IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-7681

Summary Calendar

RUANNE MCKINNEY,

Plaintiff-Appellant,

versus

JAMES SUTTON and
SHEARSON/AMERICAN EXPRESS, INC.,

Defendants,

SHEARSON/AMERICAN EXPRESS, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
(CA-C-85-15)

(March 16, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

Ruanne McKinney sued Shearson in federal court alleging claims under federal and state law for the mismanagement of her brokerage account. A panel of arbitrators awarded her $75,275 as a "full and final settlement of all claims between the parties." The award

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

further stated that "[n]o interest has been awarded to the claimant." We affirm the district court's conclusion that it could not review the arbitrators' decision about prejudgment interest.

Judicial review of an arbitration award for the purpose of modifying or vacating it is limited to the grounds in section 11 of the Federal Arbitration Act. R.M. Perez & Assocs., Inc. v. Welch, 960 F.2d 534, 539-40 (5th Cir. 1992); Forsythe Int'l, S.A. v. Gibbs Oil Co., 915 F.2d 1017, 1020 (5th Cir. 1990). Section 11 sets forth three limited grounds for modification or correction of an arbitration award.[1] McKinney cited only section 11(c) to the district court, which allows modification of an award "imperfect in matter of form not affecting the merits of the controversy."

We can rationally construe this award as denying McKinney's New York state law claims, on which prejudgment interest is mandatory, while granting relief on her federal claims, on which prejudgment interest is discretionary. See McIlRoy v. PaineWebber, Inc., 989 F.2d 817, 820 (5th Cir. 1993) (noting that "[t]he arbitration panel did not explain the rationale behind its award but it was not required to do so"). The arbitrators' decision on

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[1]Section 11 allows issuance of "an order modifying or correcting" an award:

> (a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.
> (b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.
> (c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

9 U.S.C. § 11.

whether to grant interest involved "matters encompassed within the merits of the underlying action." Osterneck v. Ernst & Whinney, 489 U.S. 169, 176, 109 S. Ct. 987, 991 (1989).[2] Reopening those issues means substituting judicial judgment for that of the arbitrators, which the district court properly declined to do. See McIlroy, 989 F.2d at 820 (describing the "strong deference due an arbitrative tribunal").

No other argument is before this court. See Valentine Sugars, Inc. v. Donau Corp., 981 F.2d 210, 214-15 (5th Cir.), cert. denied, ___ U.S. ___, 113 S. Ct. 3039 (1993). McKinney never asked the district court to vacate the award, but only to modify or correct it.[3] Accordingly, we do not consider her arguments based on section 10 of the Arbitration Act or judge-made complements to

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[2]We recognize that Oesterneck addresses a district judge's decision about prejudgment interest rather than an arbitrator's. Contrary to McKinney's suggestion, the lesson of Oesterneck goes beyond that limited context. The facts involved in making a prejudgment interest decision interrelate with those of the underlying controversy. Those facts should be found together both to avoid "piecemeal appellate review of judgments," 489 U.S. at 177, 109 S. Ct. at 992, and to avoid undermining the finality of arbitration awards.

[3]The district court opinion says:

> Finally, the Court notes that in her pleadings, plaintiff has cited § 10(a)(4) of the Federal Arbitration Act, which provides statutory grounds for vacating an award, "[w]here the arbitrators exceeded their powers or so imperfectly executed them that a mutual, final and definite award upon the subject matter was not made." At the hearing on plaintiff's motion to modify, plaintiff's counsel made it clear that plaintiff was not seeking to vacate the award. As the Court cannot rely on § 10 to modify or correct an award, the Court will not consider further plaintiff's arguments under § 10.

McKinney v. Sutton et al., No. C-85-015, slip op. at 8 (S.D. Tex. Sept. 10, 1993).

section 10. McKinney also did not argue to the district court that the power to award prejudgment interest rests with district judges to the exclusion of arbitrators.[4]

AFFIRMED

[4] See, e.g., Motion to Modify or to Correct Arbitration Award at 4, McKinney v. Sutton et al., No. C-85-015 (S.D. Tex. Sept. 10, 1993) (noting that McKinney had earlier sought interest from the arbitrators).