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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AMERICAN AIRLINES, INC.,
Petitioner,
v.
ROBERT STEVEN MAWHINNEY,
Respondent.

Case No.: 18-cv-00731-BTM-WVG
**ORDER GRANTING MOTION FOR
LEAVE TO RESPOND TO NOTICE
OF SUPPLEMENTAL
AUTHORITIES AND GRANTING
PETITION TO CONFIRM
ARBITRATION AWARD**
[ECF Nos. 4, 17]

I. INTRODUCTION

Pending before the Court is American Airline’s Petition to Confirm Arbitration Award. For the reasons set forth below, the Court GRANTS the Petition. (ECF No. 4).

II. BACKGROUND

Robert Mawhinney is an aircraft maintenance technician who worked at American Airlines (“American”). American first fired Mawhinney in 2001. (ECF No. 4-1, Exh. 3). Mawhinney alleged he was wrongfully terminated in retaliation for whistleblowing, and initiated a civil action and administrative action before the U.S. Department of Labor. (ECF No. 4-1, “Hayashi Decl.” ¶ 2). In 2002,

1 Mawhinney and American settled both actions. (Hayashi Decl. ¶ 2). The 2002
2 settlement agreement contained an arbitration clause, which required that all
3 future employment disputes between Mawhinney and American be resolved
4 exclusively through private arbitration. (ECF No. 4-1, Exh. 1).

5 Mawhinney continued to work for American Airlines until 2011, when
6 American again terminated his employment. (Hayashi Decl. ¶ 3). Mawhinney
7 viewed his firing as retaliation for whistleblowing about airline safety in 2010 and
8 2011. (Hayashi Decl. ¶ 3; Exh. 3 at 1-3). Mawhinney initiated two separate
9 proceedings, requesting private arbitration pursuant to the 2002 settlement
10 agreement and filing an administrative complaint with the Department of Labor
11 against American. (Hayashi Decl. ¶ 3; Exh. 3 at 3).

12 The subsequent procedural history of the two actions is lengthy and
13 exhaustively outlined in the Ninth Circuit's opinion affirming the order to compel
14 arbitration. *See American Airlines, Inc. v. Mawhinney*, 904 F.3d 1114 (9th Cir.
15 2018). The Court incorporates the facts set forth by the Ninth Circuit, and details
16 only the proceedings relevant to American's petition to confirm the arbitration
17 award: specifically, the first arbitration, second arbitration, and Mawhinney's
18 appeals concerning whether the district court erred by compelling the second
19 arbitration.

20 **A. First Arbitration**

21 For six days in September 2014, the parties privately arbitrated
22 Mawhinney's claims against American for employment retaliation, wrongful
23 termination, and breach of contract. (ECF No. 4-1, Exh. 3 at 14-15). American
24 prevailed on those claims. (ECF No. 4-1, Exh. 3 at 15). The presiding district
25 court denied Mawhinney's petition to vacate the award, and granted the cross-
26 petition to confirm the arbitration award. *Mawhinney v. American Airlines*, No. 15-
27 cv-0259-MMA-BLM, 2015 WL 13604265 at *1 (S.D. Cal. Aug. 13, 2015). The
28 court denied Mawhinney's motion to alter or amend the judgment in December

1 2015, and the Ninth Circuit affirmed. *Mawhinney v. American Airlines, Inc.*, 692
2 Fed. App'x 937 (July 3, 2017).

3 However, the district court denied American's motion to enjoin the
4 administrative action, or alternatively, to compel the parties to arbitrate the claims
5 in the administrative action. *Mawhinney v. American Airlines*, Case No. 15-cv-
6 0259-MMA-BLM, ECF No. 45 (Aug. 23, 2016). Because the court "did not
7 consider the merits of Mawhinney's claims underlying the first arbitration," the
8 court concluded it was "unable to enforce the arbitrator's judgment or determine
9 the preclusive effect of the arbitrator's judgment in the [administrative] action." *Id.*
10 at 6. The court stated, "to the extent American wishes to file a petition to compel
11 arbitration pursuant to 9 U.S.C. § 4, it must file its petition as a new case, not as
12 an alternative request in a motion to enforce judgment." *Id.* at 5.

13 **B. Second Arbitration**

14 American filed a new civil action and moved to compel arbitration in the
15 administrative action. *American Airlines, Inc. v. Mawhinney*, No. 16-cv-2270-
16 MMA-BLM, ECF No. 5. The motion to compel the second arbitration was
17 granted. See *American Airlines, Inc.*, 904 F.3d at 1119. Mawhinney appealed.
18 *Id.*

19 The Ninth Circuit denied Mawhinney's motions to obtain a stay of
20 arbitration, and the second arbitration went forward during the pendency of the
21 appeal. (ECF No. 4-1 ¶ 24; Exh. 5). Mawhinney failed to appear at the second
22 arbitration, and did not file an opposition brief. (ECF No. 4-1, Exh. 5).
23 Mawhinney did file a supplemental brief requesting a stay of the arbitration,
24 notwithstanding the Ninth Circuit's contrary order denying Mawhinney's request
25 for a stay. (*Id.*) American moved for summary disposition, arguing that
26 Mawhinney's claims of employment retaliation and wrongful termination were
27 already decided in the first arbitration and therefore barred under the doctrines of
28 res judicata and collateral estoppel. (*Id.*) American prevailed and an arbitration

1 award was entered in its favor on December 20, 2017. (Id.) Unlike the first
2 arbitration, Mawhinney did not move to vacate, amend, or correct the second
3 arbitration award by the three month deadline set forth in 9 U.S.C. § 12. The
4 Airline petitioned this Court to grant the second arbitration award in April 2018.
5 (ECF Nos. 1, 4).

