New York Supreme Court

Appellate Division—First Department

TCR SPORTS BROADCASTING HOLDING, LLP,

Petitioner-Appellant,

– against –

WN PARTNER, LLC, NINE SPORTS HOLDING, LLC, and WASHINGTON NATIONALS BASEBALL CLUB, LLC

Respondents-Respondents,

Appellate Case Nos.:
2019-05390
2019-05458
2019-05459

– and –

THE COMMISSIONER OF MAJOR LEAGUE BASEBALL, and THE OFFICE OF THE COMMISSIONER OF BASEBALL

Respondents,

– and –

THE BALTIMORE ORIOLES BASEBALL CLUB and BALTIMORE ORIOLES LIMITED PARTNERSHIP, in its capacity as managing partner of TCR Sports Broadcasting Holding, LLP,

Nominal Respondents-Appellants.

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOTION FOR LEAVE TO REARGUE

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MASN and the Orioles[1] respectfully submit this reply in further support of their motion to reargue pursuant to CPLR § 2221 and 22 NYCRR § 1250.16(d)(2).[2]

PRELIMINARY STATEMENT

The Court should grant leave to reargue its October 20, 2020 order because the Court misapprehended the April 15, 2019 arbitration award (A.738-85), and misapplied *Morgan Guaranty Trust Co. v. Solow*, 114 A.D.2d 818 (1st Dep't 1985), when it affirmed the $105,025,080.30 money judgment (A.90) that the Supreme Court entered when it confirmed the award. Schiller Aff. Ex. 1 at 2.[3]

The arbitrators had no authority to award a remedy of monetary damages to the Nationals and did not do so. As the award states, the arbitrators' "authority runs no further than determining the fair market value of the rights at issue." A.754; *accord* A.745 (the arbitration clause "directs the RSDC to determine 'the fair market value' of the rights licensed to MASN 'using the RSDC's established methodology for evaluating all other related party telecast agreements in the industry'").

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[1] The parties to this motion are Petitioner-Appellant TCR Sports Broadcasting Holding, LLP, d/b/a Mid-Atlantic Sports Network ("MASN"), Nominal Respondents-Appellants Baltimore Orioles Baseball Club and Baltimore Orioles Limited Partnership, in its capacity as managing partner of MASN (collectively the "Orioles" and together with MASN, "Appellants").

[2] For the reasons stated in section II below, Appellants do not submit a reply in further support of their alternative motion for leave to appeal and rely on their motion papers.

[3] This Court's October 22, 2020 Order affirming the judgment is attached as Exhibit 1 to the Affirmation of Jonathan D. Schiller in Support of Motion for Leave to Reargue and/or Leave to Appeal, dated November 20, 2020 ("Affirmation" or "Schiller Aff."). The Judgment is attached to the Affirmation as Exhibit 2, and the Award is attached to the Affirmation as Exhibit 3.

The arbitrators did not award damages, either in a specific dollar amount or in a formula. A.785. The April 15, 2019 Award's *determination* of "the fair market value of MASN's rights" is *not* a damages award. It is a "determin[ation]," of fair market value, which is the *only* thing the arbitrators had authority to decide. A.745, 754, 793. Because the arbitrators lacked authority to award damages and did not award any, the Supreme Court could not "perform[] a calculation of the Nationals' damages." Schiller Aff. Ex. 1 at 2. Therefore, it is respectfully submitted that this Court misapprehended the determination in the arbitration award.

The *sole authority* this Court cited was *Morgan Guaranty Trust Co. v. Solow*, 114 A.D.2d 818 (1st Dep't 1985). Schiller Aff. Ex. 1 at 2. But the Court misapprehended *Morgan Guaranty*, which addressed an award that "fixed the formula upon which" the damages calculation depended in a way that was "so clear and specific that the determination of the amounts owing is merely an accounting calculation." 114 A.D.2d at 821-22. Unlike *Morgan Guaranty*, the arbitrators here lacked authority to award damages and the award contains no formula, let alone the "clear and specific" formula required to enable a mere "accounting calculation."

