

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MORGAN STANLEY SMITH BARNEY LLC,	:	
et al.,	:	
	:	
Petitioners,	:	CIVIL ACTION
	:	
vs.	:	NO. 17-CV-5635
	:	
STEPHEN T. WALKER,	:	
	:	
Respondent.	:	

**DECISION**

**Joyner, J.**

**March 19, 2018**

This matter has been brought before the Court on Motion of the Petitioners, Morgan Stanley Smith Barney LLC and Morgan Stanley Smith Barney FA Notes Holdings LLC, for a Temporary Restraining Order and Preliminary Injunction. (Doc. No. 3). The parties stipulated to the entry of a Temporary Restraining Order, which the Court entered on December 20, 2017. (Doc. No. 8). Following a hearing on the requested Preliminary Injunction before the undersigned on February 1, 2018, this Court finds that the relief sought is properly granted. Based upon the record, we now make the following:

**FINDINGS OF FACT**

1. Petitioners are Morgan Stanley Smith Barney LLC (along with its predecessors in interest, "MSSB"), and Morgan Stanley Smith Barney FA Notes Holdings LLC ("MSSB Holdings"). MSSB and

MSSB Holdings are limited liability companies organized under the laws of the State of Delaware, each with their principal place of business in New York. (Pet., Doc. No. 1, at ¶¶ 1-2).

2. Respondent, Stephen T. Walker ("Walker"), is an adult individual who resides in Bryn Mawr, Pennsylvania. (Walker Aff., Doc. No. 27-2, at ¶ 4). Walker worked for MSSB from 2001 until May 2010. (N.T., 2/1/18, at p. 33-34).

3. MSSB issued various incentives and supporting loans to Walker during the course of his employment, including two promissory notes that eventually became a major issue in the parties' dispute. (Id. at 46; Mot. Ex. A, Doc. No. 3, at p. 3; Pet. Ex. A ("Arbitration Award"), at pp. 3-4; Pet. Exs. B & C). The two notes at issue contained clauses making the unpaid principal balance of the notes, plus interest, due immediately upon Walker's termination regardless of cause. (Pet. Ex. B, at p. 1 ("Morgan Stanley shall declare this Note immediately due and payable, without notice or demand, if . . . the Employee's employment with Morgan Stanley terminates voluntarily or is terminated by Morgan Stanley for any reason whatsoever . . . .")); Pet. Ex. C, at p. 3 ("All amounts outstanding under the Note shall automatically be, and become, immediately due and payable, without notice or demand . . . if the Borrower's employment with

the Authorized Party terminates voluntarily or involuntarily for any reason or no reason whatsoever . . . .”)).

4. Walker’s employment with MSSB ended, and the notes became immediately due, in May 2010. (N.T., 2/1/18, at p. 35; Pet. Ex. B, at p. 1; Pet. Ex. C, at p. 3).

5. At the time of his departure from MSSB, the outstanding balance and interest on these promissory notes were secured by funds that Walker kept at MSSB. (N.T., 2/1/18, at p. 46-47; Mot. Ex. A, at p. 3). The notes provided MSSB the right to block Walker from removing the secured funds from MSSB. (Pet. Ex. B, at p. 2; Pet. Ex. C, at p. 2).

6. Walker gained employment with Oppenheimer & Co. (“Oppenheimer”) in October 2010. (Walker Aff. ¶ 1). Shortly thereafter, Walker transferred his assets from MSSB to Oppenheimer, including the monies that secured the balance on the loans that he owed MSSB. (N.T., 2/1/18, at pp. 47-49; Walker Aff. ¶¶ 10-11).

7. Walker transferred his assets to Oppenheimer despite the fact that the outstanding principal and interest on the promissory notes were due to MSSB at the time of his termination. (Pet. Ex. B, at p. 1; Pet. Ex. C, at p. 3; N.T., 2/1/18, at pp. 43-45; Arbitration Award at pp. 4, 6-7). We found that Walker’s

testimony to the contrary was not credible. (N.T., 2/1/18, at pp. 49, 72-74).

