UNITED STATES DISTRICT COURT
JS-6 **CENTRAL DISTRICT OF CALIFORNIA**

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CASE NO.: **CV 12-03560 SJO (SHx)** **DATE:** **August 22, 2012**

TITLE: **In the Matter of the Arbitration Between Barry Sonnenfeld v. United Talent Agency, Inc.**

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PRESENT: THE HONORABLE S. JAMES OTERO, UNITED STATES DISTRICT JUDGE

Victor Paul Cruz	Not Present
Courtroom Clerk	Court Reporter
COUNSEL PRESENT FOR PETITIONER:	**COUNSEL PRESENT FOR RESPONDENT:**
Not Present	Not Present

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PROCEEDINGS (in chambers): ORDER DENYING SONNENFELD'S MOTION TO VACATE ARBITRATOR'S AWARD [Docket No. 8] **AND GRANTING UNITED TALENT AGENCY'S MOTION TO CONFIRM ARBITRATION AWARD** [Docket No. 21]

On April 24, 2012, Petitioner Barry Sonnenfeld filed a Petition to Vacate or Modify Award of Arbitrator ("Petition"), stemming from his arbitration against Respondent United Talent Agency, Inc. ("UTA"). On May 25, 2012, Sonnenfeld filed the instant Motion to Vacate Arbitrator's Award ("Motion to Vacate" ("MTV")). On June 4, 2012, UTA filed an Opposition ("OTV"). On June 25, 2012, Sonnenfeld filed a Reply ("RTV"). In addition, on June 25, 2012, UTA filed a Motion to Confirm Arbitration Award ("Motion to Confirm" ("MTC")). On July 2, 2012, Sonnenfeld filed an Opposition ("OTC"). On July 9, 2012, UTA filed a Reply ("RTC"). The Court found these matters suitable for disposition without oral argument and vacated the hearings set for June 25, 2012 and July 23, 2012. *See* Fed. R. Civ. P. 78(b). For the following reasons, Sonnenfeld's Motion to Vacate is **DENIED** and UTA's Motion to Confirm is **GRANTED**.

I. FACTUAL AND PROCEDURAL BACKGROUND[1]

The Petition and MTV make the following allegations. Sonnenfeld is an accomplished film and television director. (MTV 1, May 25, 2012, ECF No. 8.) UTA is a talent agency that formerly served as Sonnenfeld's agent. (MTV 1.) Because no written agency agreement governed UTA's representation of Sonnenfeld, the terms of their agency agreement were governed by the DGA-ATA Agency Agreement, including Rider D (collectively, the "Agency Agreement"). (Pet. ¶¶ 8-9, Apr. 24, 2012, ECF No. 1; *see also* Decl. of Edward M. Anderson in Supp. of MTV ("Anderson

[1] Because Sonnenfeld's MTV describes many of the facts in more relevant detail than does his Petition, the Court will rely in large part on the MTV. In addition, the MTC, OTC, and RTC simply restate the contents of the MTV, OTV, and RTV. Thus, the Court will generally rely on the Petition, MTV, OTV, and RTV.

Decl.") Ex. A ("Agency Agreement"), May 25, 2012, ECF No. 11-1.) The Agency Agreement states that after termination, "[the] [a]gency shall be entitled to commission on direct or indirect renewals, substitutions, replacements, extensions or modifications of contracts" that were "entered into or substantially negotiated prior to such termination." (Agency Agreement 15, at ¶¶ 4A-4B.)

While serving as Sonnenfeld's agent in 1995, UTA helped negotiate an agreement with Columbia Pictures ("Columbia") for Sonnenfeld to direct *Men in Black* (the "MIB I Agreement"). (*See* MTV 5.) The MIB I Agreement states that "[Sonnenfeld] shall have a rolling right of first negotiation to direct theatrical . . . sequels" and that "[t]he financial terms and conditions with respect to a theatrical production shall be no less favorable to . . . [Sonnenfeld] than those set forth in this [MIB I Agreement]." (Anderson Decl. Ex. F ("Award") 2, May 25, 2012, ECF No. 11-6.) For its efforts, Sonnenfeld paid UTA $325,000, a 10% commission on his $3.25 million compensation. (*See* MTV 5.) Sonnenfeld and UTA terminated their business relationship "shortly after" the finalization of the MIB I Agreement. (MTV 5.)

