UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSEPH HARGROVE,

Petitioner,

-v-

CITIGROUP INC.,

Respondent.

11 Civ. 7946 (JSR)

MEMORANDUM

JED S. RAKOFF, U.S.D.J.

On November 7, 2011, petitioner moved under 9 U.S.C. § 10 to vacate an arbitration award that found that respondent Citigroup Inc. ("Citigroup") did not discriminate against him based on his age in violation of N.Y. Exec. Law § 296. After full briefing and oral argument, the Court issued a "bottom-line" Order on February 21, 2012 denying petitioner's motion in its entirety. This Memorandum explains the Court's reasons for its decision.

On August 12, 2011, after a hearing, an arbitrator found that Citigroup did not discriminate against petitioner on the basis of his age in violation of N.Y. Exec. Law § 296. Declaration of Ira G. Rosenstein dated January 17, 2012 Ex. A ("Arbitration Award") at 3, 7. The arbitrator made the following findings of fact, which the parties do not dispute in their papers. Hargrove worked for Citigroup for fifteen years, resigning in 2009. Id. at 3-4. In 2008, Citigroup awarded Hargrove a discretionary bonus of over $600,000. Id. Citigroup distributed bonuses according to a Deferred Cash Awards Plan. Id.

Under that plan, an employee immediately receives the entirety of her bonus only if she satisfies the "Rule of 60." Id. If she does not satisfy the "Rule of 60," Citigroup pays her a portion of her bonus over the course of four years. Id. If the employee voluntarily resigns before she has received a portion of her bonus, she forfeits her entitlement to that portion. Id. Thus, the Deferred Cash Awards Plan gives employees who do not satisfy the Rule of 60 an incentive to remain at Citigroup. Id.

An employee may satisfy the Rule of 60 in either of two different ways. If she is younger than fifty, she must have worked for Citigroup for more than twenty years, and the sum of the time she has worked for Citigroup and her age must equal at least sixty. Id. If she is older than fifty, however, while the sum of the time she worked for Citigroup and her age must still equal at least sixty, she must have worked at Citigroup for only more than five years. Id.

When he resigned, Hargrove was forty-six. Id. Thus, even though the sum of the time he worked for Citigroup -- sixteen years -- and his age exceeded sixty, he did not satisfy the Rule of 60's requirement that he work for Citigroup for more than twenty years. Id. Accordingly, Citigroup deferred payment of more than $200,000 of Hargrove's $600,000 discretionary bonus. Id. Had he been fifty, Hargrove would have satisfied the Rule of 60 and received the entirety of his bonus. Id. Because he resigned before Citigroup paid him the $200,000, therefore, under the Deferred Cash Awards Plan, Hargrove forfeited his entitlement to that portion of his bonus. Id.

Hargrove sued Citigroup, claiming that the Deferred Cash Awards Plan discriminated on the basis of age, in violation of N.Y. Exec. Law § 296, because the plan treated Hargrove differently than it would have treated an identically situated fifty-year-old. Id. After an extensive analysis of New York law, the arbitrator rejected Hargrove's claim. Hargrove now claims that the arbitrator manifestly disregarded the law by failing to interpret N.Y. Exec. Law § 296 to prohibit Citigroup's Deferred Cash Awards Program.

Under 9 U.S.C. § 10, a court may vacate an arbitration award where it "was procured by corruption, fraud, or undue means," where "there was evident partiality or corruption in the arbitrators," "where the arbitrators were guilty of . . . misconduct by which the rights of any party have been prejudiced," or "where the arbitrators exceeded their powers." The Second Circuit has held that a court may also vacate an arbitration award where an arbitrator has manifestly disregarded the law. T.Co Metals, LLC v. Dempsey Pipe & Supply, Inc., 592 F.3d 329, 339 (2d Cir. 2010). To prove manifest disregard, a litigant must show: (1) that "the law that was allegedly ignored was clear, and in fact explicitly applicable to the matter before the arbitrator[]"; (2) that "the law was in fact improperly applied, leading to an erroneous outcome"; and (3) that the arbitrator had knowledge of the existence of the applicable law "and its applicability to the problem before him." Id. (quoting Stolt-Nielsen SA v. AnimalFeeds Int'l Corp., 548 F.3d 85, 93 (2d Cir. 2008), overruled in part on other grounds by 130 S. Ct. 1758 (2010)). A court

may vacate an arbitration award for manifest disregard only in "those exceedingly rare instances where some egregious impropriety on the part of the arbitrator[] is apparent." Id. (quoting Stolt-Nielsen, 548 F.3d at 91-92). Thus, a court should enforce the award "if there is a barely colorable justification for the outcome reached." Id. (quoting Stolt-Nielsen, 548 F.3d at 92) (emphasis in original).

