitioner does not cite to any cases where an arbitration award was even vacated, much less where one was vacated under similar facts. *See generally* Mot. (citing *Renard*, 778 F.3d 563; *Flender Corp. v. Techna-Quip Co.*, 953 F.2d 273 (7th Cir. 1992); *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564 (2013); *Affymax, Inc. v. Ortho-McNeil-Janssen Pharms., Inc.*, 660 F.3d 281 (7th Cir. 2011)). Oppenheimer, in turn, first counters that "it is well settled that discovery and evidentiary rulings, even determinations that foreclose certain evidence or arguments, do ***not*** amount to refusing to hear evidence or misbehavior which could arguably be considered grounds to vacate." Resp. at 8–9 (citing *Bartlit Beck LLP v. Okada*, 25 F.4th 519, 522

[4]Because the Court finds that Petitioner has not met her burden on the merits, it declines to consider the argument that Petitioner's motion is time-barred because she served the motion to vacate two days after the statutory deadline. *See* Resp. at 4.

(7th Cir. 2022), and *Halim v. Great Gatsby's Auction Gallery, Inc.*, 516 F.3d 557, 563-64 (7th Cir. 2008)).

The Court agrees with Oppenheimer. "The statutory phrase 'refusing to hear evidence' concerns the conduct of the hearing, not the conduct of discovery." *Hyatt Franchising, L.L.C.*, 876 F.3d at 901. Petitioner replies that this does concern the conduct of the hearing, because when the arbitrator denied Petitioner's motion to compel, he allowed for Petitioner to raise any concerns at a later hearing. Reply at 8. But when Petitioner attempted to bring it up at the later hearing, the arbitrator, according to Petitioner, refused to hear the argument. *Id.* Meanwhile, Petitioner never received the evidence which Oppenheimer agreed to produce.

Petitioner's argument still boils down to a decision not to grant a motion to compel, rather than a refusal to hear proffered evidence. "Indeed, nothing in the Federal Arbitration Act requires an arbitrator to allow *any* discovery." *Hyatt Franchising*, 876 F.3d at 901 (emphasis in original). It is clear that discovery occurred, and "an argument that the arbitrator had to allow more rings hollow." *Id.* This is true even where the arbitrator fails entirely to consider a discovery motion, as a refusal to hear a discovery motion can be considered to be giving "the parties what had contracted for: a cost-effective and efficient resolution of their dispute." *See Halim*, 516 F.3d at 563, *overruled on other grounds by Moore v. Club Exploria, LLC*, 2026 WL 2409841 (7th Cir. Aug. 18, 2026) ("The arbitrator's failure to formally rule on that particular discovery dispute was a far cry from a 'manifest disregard of the law.'"). Petitioner's complaints that the arbitrator failed to impose sanctions, "mischaracterized a position," or arguably demanded one of more party than the other in discovery, fall short for the same reasons. There is no evidence that the arbitrator was guilty of misbehavior or exceeded his powers, and neither § 10(a)(3) nor (4) allow for vacatur based on mistakes of law or substantive disagreements. *Hyatt Franchising, L.L.C.*, 876 F.3d at 902.

II. Evidence of Weiner's Cognitive Decline and the Rule 2165 Standard

Petitioner next argues that the arbitrator failed to apply heightened scrutiny to the transaction and ignored evidence of Weiner's cognitive decline. Mot. Vacate at 4. Not so, argues Respondent, insisting that the arbitrator considered Rule 2165, as he explicitly listed it as the claim under consideration in his order, and there is no evidence that the arbitrator deliberately disregarded the law in his order. Resp. at 9–10. The Court agrees with Oppenheimer.

It is true that the arbitrator's opinion is brief. In fact, after listing the materials considered and the history of the case, the arbitrator summarily denied all claims. *See* R. 42-3. But "[n]o rule of law requires arbitrators to render opinions—or, having chosen to write an opinion, to discuss every issue that the parties contested." *Affymax, Inc.*, 660 F.3d at 285; *Eljer Mfg., Inc. v. Kowin Dev. Corp.*, 14 F.3d 1250, 1254 (7th Cir. 1994) ("an arbitrator is simply not required to state the reasons for his decision"). The fact that the arbitrator did not specifically address Petitioner's Rule 2165 arguments in his written order is not evidence that the arbitrator failed to consider it and Petitioner cites no authority to the contrary. The arbitrator considered the evidence of Weiner's cognitive decline under Petitioner's claim that Oppenheimer violated FINRA Rule 2165. There is no evidence that he deliberately disregarded the law, and as such, Petitioner's claim fails. *Kinsella*, 66 F.4th at 1104 ("The arbitrator here applied the law governing [petitioner's] claim for a failure to accommodate his disability under the ADA. So, any objection that the arbitrator incorrectly interpreted the ADA must fail.").

