

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

PURSHE KAPLAN STERLING)
INVESTMENTS, INC., INDIVIDUALLY)
AND AS ASSIGNEE OF THE CLAIMS)
OF THE SAGINAW CHIPPEWA INDIAN)
TRIBE OF MICHIGAN AGAINST GOPI)
K. VUNGARALA,) Case No. 4:21-cv-889
)
Petitioner,)
)
v.)
)
GOPI K. VUNGARALA,)
)
Respondent.)

PETITION TO CONFIRM AND CORRECT ARBITRATION AWARD

This is a petition to confirm an arbitration award and clarify the grounds upon which it was granted. Petitioner Purshe Kaplan Sterling Investments, Inc., Individually (“PKS Investments”) and as Assignee of the Claims of the Saginaw Chippewa Indian Tribe of Michigan (the “Tribe”) Against Gopi K. Vungarala (“Vungarala”; “Assignee PKS”) (PKS Investments and Assignee PKS collectively, “PKS”), through its undersigned attorney, hereby requests (i) pursuant to Section 9 of the Federal Arbitration Act (“FAA”), 9 U.S.C. § 9, an Order and entry of Judgment confirming an arbitration award rendered June 7, 2021 in a Financial Industry Regulatory Authority (“FINRA”) arbitration entitled *Purshe Kaplan Sterling Investments, Inc., Individually and as Assignee of the Claims of the Saginaw Chippewa Indian Tribe of Michigan Against Gopi K. Vungarala vs. Gopi K. Vungarala and Trevor S. Sutterfield*, FINRA Case No. 19- 03153 (the “Arbitration Award”; the “Arbitration Proceeding”; Hearing Site: Detroit Michigan), which awarded compensatory damages to PKS Investments and PKS, and (ii) pursuant to Section 11(a),

(c) of the FAA, 9 U.S.C. § 11(a), (c), an Order and entry of Judgment correcting the specific Award (1) to remedy an evident material mistake in the description of any thing or property referred to in the Award, and/or (2) to remedy the Award being imperfect in matter of form not affecting the merits of the controversy. In particular, the specific Award mistakenly fails to indicate on which of PKS Investments' or Assignee PKS's claims the arbitrator awarded compensatory damages. In support, PKS states as follows:

NATURE OF THE ACTION

1. This is an action pursuant to (i) Section 9 of the FAA, 9 U.S.C. § 9, for an order confirming the Arbitration Award, and (ii) Section 11(a), (c) of the FAA, 9 U.S.C. § 11(a), (c), correcting the specific Award to remedy an evident material mistake in the description of any thing or property referred to in the Award and/or to remedy the Award being imperfect in matter of form not affecting the merits of the controversy. A true and correct copy of the Arbitration Award is attached to the Declaration of Lewis S. Fischbein (the "Fischbein Declaration") as Exhibit A. Mr. Fischbein's law firm represented Petitioner in the Arbitration Proceeding.

PARTIES AND JURISDICTION

2. Petitioner PKS Investments is a registered broker-dealer incorporated in the State of New York, with its principal place of business in Albany, New York, is therefore a citizen of New York, and has been a FINRA member since April 15, 1994.

3. Respondent Vungarala is a previously registered representative of PKS Investments who was barred by FINRA in 2017 from acting as a broker or otherwise associating with a broker-dealer firm in view of the facts underlying the Arbitration Proceeding. Vungarala is domiciled (and resides) in Wise County, Texas and is therefore a citizen of Texas.

4. The Arbitration Proceeding included an award of damages in excess of \$14 million.

5. This Court has jurisdiction pursuant to the FAA, 9 U.S.C. § 1 *et seq.*, to confirm and correct an arbitration award and has original jurisdiction under 28 U.S.C. § 1332, as there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.

VENUE

6. The Supreme Court has held that the venue provisions of the FAA are permissive, permitting a motion to confirm, vacate, or modify (or correct) an arbitration award either where the award was made or in any district proper under the general venue statute. *Cortez Byrd Chips, Inc. v. Bill Harbert Const. Co.*, 529 U.S. 193 (2000).

7. The general venue statute, 28 U.S.C. § 1391, provides in pertinent part that a civil action, such as this proceeding, may be brought in “a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located.” 28 U.S.C. § 1391(b)(1).

8. Venue is therefore proper in this District as Vungarala is the sole defendant and for residence purposes is domiciled in this District.