Under N.Y. Exec. Law § 296, it "shall be an unlawful discriminatory practice . . . [f]or an employer . . . because of an individual's age . . . to discriminate against such individual in compensation or in terms, conditions or privileges of employment." The Second Circuit applies the same analysis to age discrimination claims made under § 296 as to claims made under the Age Discrimination in Employment Act ("ADEA"). Woodman v. WWOR-TV, Inc., 411 F.3d 69, 71 n.1 (2d Cir. 2005).

Hargrove has not shown that the arbitrator manifestly disregarded any clearly applicable law. Hargrove maintains that the arbitrator manifestly disregarded the fact that the Deferred Cash Awards Plan, by changing how Citigroup pays bonuses in part based on an employee's age, violates the clear language of N.Y. Exec. Law § 296. According to Hargrove, treating two employees differently based on their ages necessarily "discriminate[s]," precisely what § 296 prohibits. This argument, however, disregards the extensive case law defining precisely what it means "to discriminate" on the basis of age. See, e.g., Woodman, 411 F.3d at 76 (requiring plaintiffs to show that they suffered an "adverse employment action," and allowing

defendants to invoke a "legitimate, nondiscriminatory reason" for the challenged conduct as a defense). Hargrove has not shown that the framework courts have elaborated for analyzing discrimination claims clearly required the arbitrator to rule in his favor. See T.Co Metals, 592 F.3d at 339 ("[M]isapplication of an ambiguous law does not constitute manifest disregard."). In the absence of such a showing, Hargrove cannot alternatively claim that the arbitrator disregarded the law because the arbitrator referred to courts' analyses of statutory text that Hargrove has mistakenly regarded as clear. Indeed, the arbitrator would have erred had he ignored the case law interpreting the statute's text. Accordingly, Hargrove's motion to vacate the arbitration award must fail.

Hargrove's motion fails for the independent reason that the arbitrator did not arrive at an erroneous outcome. When confronted with a discrimination claim, a defendant can foreclose any inference of discrimination by providing a "legitimate, nondiscriminatory reason" for its conduct. Woodman, 411 F.3d at 76. Even the factually inapposite case relied on by Hargrove -- which found that a trucking company could not impose a higher minimum age requirement than that created by federal law -- acknowledged that the employer had not established that its age requirement "was a bona fide occupational qualification and indeed some months later lowered its minimum hiring age." McLean Trucking Co. v State Human Rights Appeal Bd., 437 N.Y.S.2d 309, 309 (1st Dep't 1981). The ADEA specifically permits employers to provide "for the attainment of a minimum age as a

condition of eligibility for normal or early retirement benefits." 29 U.S.C. § 623(l)(1)(A)(i). While N.Y. Exec. Law § 296 may not explicitly incorporate this provision, the provision nonetheless indicates that employers can legitimately consider age when thinking about and providing for their employees' retirement.

Citigroup's Deferred Cash Awards Program plainly serves the purpose of giving employees an incentive to remain at Citigroup, and the Rule of 60 prevents that Program from discouraging retirement.[1] Citigroup has a legitimate, nondiscriminatory interest in attempting to retain employees who will not immediately enter retirement. If an employee leaves Citigroup to work for a competitor, Citigroup not only loses the employee's talents, but also must compete with the business that has the benefit of those talents. Retirement imposes the former cost, but not the latter. Thus, Citigroup can justifiably discourage leaving for reasons other than retirement.[2] A contrary finding would turn the age discrimination laws on their heads. Far from discriminating against its younger employees, Citigroup tries harder to retain their services. Because Hargrove has not attempted to rebut

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[1] The provision allowing those who have worked for Citigroup for more than twenty years to immediately receive their bonuses apparently rewards the exceptional loyalty such employees have shown to the company.

[2] While Citigroup uses age as a proxy for determining the likelihood of retirement, such use is plainly reasonable. ADEA specifically permits employers to consider age when determining employees' eligibility for retirement benefits. While § 296 does not contain an identical provision, it does incorporate ADEA's defense for employers with a legitimate, nondiscriminatory for their conduct. Woodman, 411 F.3d at 71 n.1. Moreover, a system that focuses on age is easier to administer than one that attempts to ascertain an employee's future plans.

this legitimate, nondiscriminatory explanation for Citigroup's Deferred Cash Awards Program, the arbitrator did not arrive at an erroneous outcome, and Hargrove's motion to vacate the award must fail.

Accordingly, the Court reaffirms its February 21, 2012 Order denying petitioner's motion to vacate the arbitration decision under 9 U.S.C. § 10. The Clerk of the Court is hereby directed to close the case.

SO ORDERED.

JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
May 8, 2012