The Nationals' opposition to Appellants' motion ("Nationals' Opposition") further supports reargument. The Nationals' Opposition does not address Appellants' main point—that the arbitrators lacked authority to award damages. *See* Appellants' Memorandum in Support of Motion ("Appellants Mem.") at 16-17;

A.745, 754. Nor does the Nationals' Opposition address the fact that the Nationals themselves never sought money damages during the arbitration. The Nationals never submitted a damages calculation, a prayer for relief, or an *ad damnum* statement *to the arbitrators*. Appellants' Mem. at 18-19; A.1865, 1917, 1924, 1963. Instead, the Nationals asked for damages for the first time in the Supreme Court to try to obtain a remedy from the court that the arbitrators did not have authority to grant and did not grant. Under the Federal Arbitration Act ("FAA"), "courts and arbitrators must give effect to the contractual rights and expectations of the parties," and neither an arbitrator nor a court has the power to award a remedy that the arbitration clause does not authorize the arbitrator to award. *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 682 (2010); *accord* CPLR § 7511(b)(iii).

Finally, the Nationals' Opposition *concedes* that there is no "actual formula . . . set out in the arbitration award." Nationals' Opposition at 21. Instead, the Nationals argue that *Morgan Guaranty* does not require the award to contain a "specific formula." Nationals' Opposition at 20. That is a misinterpretation of *Morgan Guaranty's* holding. The award in *Morgan Guaranty* "fixed the formula upon which" damages were to be calculated, and that "formula," *in the award*, was "so clear and specific that the determination of the amounts owing [was] merely an accounting calculation." 114 A.D.2d at 821-22. The award at issue here *contains no formula*, and this Court misapprehended the award in concluding otherwise.

ARGUMENT

I. THE COURT MISAPPREHENDED THE APRIL 15, 2019 AWARD WHICH DID NOT AWARD MONETARY DAMAGES

A. The Arbitrators Lacked Authority to Award the Remedy of Money Damages and the Nationals Never Sought Money Damages

The Nationals' Opposition does not *address*, much less rebut, Appellants' main point on their motion for reargument—that the arbitrators *lacked authority* to award damages. The arbitration clause (A.793) and the award (A.754) demonstrate this. The arbitration clause states that the RSDC shall "determine[]" the "fair market value of the Rights." A.793. It does not give the RSDC any other authority. The arbitrators recognized their narrow authority in the award when they stated: "This Committee holds that its *authority runs no further than* determining the fair market value of the rights at issue." A.754 (emphasis added).

Consistent with their limited authority, the arbitrators stated that they *lacked authority* to award prejudgment interest, costs, or expenses. A.754. Likewise, the arbitrators did not award the *remedy* of damages. A.784-85.

Indeed, the Nationals *never sought* money damages *in the arbitration.* The Nationals explicitly sought interest, costs, and litigation expenses—all of which the arbitrators stated they lacked authority to award, A.754—but the Nationals did not seek a remedy of monetary damages. The Nationals did not submit to the arbitrators a proposed calculation of damages, a prayer for relief, or an *ad damnum* statement.

Rather, the Nationals only asked for a determination about the "fair market value" of the Rights. A.1962-63; *see also* A.1865, 1924, 1963. And the "fair market value" of the Rights is not a damages figure, including because—as the arbitrators recognized—past rights fees and past profit distributions must offset the higher rights fees. *See* A.784.

The Court should grant leave to reargue because its October 22, 2020 order affirming the Supreme Court's $105,025,080.30 judgment misapprehended the award as awarding "damages." Schiller Aff. Ex. 1 at 2. But, as the arbitrators stated, they lacked authority to do anything except make a determination as to fair market value. A.754. An award of damages would have "exceeded [the arbitrators'] powers," 9 U.S.C. § 10(a)(4), because the arbitration agreement (A.793) does not authorize the arbitrators to award damages. *See Stolt-Nielsen*, 559 U.S. at 682 ("an arbitrator derives his or her powers from the parties' agreement to forgo the legal process and submit their disputes to private dispute resolution").

The Court also misapprehended the Court's holding in *Morgan Guaranty*. In *Morgan Guaranty*, the arbitrator *had the authority* to award money damages. 114 A.D.2d at 821 ("Solow was directed forthwith [by the arbitrators] to calculate and repay Morgan the excess payments . . . with interest at the legal rate from the date of payment by Morgan to the date of repayment by Solow."). Unlike the award at issue in *Morgan Guaranty*, the RSDC arbitrators *did not* direct MASN to pay the

Nationals any money. The arbitration clause and the arbitrators stated that all they could do is make a determination of fair market value. A.745, 754, 793. The Court misapprehended *Morgan Guaranty* by applying *Morgan Guaranty* to the award at issue here, which did not direct MASN to pay money to the Nationals.

