

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 08-21505-MC-GOLD/MCALILEY

FEDERACION NACIONAL AUTONOMA  
DE FUTBOL DE HONDURAS,

Petitioner,

v.

TRAFFIC SPORTS USA, INC.,  
f/k/a INTER FOREVER SPORTS, INC.,

Respondent.

ORDER CONFIRMING ARBITRAL AWARD;  
DENYING MOTION TO VACATE; CLOSING CASE

THIS CAUSE comes before the Court on the Petition to Confirm Arbitral Award [DE 1] filed by Petitioner Federacion Nacional Autonoma de Futbol de Honduras ("Federacion") and the Motion to Vacate Arbitral Award [DE 6] filed by Respondent Traffic Sports. The Arbitral Award at issue was entered on March 28, 2008. Having reviewed the Petition to Confirm, Motion to Vacate, and each party's Memorandum [DE 11, DE 13], and having heard oral argument on August 28, 2008, I confirm the arbitral award and deny the motion to vacate.

I. Background

Petitioner Federacion and Respondent Traffic Sports entered into a Licensing Contract on or about March 2, 2003, and they executed two addenda to this Licensing Contract. Petition [DE 1] at ¶¶ 5-6. The Licensing Contract provided that the parties "hereby agree to subject themselves to the jurisdiction and competency of the Honduran courts, thereby waiving any other venue the parties may claim by virtue of present or future

domicile. [The parties] likewise expressly agree to submit their differences to the terms of arbitration set forth under the laws of Honduras, as well as repeal in its entirety the contract dated the third (3<sup>rd</sup>) day of June, nineteen hundred and ninety-six (1996)." *Id.*, Ex. A [DE 1 at p.22].

In the Second Addendum to the Licensing Contract, the parties agreed to "resolve any doubts or disagreements arising between the parties regarding the contents thereof this Second Addendum and the Contract amicably and in good faith. If this is not possible, any doubts or disagreements will be resolved by arbitration in that city in which the party requesting the arbitration so submits its claim, provided that this is conducted in one of the headquarter cities of the parties and pursuant to applicable norms and laws regularly applied in the normal course of business in said locality." *Id.*, Ex. B [DE 1 at p.28].

In June 2006, Respondent Traffic Sports filed an action in Florida state court in Miami-Dade County to compel arbitration. *Id.*, Ex. C [DE 1 at p.30]. After Petitioner Federacion failed to respond to the complaint, the court entered a final default judgment on August 15, 2006. *Id.*, Ex. D [DE 1 at p. 58] As part of this default judgment, the state court ordered the parties, pursuant to the Florida International Arbitration Act, to arbitrate their dispute in Miami-Dade County, "under the laws of the State of Florida and pursuant to the rules of the American Arbitration Association." *Id.*

Petitioner Federacion subsequently moved to vacate the Final Default Judgment, while Respondent Traffic Sports moved to enforce it. The state court granted Traffic Sport's motion and denied Federacion's motion. De 11 at 6.

Arbitration on the merits commenced on January 11, 2008, and hearings were also conducted on March 18, 2008 and March 28, 2008. After the conclusion of the hearing on

March 28, 2008, the Arbitrator granted an award in favor of Petitioner Federacion. On April 25, 2007, Traffic Sports filed an application for change of award with the Arbitrator, and on May 24, 2008, the Arbitrator denied that application.

Petitioner Federacion requests that this Court confirm the arbitral award, and Respondent requests that the arbitral award be vacated.

## II. Discussion

### A. The Arbitral Award

Pursuant to section 684.24(a) of the Florida Statutes, a “court shall confirm the [arbitral] award without regard to the place of arbitration unless one of more of the grounds set forth in section 684.25 is established by way of an affirmative defense.” Fla. Stat. § 684.24(a). As recognized in this District, objections to the confirmation of an arbitral award are construed narrowly, and the court’s review of an arbitration award is extremely limited. *Rintin Corp. v. Domar, Ltd.*, 374 F.Supp. 2d 1165, 1169 (S.D. Fla. 2005) (King, J.). In Respondent’s Motion to Vacate, Traffic Sports argues that the arbitral award should be vacated pursuant to section 684.25(1)(c) of the Florida International Arbitration Act, which provides that

(1) A final award shall be vacated or declared not entitled to confirmation by the courts of this state only if one or more of the following grounds is established: . . . .