8. MSSB and MSSB Holdings initiated arbitration proceedings against Walker in September 2010. (Arbitration Award at p. 2). MSSB and MSSB Holdings sought, *inter alia*, the remaining balance plus interest on the two outstanding promissory notes issued to Walker. Id. at 4. Walker filed various counterclaims against MSSB and Daniel F. Thompson ("Thompson"), Walker's branch manager. Id. at 2.

9. When questioned at the arbitration proceedings about the transferred assets securing his promissory notes with MSSB, Walker stated that he had "assets set aside" so that he could pay MSSB the remaining balance and interest on his promissory notes, if so ordered. (N.T., 2/1/18, at pp. 51-52).

10. Arbitration proceedings continued until the panel issued its decision on November 1, 2017. The panel ruled in favor of Petitioners on the issue of the outstanding promissory notes owed by Walker. (Arbitration Award at pp. 6-7). The panel awarded MSSB Holdings its requested \$1,665,727.22 for compensatory damages and, pursuant to the terms of the promissory notes, another \$285,860.63 for MSSB Holdings' attorneys' fees. Id. at 6. The panel awarded Walker \$525,000.00 in compensatory

damages from MSSB, which was offset by \$15,000 in compensatory damages that the panel found Walker owed MSSB. Id. at 6-7. Lastly, the panel awarded Thompson \$10,000.00 in compensatory damages from Walker. Id. at 7.

11. In all, the panel ordered (i) Walker to pay MSSB Holdings \$1,951,587.85, (ii) Walker to pay Thompson \$10,000.00, and (iii) MSSB to pay Walker \$510,000. Id. at 6-7.

12. In its award, the panel noted that it was denying Walker's request for spoliation damages. Id. at 7.

13. Pursuant to Financial Industry Regulatory Authority ("FINRA") Rules, the panel ordered the parties to pay the awards by December 1, 2017. (Arbitration Award, Cover Letter).

14. On December 1, 2017, MSSB sent a check, payable to Walker in the amount of \$510,000.00 ("the MSSB Payment"), to Walker's attorney, Gary Green, Esq. ("Green"), who represented Walker throughout the underlying arbitration proceedings. (Pet. Ex. E).

15. Walker has not yet paid MSSB Holdings. (See N.T., 2/1/18, at pp. 68-69).

16. It is unlikely that Walker could come up with the nearly \$2 million required to pay MSSB Holdings within the immediate future. (N.T., 2/1/18, at p. 56; Mot. Ex. C, at p. 1).

Aside from about \$600,000 in liquid assets, (N.T., 2/1/18, at p. 54), Walker has roughly \$1 million in equity tied up in a second house located in Gladwyne, Pennsylvania, (id. at 56-58). Walker recently listed that property for sale in January 2018. Id. at 57. In addition, Walker recently notified FINRA that he has a bonafide inability to pay the arbitration award. (Id. at 52-53; Mot. Ex. C).

## **DISCUSSION**

### **A. Standards for Granting Preliminary Injunctive Relief**

The remedy of a preliminary injunction is afforded under Fed. R. Civ. P. 65, subsection (d) of which outlines the contents and scope of injunction orders:

#### **(d) Contents and Scope of Every Injunction and Restraining Order.**

**(1) Contents.** Every order granting an injunction and every restraining order must:

- (A) state the reasons why it issued;
- (B) state its terms specifically; and
- (C) describe in reasonable detail - and not by referring to the complaint or other document - the act or acts restrained or required.

**(2) Persons Bound.** The order binds only the following who receive actual notice of it by personal service or otherwise:

- (A) the parties;
- (B) the parties' officers, agents, servants, employees, and attorneys; and

(C) other persons who are in active concert or participation with anyone described in Rule 65(d)(2)(A) or (B).

Of course, under Rule 65(a)(1), a preliminary injunction may only issue on notice to the adverse party. "A preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion." Mazurek v. Armstrong, 520 U.S. 968, 972, 117 S. Ct. 1865, 1867, 138 L. Ed.2d 162 (1997) (emphasis in original).

A district court must consider four factors when determining whether to issue a preliminary injunction: "(1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest." ACLU v. Black Horse Pike Regional Bd. of Edu., 84 F.3d 1471, 1477 n.2 (3d Cir. 1996) (quoting Gerardi v. Pelullo, 16 F.3d 1363, 1373 (3d Cir. 1994) and SI Handling Systems, Inc. v. Heisley, 753 F.2d 1244, 1254 (3d Cir. 1985)).

