UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

PIOTR NOWAK, *Plaintiff* vs. PENNSYLVANIA PROFESSIONAL SOCCER, LLC, and KEYSTONE SPORTS AND ENTERTAINMENT, LLC, *Defendants.*	:	CIVIL ACTION No. 2:12-cv-04165-MAK

PLAINTIFF, PIOTR NOWAK'S REPLY BRIEF IN SUPPORT OF HIS MOTION TO VACATE THE AAA ARBITRATION AWARD AND IN OPPOSITION TO DEFENDANTS' CROSS-MOTION TO CONFIRM THE AAA AWARD

Plaintiff, Piotr Nowak, by and through his undersigned counsel, Haines & Associates, hereby submits this brief in reply to Defendants Pennsylvania Profession Soccer, LLC ("the Union") and Keystone Sports' Opposition to Nowak's Motion to Vacate the AAA Interim Award and in opposition to Defendants' Cross-Motion to Confirm the AAA Final Award:

I. INTRODUCTION

On November 30, 2015, the Union filed its Opposition to Nowak's Motion to Vacate the AAA Award and Cross-Motion to Confirm the Award (the "Opposition Brief"). The Union's Opposition Brief consists of little substance to refute Nowak's Motion to Vacate, consisting instead of hyperbolic attacks and mischaracterizations of Nowak's conduct as a coach, as well as mischaracterizing his arguments in the Motion to Vacate. The record is clear that Nowak was wrongfully terminated for pretextual reasons. As the AAA Award is manifestly unreasonable, Nowak is entitled to vacatur pursuant to 9 U.S.C. § 10(a) of the Federal Arbitration Act.

II. ARGUMENT

1. Nick Sakiewicz encouraged the hazing of rookies as a "bonding experience" before using it as a pretext to terminate Nowak.

In its Opposition Brief, the Union deny that Nick Sakeiwicz referred to hazing as a "bonding experience" and claims that Nowak's allegations "could not be further from the truth." *See* Opposition Brief, p. 11. However, a review of Sakiewicz' testimony and Arbitrator Brogan's Award reflects that Sakeiwicz did laugh about the hazing rituatls, and *did* in fact refer to hazing as a "bonding experience." *See* Joint Appendix G, pp. 26, 31, *See also* Confid. App. M, May 28, 2015 Transcript, p. 514:24. Accordingly, the Union's contention that Nowak's allegations "could not be further from the truth, and in fact, [are] contrary to the undisputed record evidence" is perplexing. The record and Sakeiwicz' testimony speak for themselves and when viewed in the context of Nowak's termination, it is clear that the hazing justification was pretextual.

2. Nowak's allegedly improper training exercises were not only curable, but were cured.

In its Opposition Brief, the Union characterizes Nowak's training exercise on May 31, 2012 as being "grotesque." *See* Opposition Brief, p. 13. While consistent with the hyperbolic and dramatic tone of the rest of the Union's Opposition Brief, this characterization is not consistent with the day-to-day reality of being a professional soccer player. Soccer involves non-stop running, including in the summer. Therefore, running 10 miles on an 80 degree day in June is par-for-course for the profession. Nowak does not dispute that he denied players water on May 31, 2012, but his point in the Motion to Vacate was simply that this defect was "cured." Once Nowak was approached by the trainer about this, he did not deny players water again.

Therefore, the Arbitrator's finding that Nowak's "conduct could not have been cured" is unreasonable and simply untrue.

3. Nowak's communications with Shep Messing and other agents did not violate his Employment Agreement.

Echoing the finding of the Arbitrator, the Union contend that the "record evidence, as confirmed by the Arbitrator's factual determinations, illustrated that Mr. Nowak actually attempted to obtain other employment during his employment with the Philadelphia Union and in violation of the Employment Agreement." *See* Opposition Brief, p. 18. However, Nowak never reached out to other teams to seek employment, he simply contacted sports agents. Nowak's Employment Agreement prohibited Nowak does not prohibit this. *See* Confid. Appendix O, Tab 2, ¶ VII. Therefore, Arbitrator Brogan's finding, and the Union's argument are not predicated on an overly broad and/or inaccurate reading of the contract.

4. The Union failed to comply with the Employment Agreement because it did not give Nowak an opportunity to respond to the MLS Report.

Nowak's Employment Agreement In its Opposition Brief, the Union argues that it complied with the contractual requirement of providing Nowak with an opportunity to respond to the reasons for his termination. *See* Opposition Brief, p. 25. The Union claims that the reasons were given in the email and brief meeting between Sakiewicz and Nowak. *Id.* This contention is clearly false, Nowak did not see the MLS report at the time of his termination. Union ownerJay Sugarman testified that the MLS Report and direction from the MLS were the reasons for Nowak's termination. *See* Confid. Appendix O, Tab 12, Deposition Transcript of Jay Sugarman, p. 73:12-25. Given that the Union did not give Nowak the opportunity to respond to the MLS report, Arbitrator Brogan's finding that he had the equivalent during a hearing for the

wrongful termination suit is completely illogical. Having the opportunity to defend oneself is of little value once the decision has already been made.

III. CONCLUSION

For the reasons stated herein, Plaintiff, Piotr Nowak respectfully requests that this Honorable Court vacate the AAA Arbitration Award, pursuant to 9 U.S.C. § 10(a)(2)-(4) and deny the Defendants' cross-motion to confirm the Award.

Respectfully submitted,

HAINES & ASSOCIATES,

By: */s/ Clifford E. Haines*

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Dated: January 5, 2016

CERTIFICATE OF SERVICE

I, Clifford E. Haines, Esquire, certify that on January 5, 2016, I caused a true and correct copy of the foregoing Response in Opposition to Cross-Motion to Confirm AAA Arbitration Award and Reply Memorandum in further support of Motion to Vacate Arbitration Award to be served on all counsel of record via the Court's ECF System.

/s/ Clifford E. Haines
CLIFFORD E. HAINES