In 2001, Sonnenfeld's new agent Creative Artists Agency ("CAA") helped negotiate an agreement with Columbia for Sonnenfeld to direct *Men in Black II* (the "MIB II Agreement"). (MTV 5.) The MIB II Agreement gave Sonnenfeld substantially improved contract terms and conditions. (MTV 5-6.) For its efforts, Sonnenfeld paid CAA a 10% commission on his $20 million compensation. (MTV 6.) In addition, CAA had agreed to indemnify Sonnenfeld against any claims made by UTA in connection with *Men in Black II*. (Award 4-5.) UTA later made such a claim. (Award 4-5.) Accordingly, CAA paid UTA $325,000. (MTV 6.)

In 2009, Columbia approached Sonnenfeld about directing *Men in Black III*. (MTV 6.) Columbia "ignored the prior negotiation clauses and forced Sonnenfeld to negotiate an agreement . . . from scratch," but ultimately the two parties reached an agreement (the "MIB III Agreement"). (MTV 6.) Sonnenfeld received $7 million in compensation, in addition to contingent bonuses. (MTV 6.) As with *Men in Black II*, UTA claimed that it was entitled to a commission on the first $3.25 million in compensation, and UTA initiated the arbitration process on December 10, 2010. (MTV 7.)

On January 28, 2011, Sonnenfeld and UTA chose Howard Weitzman as their sole Arbitrator. (Anderson Decl. ¶ 3.) Weitzman was informed that the Agency Agreement required that the Arbitration Hearing ("Hearing") occur within fifteen days of his appointment. (MTV 7.) On July 25, 2011, UTA filed a motion asking Weitzman to subpoena files from Sonnenfeld's transactional attorney, Melanie Cook. (Pet. ¶ 19; MTV 8.) Although Sonnenfeld opposed the motion, Weitzman granted it on September 9, 2011. (MTV 8.)

On January 17, 2012, Weitzman held the Hearing. (MTV 9.) Although Sonnenfeld prepared to have witness Michael Marshall testify at the Hearing, Weitzman "actively dissuaded" Sonnenfeld from having Marshall testify by stating that Weitzman "knew what Mr. Marshall would say" and "did not need or desire him to testify." (MTV 9, 16.) On March 17, 2012, Weitzman issued the Award: UTA was entitled to a 10% commission on Sonnenfeld's total compensation for *Men in Black III* - with a maximum ceiling of $325,000 - and would be entitled to the same commission (and

maximum ceiling) for each future *Men in Black* sequel or remake. (Award 7.) Weitzman based the Award on his conclusion that the MIB I Agreement's "rolling right of first negotiation" clause combined with the Agency Agreement's post-termination commission clause granted UTA future commissions based solely upon its original negotiation. (Award 6.)

On April 24, 2012, Sonnenfeld filed the Petition. (*See generally* Pet.) On May 25, 2012, Sonnenfeld filed the instant MTV. (*See generally* MTV.) In the MTV, Sonnenfeld argues that the Court should vacate the Award because: (1) the Award does not comport with the "essence" of the Agency Agreement; and (2) Weitzman "exceeded his power" by failing to comply with the Agency Agreement's substantive and procedural requirements. (*See generally* MTV.)

On June 4, 2012, UTA filed the OTV. (*See generally* OTV, ECF No. 14.) In the OTV, UTA argues that the Court should instead confirm the Award because: (1) the Award comports with the "essence" of the Agency Agreement; and (2) the alleged substantive and procedural defects are not sufficient to warrant vacation of the Award. (*See generally* OTV.) On June 25, 2012, Sonnenfeld filed the RTV. (*See generally* RTV, ECF No. 24.)

On June 25, 2012, UTA filed the instant MTC, which generally restated the arguments from its OTV. (*See generally* MTC, ECF No. 21). On July 2, 2012, Sonnenfeld filed the OTC, which generally restated the arguments from his Petition, MTV, and RTV. (*See generally* OTC, ECF No. 30). On July 9, 2012, UTA filed the RTC, which also generally restated arguments from its OTV. (*See generally* RTC, ECF No. 37).