FACTUAL BACKGROUND

9. From at least June 2011 to in or about late December 2014, Vungarala defrauded his customer and employer, the Tribe, by misrepresenting and omitting material information regarding commissions he received for millions of dollars of alternative investments he made on behalf of the Tribe as its Treasury Investment Manager and as PKS Investments’ registered representative. In short, Vungarala intentionally or recklessly misrepresented to the Tribe that he would not receive or was not receiving commissions on purchases of such products and intentionally or recklessly omitted to disclose his receipt of commissions to increase substantially his compensation, abusing his position of trust with the Tribe. *See* PKS’s Corrected Second Amended Statement of Claim in the Arbitration Proceeding, *e.g.*, ¶ 3, a true and correct copy of which is

attached to the Fischbein Declaration as Exhibit B. (The Arbitration Award terms the Corrected Second Amended Statement of Claim the “Corrected Amended Statement of Claim.”)

10. Indeed, Vungarala also defrauded PKS Investments in the process. Throughout the entire period, Vungarala, *inter alia*, intentionally or recklessly omitted to disclose to PKS Investments that Vungarala represented to the Tribe that he would not receive or was not receiving any commissions on purchases of such products, and that Vungarala omitted to disclose to the Tribe that he would receive or was receiving commissions on those transactions. Vungarala had a duty to PKS Investments to make such disclosures as its registered representative. *See id.*, e.g., ¶ 11.

11. When Vungarala began his registration with PKS Investments, he signed an agreement with a provision requiring arbitration of disputes before the National Association of Securities Dealers, Inc., the precursor to FINRA. *See* page 4, paragraph 9, of Vungarala’s January 24, 2008 Independent Contractor Agreement and Security Sales Agreement for Registered Representative, which is Exhibit E to PKS’s Corrected Second Amended Statement of Claim.

12. Vungarala’s fraudulent actions resulted in a FINRA enforcement action against PKS Investments and Vungarala, leading to his being barred from the securities industry, and claims brought against PKS Investments by the Tribe that were ultimately settled on May 10, 2019, at a cost of millions of dollars. As part of that settlement, the Tribe’s claims against Vungarala were assigned to PKS Investments. Excerpts of the settlement agreement, including the assignment provision (¶ 5), are included within Exhibit D to PKS’s Corrected Second Amended Statement of Claim.

13. On or about October 18, 2019, PKS filed its Original Statement of Claim through the dispute resolution services of FINRA detailing Vungarala’s fraudulent conduct and its damages. On or about December 9, 2019, PKS filed its Amended Statement of Claim (which the Arbitration

Award terms the “Statement of Claim”); on or about April 16, 2021, PKS filed its Second Amended Statement of Claim (which the Arbitration Award terms the “Amended Statement of Claim”); and on or about April 23, 2021, PKS filed its Corrected Second Amended Statement of Claim (as noted, which the Arbitration Award terms the “Corrected Amended Statement of Claim”). *See* Exhibit A to the Fischbein Declaration, Arbitration Award, at 1 (the dates of April 16, 2020 and April 23, 2020 therein are typographical errors).

14. Specifically, PKS brought claims for Vungarala’s “misrepresentations and omissions of material facts in connection with the sale of securities – commissions fraud; misrepresentations and omissions of material facts in connection with the sale of securities – volume discounts fraud; common law fraud; RICO violations – Section 1962(c); breach of indemnity provisions; breach of common law indemnity; unjust enrichment; breach of fiduc[i]ary duty; and breach of contract.” *See id.* at 2.

15. As a registered representative, Vungarala was “required to submit” to the Arbitration Proceeding, but did not file a Statement of Answer or an executed Submission Agreement. *See id.* Vungarala was properly served on December 10, 2019 with a FINRA Claim Notification letter (by regular mail), on April 1, 2021 with a FINRA Overdue Notice (including the Amended Statement of Claim) (by regular mail and FedEx), and on April 27, 2021 with the Notification of Arbitrator (by regular mail). *See id.* at 3. PKS also served the Second Amended Statement of Claim and the Corrected Second Amended Statement of Claim on Vungarala (by email, as permitted by FINRA rules).