Petitioner attaches the transcripts and other records, and cites to them, for the first time on reply. Ordinarily, it is improper to consider evidence raised for the first time on reply. *United States v. Desotell*, 929 F.3d 821, 826 (7th Cir. 2019) ("In most instances, litigants waive any arguments they make for the first time in a reply brief." (citing *Carroll v. Lynch*, 698 F.3d 561, 568 (7th Cir. 2012)). But the Court finds that its conclusion does not change even with this evidence. From the transcripts, it is clear the arbitrator considered Weiner's cognitive decline. For example, the arbitrator considered the fact that Petitioner had not filed for power of attorney for Weiner until 2023, five years after she testified that she had concerns about Weiner's ability to look out for himself financially, Tr. at 31–32; he considered that she did not have conversations with Oppenheimer about Weiner's cognitive ability until 2023, *id.* at 36; he heard testimony from two of Petitioner's experts about his cognitive state and asked questions of them, including whether they could offer opinions as to his ability to handle finances, *id.* at 41, 51–53, 63–64; he considered that Weiner signed his own tax returns through 2022, *id.* at 43; he considered Weiner's advisor's opinion of his cognitive state based on his interactions, *id.* at 140; how many times Weiner accessed his account, *id.* at 146; Weiner's requests of his advisor, *id.* at 153; his advisor's training on assessing elderly clients, *id.* at 160; and the arbitrator questioned Weiner's advisor on the rate increase itself, *id.* at 168.

Accordingly, the Court finds that Petitioner has not shown that the arbitrator deliberately disregarded Rule 2165 or refused to consider evidence of cognitive decline.

III. Timing of Fee Increase

Last, Petitioner argues that Oppenheimer continually misrepresented the timing of the fee increase, "depriv[ing] Petitioner of a right to a fair hearing." Mot. Vacate at 5. Again, the Court finds that the arbitrator's preliminary rulings and evidentiary decisions are not grounds for vacatur. Second, the Court agrees with Oppenheimer that there is no evidence that the arbitrator deliberately disregarded the law or the contract.

"[T]he relevant question is 'whether the arbitrator (even arguably) interpreted the parties' contract, not whether [he] got its meaning right or wrong.'" *USAA Sav. Bank v. Goff*, 170 F.4th 1051, 1054 (7th Cir. 2026). "In other words, we ask 'not whether the arbitrator misinterpreted the agreement, but only whether the arbitrator's inquiry disregarded the very language of the agreement itself.'" *Id.* Petitioner replies that the arbitrator could not have arguably interpreted the contract because there is no way to come to the conclusion that Weiner ratified a fee increase that began two weeks before he signed the contract. Reply at 3–6. But the arbitrator heard argument and evidence that the fees began on January 1, 2026, and Petitioner explicitly pointed out at the hearing that Weiner did not sign the agreement until January 12, 2026, Tr. at 82–83. The arbitrator also heard the context of that fee increase, which was that Weiner wanted to increase income from his securities holdings and buy more bonds, which required more investments, *Id.* at 198. This required an accompanying increase in fees. *Id.* The arbitrator heard that Weiner and his advisor discussed this plan, Weiner agreed, and the agreement was to memorialize the fact that Weiner would be paying more fees in 2021. *Id.* at 169–71, 202–203.

Again, "the question for decision by a federal court asked to set aside an arbitration award . . . is not whether the arbitrator or arbitrators erred in interpreting the contract; it is not whether they clearly erred in interpreting the contract; it is not whether they grossly erred in interpreting

the contract; it is whether they interpreted the contract." *Affymax, Inc.*, 660 F.3d at 286. Here, the record shows that the arbitrator interpreted the contract. The Court thus finds Petitioner has not met her burden for vacatur of the award.

Finally, Petitioner asserts for the first time in reply that an email from Oppenheimer's arbitration counsel during arbitration, which told Jordan Weiner that he had "alienated" the arbitrator, suffices to show misbehavior sufficient to vacate the award. Reply at 12. Not only did Oppenheimer not have an opportunity to respond to this argument, but Petitioner provides no authority for the proposition that an email from opposing counsel critiquing a party's strategy can constitute the "misbehavior" required for vacatur under § 10(a)(3).

Oppenheimer also cross-moves for confirmation of the award. *See* Resp. Because the Court agrees that there is no reason to set aside the award, the Court grants the motion to confirm. *See Standard Sec. Life Ins. Co. of New York v. FCE Benefit Adm'rs, Inc.*, 967 F.3d 667, 671 (7th Cir. 2020) ("Confirmation is 'usually routine or summary' . . . .").

Conclusion

For the reasons stated herein, the Court denies the motion to vacate arbitration, R. 1, and grants the cross-motion to confirm the award, R. 15.

Date: September 29, 2026

United States District Judge
Franklin U. Valderrama