II. DISCUSSION

A. Standard of Review

The Federal Arbitration Act ("FAA") constrains the Court's review of an arbitration award. *Bosack v. Soward*, 586 F.3d 1096, 1102 (9th Cir. 2009). The FAA "enumerates limited grounds on which a federal court may vacate, modify, or correct an arbitral award." *Kyocera Corp. v. Prudential-Bache Trade Servs., Inc.*, 341 F.3d 987, 994 (9th Cir. 2003). "'Neither erroneous legal conclusions nor unsubstantiated factual findings justify federal court review of an arbitral award under the statute . . . .'" *Bosack*, 586 F.3d at 1102 (quoting *Kyocera*, 341 F.3d at 994). "In sum, the [FAA] allows a federal court to . . . vacate an award that evidences affirmative misconduct in the arbitral process or the final result or that is completely irrational or exhibits a manifest disregard for the law." *Kyocera*, 341 F.3d at 997-98. Thus, the Court has "an extremely limited review authority, a limitation that is designed to preserve due process but not to permit unnecessary public intrusion into private arbitration procedures." *Kyocera*, 341 F.3d at 998. Indeed, courts grant labor arbitration awards "nearly unparalleled deference." *Grammar v. Artists Agency*, 287 F.3d 886, 890 (9th Cir. 2002) (internal quotation marks omitted). Thus, the party moving to vacate the award bears a heavy burden. *See Grammar*, 287 F.3d at 890.

B. Essence of the Agency Agreement

Sonnenfeld argues that the Award must be vacated because it fails to "draw its essence" from the Agency Agreement. (MTV 11.) Sonnenfeld contends that Weitzman's interpretation of the Agency Agreement is at odds with a different arbitrator's interpretation in the Friedkin Arbitration. (MTV 12-14.) In the Friedkin Arbitration, the arbitrator concluded that although the Agency Agreement - specifically Rider D - requires directors to pay commission to talent agents if "such employment [has] been procured directly through the efforts or services of the talent agency," the director in question was **not** obligated to pay commissions for any agreements that were not "consummated and signed" prior to the termination of the representation. (Anderson Decl. Ex. B (the "Friedkin Award") 5, 9, May 25, 2012, ECF No. 11-2.) In support of the premise that Weitzman was bound by the Friedkin Award's holding, Sonnenfeld cites *Trailways Lines, Inc. v. Trailways, Inc. Joint Council*, 807 F.2d 1416 (8th Cir. 1986). *See id.* at 1419-20 ("We are also of the opinion that where, as here, an arbitrator . . . has definitively construed a provision of the collective bargaining agreement, such construction becomes part of the existing labor agreement."). Thus - Sonnenfeld argues - Weitzman was obligated to follow the Friedkin Award's interpretation because it had become a "binding" part of the Agency Agreement, and to do otherwise deprives the Award of the essence of the Agency Agreement. (MTV 14.)

UTA argues that the award must be affirmed because it draws its essence from the Agency Agreement. (OTV 12.) UTA contends that Sonnenfeld misinterprets the Friedkin Award and that the Friedkin Award did not bind Weitzman. (OTV 13-17.)

An arbitration award "is legitimate only so long as it draws its essence from the collective bargaining agreement." *United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 597 (1960). In making this determination, a court "do[es] not decide the rightness or wrongness of the arbitrators' contract interpretation" and "will not vacate an award simply because [it] might have interpreted the contract differently." *Bosack*, 586 F.3d at 1106 (internal quotation marks omitted). In explaining this deferential standard, the Ninth Circuit cites the Third Circuit: "'An arbitration award draws its essence from the bargaining agreement if the interpretation can in *any rational way* be derived from the agreement, viewed in the light of its language, its context, and any other indica [sic] of the parties' intention.'" *Grammar*, 287 F.3d at 891 (quoting *Tanoma Mining Co. v. Local Union No. 1269, United Mine Workers of Am.*, 896 F.2d 745, 748 (3d Cir.1990)).

Here, Sonnenfeld has failed to carry his heavy burden of showing that Weitzman's interpretation fails to draw its essence from the Agency Agreement in "any rational way." *Grammar*, 287 F.3d at 891. Because the MIB I Agreement granted Sonnenfeld a "rolling right of first negotiation" (Award 2), and because the Agency Agreement entitles UTA to commissions for "direct or indirect renewals" (Agency Agreement 15, at ¶ 4B), Weitzman could have rationally concluded that the Agency Agreement allowed UTA to collect commissions from Sonnenfeld for sequels to *Men in*

Black.[2] That Sonnenfeld or the Court might interpret the Agency Agreement differently is of no import. *See Bosack*, 586 F.3d at 1106. Because Sonnenfeld has failed to show that Weitzman's interpretation is irrational, the Court finds that the Award **does** draw its essence from the Agency Agreement. Therefore, the Court will not vacate the Award on these grounds.