B. Since No Money Damages Were Awarded, There is No Formula in the April 15, 2019 Award to Calculate Damages

The Nationals' Opposition concedes, as it must, that no "actual formula" is "set out in the arbitration award." Nationals' Opposition at 21. There is no formula actually set forth *in* the award. A.745, 754, 875. This makes eminent sense as the arbitrators did not have authority to award damages. A.754.

The Nationals instead argue, without any authority, that a Court can *imply* a formula *into* the award even when the formula is not set forth in the award. Nationals' Opposition at 21-22. But nothing in *Morgan Guaranty* authorizes a Court to *imply* a formula into an award that (i) was issued by an arbitrator that lacked authority to award money damages and was merely a determination, and (ii) does not expressly set forth a formula for the calculation of damages.

Rather, the award in *Morgan Guaranty* specifically "directed" the respondent "to calculate and repay" damages to the claimant, and "fixed the formula upon which" to calculate damages that "so clear and specific that the determination of the amounts owing is merely an accounting calculation." 114 A.D.2d at 821-22. The April 15, 2019 award at issue here contains *none* of these attributes, and indeed it

states that the arbitrators lacked authority to do anything except make a determination. A.754. Thus, the decision of the Court violates the Federal Arbitration Act, which limits the court's authority to what is expressly provided for in the arbitration agreement. *Stolt-Nielsen*, 559 U.S. at 682-83; *Oxbow Calcining USA, Inc. v. Am. Indus. Partners*, 96 A.D.3d 646, 648-69 (1st Dep't 2012) ("parties may structure arbitration agreements to limit both the issues they choose to arbitrate and with whom they choose to arbitrate their disputes" (quoting *Stolt-Nielsen*, 559 U.S. at 683)).

The Nationals' implied-damages rule is inconsistent with both CPLR and the FAA, under which the Court has very narrow authority. The Court must "confirm the award" "unless the award is vacated or modified upon a ground specified in" CPLR § 7511. CPLR § 7510. The Court may "modify" an award only to correct "a miscalculation of figures or a mistake in the description of any person, thing or property referred to in the award" or address something that makes the award "imperfect in a matter of form, not affecting the merits of the controversy." CPLR § 7511(c); *accord* 9 U.S.C. §§ 9, 10(a)(4), 11(a)-(b).

The Nationals cite other cases not cited by the Court in its October 20, 2020 Order. Nationals' Opposition at 21-25. But these cases further support Appellants' motion for reargument because they, like *Morgan Guaranty*, addressed awards (1) issued by arbitrators that had authority to award damages (for example, back pay),

and (2) contained an express formula. *Matter of Civil Serv. Employees Ass'n, Inc*., 223 A.D.2d 890, 891 (3d Dep't 1996) ("The question of whether the employee should be awarded back pay, and if so how much, was clearly encompassed by the remedy issue submitted to the arbitrator," who "fashion[ed] the remedy as requested by the parties"); *Matter of Vermilya (Distin)*, 157 A.D.2d 1030, 1031 (3d Dep't 1990) (award expressly provided that "the earning received by the grievant following her termination by respondent should be deducted from the amount of her back pay"); *Matter of Trudeau*, 135 A.D.2d 150, 156 (3d Dep't 1998) (the award "provide[d] for compensation of each teacher . . . at his or her daily rate of pay for each hour so worked"); *Matter of State Mar. Lines*, 19 A.D.2d 1, 3 (1st Dep't 1963) (the award provided that that "[t]he salary of the commodore under the award will be at least $1,500 a month. If the chief engineer on the same vessel and on the same payroll of the same employer gets $1,400 a month, the commodore must get $1,600; and this progression will be followed upward"); *Hunter v. Proser*, 298 N.Y. 828, 829 (1949) (the award "directed appellants to pay respondent $1,500 and a sum equal to three quarters of 1% of the gross weekly box-office receipts derived from the presentation of said play and a like percentage of the proceeds derived from the licensing of any of the material from said play, with a provision that respondent's share of the proceeds derived from foreign productions of said play would be determined according to the formula set forth in the agreement of July 7, 1947").