6 **C. Appeals**

7 On September 26, 2018, while American's petition was pending before this
8 Court, the Ninth Circuit held that the claims between Mawhinney and American
9 were properly subject to arbitration, affirming the district court. *See American*
10 *Airlines, Inc. v. Mawhinney*, 904 F.3d 1114 (9th Cir. 2018). The Ninth Circuit
11 denied Mawhinney's petition for rehearing en banc, and the U.S. Supreme Court
12 denied Mawhinney's petition for a writ of certiorari. *See American Airlines, Inc. v.*
13 *Mawhinney*, No. 16-55006 (9th Cir. Nov. 5, 2018); *Mawhinney v. American*
14 *Airlines, Inc.*, No. 18-1032 2019 WL 485453 (Mem) (U.S. Apr. 1, 2019).

15 **III. DISCUSSION**

16 Mawhinney, proceeding pro se, filed a Response, Sur-reply, and Amended
17 Sur-reply opposing the Petition. (ECF Nos. 8-1, 11, 13). Mawhinney also filed a
18 Request for Leave to Respond to Petitioner's Notice of Supplemental Authorities,
19 accompanied by a responsive briefing. (ECF No. 17). The Court grants that
20 request and has considered Mawhinney's response. (ECF No. 17). Mawhinney
21 asks this Court to deny American's Petition to Confirm Arbitration Award and
22 order that Mawhinney's administrative action be allowed to proceed. (ECF No. 17
23 at 6). American argues the Petition to Confirm Arbitration Award should be
24 granted because Mawhinney lost his appeals challenging the underlying motion
25 to compel arbitration, and he failed to timely challenge the arbitration award itself.
26 (ECF No. 15). The Court agrees with American.

27 Mawhinney's challenges to the Petition are unavailing. Mawhinney primarily
28 argues that the Court should not confirm the arbitration award because the

1 underlying decision to compel arbitration was erroneous. (ECF Nos. 11, 13, 17).
2 But, as discussed above, the Ninth Circuit held that the claims between
3 Mawhinney and American were properly subject to arbitration. Mawhinney
4 nevertheless urges the Court to reject the Ninth Circuit's "fallacious" and
5 "erroneous" conclusion, and allow the action to be litigated before an
6 Administrative Law Judge. (ECF No. 17 at 3, 4, 6). This argument reflects a
7 fundamental misunderstanding of the relationship between trial and appellate
8 courts. As a lower trial court, this Court defers to the Ninth Circuit and the U.S.
9 Supreme Court, and is bound by those courts' decisions. Here, Mawhinney has
10 lost his appeal before the Ninth Circuit, and the Supreme Court denied certiorari.
11 The underlying decision to compel arbitration is thus no longer disputable.

12 As for the arbitration award itself, Mawhinney did not move to vacate or
13 otherwise challenge the award by the three month deadline. See 9 U.S.C. § 12
14 ("Notice of a motion to vacate, modify, or correct an award must be served upon
15 the adverse party or his attorney within three months after the award is filed or
16 delivered."). The second arbitration award was issued on December 20, 2017.
17 (ECF No. 4-1, Exh. 5). Mawhinney missed the three-month window to move to
18 vacate the award, and cannot do so now through his opposition. See, e.g., *AG*
19 *La Mesa LLC v. Lexington Ins. Co.*, No. 10-CV-1873 AJB-BGS, 2012 WL
20 2961264, at *2 (S.D. Cal. July 19, 2012) (holding failure to timely file motion to
21 vacate arbitration decision cannot be cured through opposition to petition to
22 confirm arbitration award).

23 Although Mawhinney proceeds *pro se* and thus is entitled to some leniency
24 with procedural matters, Mawhinney was not unaware of this procedure, as he
25 properly moved to vacate the first arbitration. See *Haines v. Kerner*, 404 U.S.
26 519, 520-21 (1972) (holding *pro se* litigants held to less stringent standards);
27 *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987) ("Pro se litigants must follow the
28 same rules of procedure that govern other litigants."); *Mawhinney v. American*

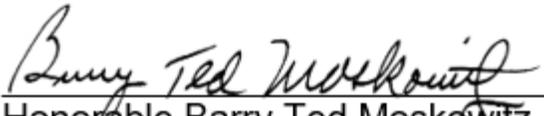
1 *Airlines*, No. 15-cv-0259-MMA-BLM, 2015 WL 13604265 at *1 (S.D. Cal. Aug. 13,
2 2015) (denying Mawhinney’s petition to vacate first arbitration award). This was
3 a tactical decision—Mawhinney admits he chose not to engage in the second
4 arbitration and instead relied on his challenge to the underlying motion to compel
5 the arbitration. (See ECF No. 13 at 12). To the extent Mawhinney now
6 challenges the arbitrator’s ruling that res judicata and collateral estoppel apply to
7 the administrative action, the arguments are untimely and unavailing. (ECF No.
8 11 at 3-5; ECF No. 13 at 10-12).

9 **IV. CONCLUSION**

10 The Petition to Confirm Arbitration Award is GRANTED. The Clerk shall enter
11 final judgment.

12 IT IS SO ORDERED.

13 Dated: April 29, 2019

14 
15 Honorable Barry Ted Moskowitz
16 United States District Judge
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