C. Exceeding the Arbitrator's Powers

Sonnenfeld argues that Weitzman exceeded his powers by ignoring procedural and substantive arbitration requirements in the Agency Agreement. (MTV 1.) Sonnenfeld contends that: (1) Weitzman held the Hearing one year after his appointment as arbitrator, far outside the fifteen day window (MTV 15-16); (2) Weitzman allowed discovery "not contemplated" by the Agency Agreement by issuing a subpoena duces tecum (MTV 16); and (3) Weitzman "actively dissuaded" Sonnenfeld from having Marshall testify. (MTV 9, 16.)

UTA argues that Wietzman did not exceed his powers. (OTV 15.) UTA contends that: (1) Sonnenfeld consented to the Hearing delays and fails to present any evidence that he objected at the time (OTV 19); (2) Sonnenfeld has presented no evidence showing that the issuance of the subpoena duces tecum was improper (OTV 20); and (3) both Sonnenfeld and UTA agreed "that no oral testimony would be presented at the [Hearing]." (OTV 21.)

The FAA allows a district court to vacate an arbitration award if "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)(4). "Arbitrators exceed their powers . . . when they act outside the scope of the parties' contractual agreement. However, [a court] [has] no authority to vacate an award solely because of an alleged error in contract interpretation. Instead, [a court] need only determine whether the arbitrators' interpretation was plausible." *Lagstein v. Certain Underwriters at Lloyd's, London*, 607 F.3d 634, 643 (9th Cir. 2010) (internal quotation marks and citations omitted). "[T]his narrow standard of review applies to the arbitrator's interpretation of matters of procedure in the contract as well as matters of substance. In the absence of an express agreement to the contrary, procedural questions are submitted to the arbitrator, either explicitly or implicitly, along with the merits . . . ." *Lagstein*, 607 F.3d at 643 (internal quotation marks and citations omitted).[3]

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[2] Sonnenfeld's reliance on *Trailways* is not persuasive. Because *Trailways* is an Eighth Circuit case, it is merely persuasive authority. The Court is not persuaded.

[3] Arbitrators also exceed their powers "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." *Biller v. Toyota Motor Corp.*, 668 F.3d 655, 665 (9th Cir. 2012). "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 . . . . [Rather,] it must be clear from the record that the arbitrators recognized the applicable law and then ignored

1. Hearing Delay

Here, Sonnenfeld has failed to carry his heavy burden of demonstrating that Weitzman exceeded his powers by delaying the hearing. Although the Agency Agreement includes a fifteen-day window to hold an arbitration hearing (Agency Agreement 8, at ¶ C4(a)(i)), it also states that "[f]or good cause presented, the Arbitration Secretary shall have the authority to grant an extension for a reasonable time." (Agency Agreement 10, at ¶ D4.) Sonnenfeld has presented **no** evidence that the Arbitration Secretary did not grant extensions as described in the Arbitration Agreement. Furthermore, although Sonnenfeld's counsel declares that he reserved all objections to the delay (Supplemental Decl. of Edward M. Anderson in Supp. of MTV, ¶¶ 3, 11, 12, June 25, 2012, ECF No. 26), UTA has presented emails from Sonnenfeld's counsel showing that Sonnenfeld consented to the delay on more than one occasion. (Decl. of Steven B. Stiglitz in Supp. of Opp'n to MTV, Ex. H, at 1, Ex. I, at 1, June 4, 2012, ECF Nos. 15-8, 15-9.) Given the "nearly unparalleled deference" to which the Award is entitled, *see Grammar*, 287 F.3d at 886, the Court concludes that Weitzman's delaying of the Hearing was a "plausible" interpretation of the Agency Agreement. *See Lagstein,* 607 F.3d 643.