These cases demonstrate what is required for a money judgment to be entered on an arbitration award: (1) the arbitrator must have *authority* to award damages, and (2) the award *must award* a sum of damages or an *express formula* for calculating damages. No case holds that the Court can *imply* a formula into an award when (1) the arbitrators lacked authority to award damages and (2) no express formula is contained in the award. And such a rule would violate the CPLR and the FAA. The Court should grant reargument because the Court misapprehended the April 15, 2019 arbitration award which, unlike the award at issue in *Morgan Guaranty*, did not award damages.

II. THE MOTION SHOULD NOT BE DENIED AS PROCEDURALLY DEFECTIVE

The Nationals contend that the Appellants' combined motion for reargument and/or for leave to appeal to the Court of Appeals should be denied as procedurally defective. Nationals' Opposition at 45. The Appellants' motion is in full compliance with the notice requirements in CPLR 2214(b) and section 1250.16(d) of the Statewide Practice Rules of the Appellate Division, entitled "Motion for Reargument or Leave to Appeal to the Court of Appeals." The Nationals make no argument to the contrary.

Rather, the Nationals claim that because the motion was made returnable on December 7, 2020, it is not in compliance with CPLR 5516. In other words, the Nationals complain that there was *too much* time between the motion's filing and

the return date. In support, the Nationals cite to *Bd. of Educ., Shoreham Wading Cent. Sch. Dist. v. State*, 66 N.Y.2d 854, 854 (1985) to support their contention. In *Shoreham*, however, the moving party failed to serve its supporting papers and brief at least 8 days prior to the return date of the motion. In the motion currently before this Court, the Nationals do not complain of such "short service" because they were served with a complete set of motion papers 17 days prior to the return date of the motion. Therefore, *Shoreham* is inapposite.

Moreover, the Nationals were not prejudiced by any defect in this regard as it allowed them a total of 10 days to submit answering papers, rather than having to submit their papers by the Friday after Thanksgiving. *See* CPLR 2001 ("if a substantial right of a party is not prejudiced, [any] mistake, omission, defect or irregularity shall be disregarded"); CPLR 2101(f) ("A defect in the form of a paper, if a substantial right of a party is not prejudiced, shall be disregarded by the court"); *Stephen LLC v. Zazula*, 171 A.D.3d 488, 488-89 (1st Dep't 2019) (ruling that supreme court "providently exercised its discretion in accepting plaintiff's opposition papers, which were filed after the date originally designated in the court's scheduling order, as defendant did not demonstrate any prejudice"). That is likely why the Nationals did not immediately object to the return date of the motion.

Appellants sought to preserve their right to serve a reply on the motion for reargument, and that is the reason this combined motion was made returnable on

December 7, 2020. Appellants have not submitted a reply to that portion of the motion seeking leave to appeal to the Court of Appeals, as that might arguably violate the spirit of CPLR 5516.

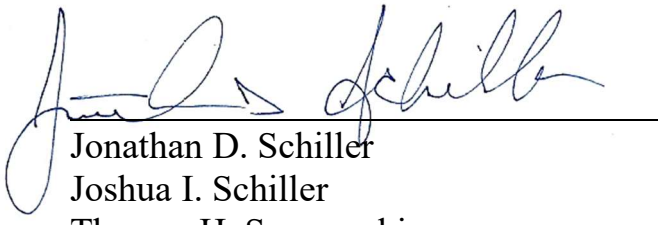
CONCLUSION

The Court should grant Appellants' motion for leave to reargue the October 22, 2020 Order, because the Court misapprehended the April 15, 2019 Award and misapplied *Morgan Guaranty Trust Co. v. Solow*, 114 A.D.2d 818 (1st Dep't 1985), when it affirmed the $105,025,080.30 money judgment. The Court should grant leave to reargue this appeal and should vacate the money judgment.

While, as explained above, Appellants have not submitted a reply in support of their motion for leave to appeal, for the reasons stated in Appellants' motion papers, if the Court denies reargument the Court should grant leave to appeal.

Dated: New York, New York
December 4, 2020

Respectfully submitted,



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I hereby certify pursuant to 22 N.Y.C.R.R. § 1250.8(j) that the foregoing brief was prepared on a computer using Microsoft Word.

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