16. Accordingly, Jeffrey M. Bauer, the Arbitrator duly appointed in the Arbitration Proceeding, “determined that Vungarala is, therefore bound by the Arbitrator’s ruling and determination.” *See id.*

17. On April 16, 2021, PKS filed a Request for Default Proceedings against Vungarala. *See id.*

18. On June 7, 2021, the Arbitrator rendered a specific Award in favor of PKS as follows:

AWARD

After considering the pleadings and Claimant's submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Vungarala is liable for and shall pay to PKS Investments the sum of \$14,029,656.00 in compensatory damages.
2. Vungarala is liable for and shall pay to PKS Investments interest on the above-stated compensatory damages sum pursuant to MCL § 600.6013(8).
3. Vungarala is liable for and shall pay to Assignee PKS the sum of \$6,838,217.00 in compensatory damages.
4. Vungarala is liable for and shall pay to Assignee PKS interest on the above-stated compensatory damages sum pursuant to MCL § 600.6013(8).
5. Vungarala is liable for and shall pay to PKS the sum of \$2,500.00 to reimburse PKS for the non-refundable portion of the filing fee previously paid to FINRA Dispute Resolution Services.
6. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, are denied.

See id. (MCL stands for Michigan Compiled Laws.)

19. On June 8, 2021, FINRA served PKS and Vungarala with the Arbitration Award. *See id.* at 5. Under FINRA Rule 12904(j), Vungarala had 30 days, or until July 8, 2021, to pay the Arbitration Award. As of July 8, 2021, Vungarala had not paid the Arbitration Award, nor has he done so to date.

20. Accordingly, the Arbitration Award was made less than one year prior to the commencement of the portion of this Petition to Confirm the Arbitration Award, *see* 9 U.S.C. § 9, and delivered less than three months prior to the commencement of the portion of this Petition to Correct the Arbitration Award, *see* 9 U.S.C. § 12. Therefore, the Petition is timely.

21. The Award has not previously been vacated, modified or corrected upon any ground specified in Section 10 or Section 11 of the FAA, 9 U.S.C. §§ 10-11.

CONFIRMATION AND CORRECTION

22. The Arbitration Award should be confirmed as in the specific Award set forth above, corrected to remedy an evident material mistake in the description of any thing or property referred to in the Award, *see* 9 U.S.C. § 11(a), and/or to remedy the Award being imperfect in matter of form not affecting the merits of the controversy, *see* 9 U.S.C. § 11(c). In particular, the specific Award mistakenly fails to indicate on which of PKS Investments' or Assignee PKS's claims the arbitrator awarded compensatory damages, which is an evident material mistake on the face of the Award and/or renders it imperfect in form not affecting the merits.

23. Viewed against pages 39-44 ("Relief Requested") of PKS's Corrected Second Amended Statement of Claim listing the specific claims and related damages, including the type of interest sought, (i) the sum of \$14,029,656.00 awarded to PKS Investments per paragraph no. 1 of the specific Award, with interest pursuant to MCL § 600.6013(8) per paragraph no. 2 of the specific Award, relates to PKS Investments' third claim, for common law fraud, and (ii) the sum of \$6,838,217.00 awarded to Assignee PKS per paragraph no. 3 of the specific Award, with interest pursuant to MCL § 600.6013(8) per paragraph no. 4 of the specific Award, relates to Assignee PKS's third claim, for common law fraud, and Assignee PKS's eighth claim, for breach of fiduciary duty, and Assignee PKS's ninth claim, for breach of contract.

24. Indicating which claim(s) relate(s) to a particular compensatory damage award is material and critical, because claims for common law fraud and breach of fiduciary duty are not dischargeable in bankruptcy per Section 523 of the Bankruptcy Code.

25. As so corrected, paragraph no. 1 of the specific Award should read as follows: “Vungarala is liable for and shall pay to PKS Investments the sum of \$14,029,656.00 in compensatory damages on PKS’s third claim, for common law fraud.”

26. As so corrected, paragraph no. 3 of the specific award should read as follows: “Vungarala is liable for and shall pay to Assignee PKS the sum of \$6,838,217.00 in compensatory damages on Assignee PKS’s third claim, for common law fraud, and Assignee PKS’s eighth claim, for breach of fiduciary duty, and assignee PKS’s ninth claim, for breach of contract.”

27. No prior application for the relief sought herein has been made to this or any other Court.

WHEREFORE, Petitioner PKS respectfully requests that this Court enter an Order and Judgment Confirming the Arbitration Award entered in the FINRA Arbitration entitled *Purshe Kaplan Sterling Investments, Inc., Individually and as Assignee of the Claims of the Saginaw Chippewa Indian Tribe of Michigan Against Gopi K. Vungarala vs. Gopi K. Vungarala and Trevor S. Sutterfield*, FINRA Case No. 19-03153, as indicated in paragraph 18 above, as corrected in paragraphs 25-26 above.

Dated: July 26, 2021

/s/ James Baehr

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