(c) The arbitral tribunal conducted its proceedings so unfairly as to substantially prejudice the rights of the party challenging the award.

Fla. Stat. § 684.25(1)(c).

On a motion to vacate based on section 684.25(1)(c), the moving party has the burden of proof, and the Court’s inquiry is limited to “considering procedural irregularities

in the arbitration proceedings.” *Rintin*, 374 F.Supp. 2d at 1171 (citing FIAA Legis. Hist. at 39). The Court is not permitted to second guess the tribunal or inquire into the substantive fairness of the award itself. *Id.* Respondent Traffic Sports argues that the arbitral award should be vacated pursuant to the above standard because the Arbitrator did not accept expert testimony on Honduran law. DE 6 at 7. Instead, the Arbitrator based his decision on Florida law. *Id.* Respondent argues that the Arbitrator should have looked at Honduran law and performed a conflict of laws analysis on Florida and Honduran law.

At the hearing on January 11, 2008 before the Arbitrator, the Arbitrator had the following discussion on the issue of Respondent’s expert on Honduran law:

[Counsel for Respondent]: Judge, for your edification, it’s an issue of conflict of law. There is a couple of provisions that deal with the choice of law; the initial agreement said Honduran law; the addendum said there would be arbitration in a local city.

THE ARBITRATOR: The party demanding arbitration?

[Counsel for Respondent]: Correct, which arguably here might mean Florida law. I think actually the law of the [contract] is and always has been Honduran law, but there is an issue that may be raised. We don’t know what they will do, they have never told us, other than their summary judgment.

And there was also a presumption in ordinary conflict of laws determination, that foreign law is the same as the forum, unless there is some claim to the contrary.

THE ARBITRATOR: And you don’t have any?

[Counsel for Respondent]: We believe it’s the same.

THE ARBITRATOR: The issue hadn’t been created yet though. Then, we don’t need [the expert], do we?

[Counsel for Respondent]: arguably not. If they come in later and try to say Honduran law is different ----

Trans., Jan. 11, 2008 at p.61 [DE 11-4 at 64].

Following the above discussion, the Arbitrator heard testimony from Respondent’s expert on Honduran law. The Arbitrator stopped the questioning of the expert after he testified that he was not familiar with Florida law, *id.* at p. 77 [DE 11-4 at 81], stating:

[THE ARBITRATOR]: Later on, if someone brings up the fact that Honduran law applies, then I might feel misled [sic] and that we bring him back or somebody else back up necessarily, but my marching orders on Judge Friedman's order says, Florida law applies, and that is what exactly I'll use in making a decision.

So, I don't think we need to go any further, actually.

[Counsel for Respondent]: Well, Your Honor, the only concern I have is that somebody might be claiming down the road that Florida law, including Florida Conflict of Laws rules, Honduras would apply. If they are not going to do that, I would agree with you and we can end this.

*Id.* at p. 78 [DE 1-4 at 82].

According to Florida conflict of laws analysis, a court must determine which sovereigns have an interest in applying their laws and then consider, as a threshold issue, whether there is a "true conflict" between the jurisdictions with an interest in a particular issue or if there is merely a "false conflict." *Pycsa Panama, S.A. v. Tensar Earth Techs., Inc.*, 2008 WL 1775409, \*15 (S.D. Fla. Apr. 16, 2008) (Gold, J.) (citing *Judge v. Am. Motors Corp.*, 908 F.2d 1565, 1568 (11th Cir. 1990); *Tune v. Phillip Morris, Inc.*, 766 So. 2d 350, 352 (Fla. 2d DCA 2000)).