2. Subpoena Duces Tecum

Here, Sonnenfeld has failed to carry his heavy burden of demonstrating that Weitzman exceeded his powers by issuing a subpoena duces tecum. Sonnenfeld argues that under the Agency Agreement, discovery in the form of the subpoena "could not have been contemplated." (MTV 7, 8.) However, the Agency Agreement never uses the words "discovery" or "subpoena." (*See generally* Agency Agreement.) Because no "express agreement to the contrary" exists, the parties were obligated to submit this "procedural question" to Weitzman. *See Lagstein*, 607 F.3d at 643 (internal quotation marks omitted). Here, the question of subpoena propriety was submitted to Weitzman, and his interpretation - given the arbitrator's "power to control . . . the rules of procedure for the [H]earing" - is plausible. (Agency Agreement 9, at ¶ C4(b)(1).) Indeed, "procedural questions which grow out of the dispute and bear on its final disposition are presumptively not for the judge, but for an arbitrator, to decide." *Lagstein*, 607 F.3d at 643 (internal quotation marks omitted).

3. Marshall Testimony

Here, Sonnenfeld has failed to carry his heavy burden of demonstrating that Weitzman exceeded his powers by "actively dissuading" Sonnenfeld from having Marshall testify. (MTV 9, 16.) First, "dissuading" a party is not equivalent to coercing a party. That Sonnenfeld now regrets a strategic choice that Weitzman encouraged is not grounds to vacate the Award. Second, Weitzman

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it." *Lagstein* 607 F.3d at 641(internal quotation marks and citations omitted). However, because Sonnenfeld does not argue that Weitzman exceeded his powers by applying the **law** incorrectly (*see generally* Pet.; MTV), this standard does not aid the Court's analysis.

possessed "the power to control the time allotted to each party and the rules of procedure for the [H]earing," and the discretion to waive the "[t]echnical rules of evidence." (Agency Agreement 9, at ¶ C4(b)(1).) Third, "[i]t was agreed amongst the parties and their counsel that no oral testimony would be presented at the [Hearing]." (Award 1.) Given Weitzman's broad power to control procedure and Sonnenfeld's assent, the Court finds that Weitzman's interpretation of the Agency Agreement was plausible.

Given the "nearly unparalleled deference" to which the Award is entitled, *see Grammar*, 287 F.3d at 886, and because Weitzman's interpretation of the Agency Agreement was plausible as to each of Sonnenfeld's claims, the Court finds that Weitzman did not exceed his powers. Therefore, the Court will not vacate the Award on these grounds.

D. Confirmation of Arbitration Award

"Under § 9 of the FAA, 'a court **must** confirm an arbitration award unless it is vacated, modified, or corrected as prescribed in §§ 10 and 11.'" *Bosack*, 586 F.3d at 1102 (quoting *Hall St. Assocs. v. Mattel, Inc.*, 552 U.S. 576, 582 (2008)) (internal quotation marks omitted) (emphasis added). As explained *supra*, the Court finds that: (1) the Award draws its essence from the Agency Agreement; and (2) Weitzman did not exceed his powers. Sonnenfeld proffers no other arguments in favor of vacating, modifying, or correcting the award. Having reviewed all the relevant briefing before the Court,[4] the Court finds no grounds upon which to vacate or otherwise amend the award. Accordingly, the Court is obligated to confirm the Award.

Finally, UTA argues that the Court should award attorneys' fees because "Sonnenfeld has no legitimate, or even colorable, basis" for seeking to vacate the Award. (MTC 6.) In support, UTA cites *International Union of Petroleum & Industrial Workers v. Western Industrial Maintenance, Inc.*, 707 F.2d 425 (9th Cir. 1983). *See id.* at 428 ("Under the American rule . . . a prevailing litigant ordinarily may not collect attorneys' fees. However, a court may assess attorneys' fees when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." (internal quotation marks and citations omitted)). Here, Sonnenfeld has not acted in bad faith: although he faces a difficult standard of review, he has made valid - if insufficient - claims. In addition, UTA has proffered no evidence showing that Sonnenfeld has acted "vexatiously, wantonly, or for oppressive reasons." *W. Indus. Maint.*, 707 F.2d at 428. Therefore, the Court finds that UTA is not entitled to attorneys' fees.

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[4] The relevant briefing before the Court includes: Sonnenfeld's Petition, MTV, RTV, and OTC; and UTA's OTV, MTC, and RTC.

UNITED STATES DISTRICT COURT

JS-6 **CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES - GENERAL

CASE NO.: CV 12-03560 SJO (SHx) **DATE: August 22, 2012**

III. CONCLUSION

For the foregoing reasons, the Court **DENIES** Sonnenfeld's Motion to Vacate Arbitrator's Award and **GRANTS** UTA's Motion to Confirm Arbitration Award. The Court **DENIES** UTA's request for attorneys' fees.

IT IS SO ORDERED.