A "false conflict" can exist in at least three sets of circumstances: where the laws of the different sovereigns are (1) the same; (2) different but would produce the same outcome under the facts of the case; or (3) when the policies of one state would be furthered by the application of its laws while the policy of the other state would not be advanced by the application of its laws. *Tune*, 766 So. 2d at 252 (citing *Greaves v. State Farm Ins. Co.*, 984 F.Supp. 12, 14 (D.D.C. 1997); *Pycsa*, 2008 WL 1775409, at \*15. In contrast, a "true conflict" exists when "two or more states have a legitimate interest in a particular set of facts in litigation and the laws of those states differ or would produce a

different result.” *Pycsa*, 2008 WL 1775409, \*15 (citing *Walker v. Paradise Hotel, Ltd.*, No. 01-3564, 2003 U.S. Dist. LEXIS 25660, at \*5 (S.D. Fla. Apr. 24, 2003).

As previously discussed, Respondent Traffic Sports’ counsel represented to the Arbitrator that Traffic Sports believed Honduran and Florida law to be the same with respect to the issues for arbitration. Based on this representation, there would be no “true conflict” between Honduran and Florida law. Furthermore, based on my review of the record, neither Traffic Sports nor Federacion argued to the Arbitrator that Honduran law would apply in the arbitration. See *Cavic v. Grand Bahama Development Co., Ltd.*, 701 F.2d 879, 882 (11th Cir. 1983) (noting that Federal Rule of Civil Procedure 44.1(1) requires parties to give written notice of their intention to assert foreign law, and applying Florida law where the parties did not raise a conflict of laws issue in the district court or on appeal and where neither party claimed the applicability of Bahamian law or asserted that it differs from Florida law)

In determining whether to vacate an arbitral award based on section 684.25(1)(c), I am limited to considering procedural irregularities in the arbitration proceedings. See *Rintin*, 374 F.Supp. 2d at 1171. Here, although Respondent now argues that the Arbitrator conducted the proceedings unfairly by not fully considering its expert testimony on Honduran law, before the Arbitrator, Respondent neither argued that there was a “true conflict” of law nor argued for the application of Honduran law. As such, I find that the Arbitrator did not conduct the proceedings “so unfairly as to substantially prejudice the rights of the party challenging the award,” and I deny the Motion to Vacate and grant the Petition to confirm the award.

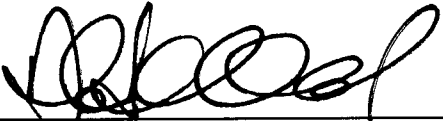
B. The Motion for Sanctions

Petitioner Federacion also filed a Motion for Rule 11 Sanctions [DE 14] against Respondent Traffic Sports, arguing that Respondent's position is frivolous. According to the Eleventh Circuit, a determination on whether Rule 11 sanctions are warranted "requires a two-step inquiry as to (1) whether the party's claims are objectively frivolous; and (2) whether the person who signed the pleadings should have been aware that they were frivolous." *Baker v. Alderman*, 158 F.3d 516, 524 (11th Cir. 1998). Considering this standard, I find that Respondent's argument that the Arbitrator should have conducted a conflicts of law analysis is not objectively frivolous so as to warrant the imposition of Rule 11 sanctions. Consequently, I deny the Motion for Sanctions. Accordingly, it is hereby

ORDERED AND ADJUDGED that

1. The Petition to Enforce the Arbitral Award [DE 1] is GRANTED.
2. The Motion to Vacate [DE 6] is DENIED.
3. The Motion for Sanctions [DE 14] is DENIED.
4. This case is CLOSED.
5. All pending motions are DENIED as moot.

DONE AND ORDERED in Chambers in Miami, Florida this ~~27~~<sup>29</sup> day of August, 2008.

  
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THE HONORABLE ALAN S. GOLD  
UNITED STATES DISTRICT JUDGE

cc:  
U.S. Magistrate Judge Chris M. McAliley  
All counsel of record