"The grant or denial of a preliminary injunction is almost

always based on an abbreviated set of facts, requiring a delicate balancing of the probabilities of ultimate success at final hearing with the consequence of immediate irreparable injury.” U.S. Steel Corp. v. Fraternal Ass’n of Steelhaulers, 431 F.2d 1046, 1048 (3d Cir. 1970). Weighing these considerations falls within the Court’s discretion and “only a clear abuse of discretion will justify appellate reversal.” Id.

***B. Propriety of Injunctive Relief in Petitioners’ Case***

Petitioners seek a Preliminary Injunction restraining Walker, and anyone acting in concert with him, from transferring, dissipating, secreting or otherwise disposing of any money, property, or other assets, and requiring Walker to deposit the MSSB Payment into the Court. (Doc. No. 3).

We find that the balance of the above factors favors granting, in large part, the requested injunctive relief. We deviate from the requested relief in order to permit Walker to use his assets for necessary and ordinary living expenses. We also deviate from the requested relief by ordering Walker’s attorney throughout the arbitration proceedings, Green, to deliver the MSSB Payment back to MSSB, in order to restore the status quo until we affirm or vacate the arbitration award.

## 1. Likely Success on the Merits

First, on a motion for preliminary injunction, the moving party must establish a "reasonable probability of eventual success on the merits." Continental Group, Inc. v. Amoco Chemicals Corp., 614 F.2d 351, 356-57 (3d Cir. 1980).

Petitioners initiated proceedings before this Court on December 15, 2017, seeking to confirm an arbitration award that was the result of a multi-year arbitration proceeding. (Doc. No. 1). The written award indicates that the panel held eight pre-hearing sessions and 151 hearing sessions, beginning in 2011 and continuing throughout 2017. (Arbitration Award at pp. 10-11).

Walker has since moved to vacate the arbitration award. (Doc. No. 28). In response to Petitioners' instant Motion for a Preliminary Injunction, Walker argues that MSSB and MSSB Holdings have failed to establish a likelihood of success on the merits because the arbitrators "completely ignored" Walker's claim that MSSB was liable for spoliation. (Resp. Mem., Doc. No. 27, at 7). This is the same basis upon which Walker has moved to vacate the arbitration award.

We note that "[a] court's function in confirming or vacating an arbitration award is extremely limited." Day & Zimmerman, Inc. v. SOC-SMG, Inc., No. 11-cv-6008, 2012 WL 5232180, at \*5

(E.D. Pa. Oct. 22, 2012) (citing Mutual Fire, Marine & Island Ins. Co. v. Norad Reinsurance Co., Ltd., 868 F.2d 52, 56 (3d Cir. 1989)). We do not review the award to determine the merits of the arbitrator's decision. Id. Indeed, "[t]he Third Circuit has made clear that an award will be vacated only if there is 'absolutely no support at all in the record justifying the arbitrator's determination.'" Id. (quoting United Transp. Union Local 1589 v. Suburban Transit Corp., 51 F.3d 376, 379 (3d Cir. 1995)).

Petitioners present a strong likelihood of success given the deference we afford arbitration awards and the panel's considerable work throughout the seven years and 158 hearings upon which it based its decision. While reserving judgement on the merits of Walker's Motion to Vacate, we note that the arbitration panel did not "completely ignore" his spoliation claim, as he argues now. The panel explicitly ruled that it was denying Walker's request for spoliation damages. (Arbitration Award at p. 7). We are not swayed, at this stage, that the panel's consideration of Walker's spoliation claim was so egregiously lacking that it will undermine the considerable deference we afford the panel's decision.

## 2. Irreparable Injury

Second, the moving party must establish that it will suffer immediate and irreparable harm absent the injunctive relief.

Continental Group, Inc., 614 F.2d at 357.

In the context of protecting a future money judgment, the Third Circuit has affirmed the district court's power to issue a preliminary injunction to prevent a defendant from dissipating or secreting assets that will likely be owed to the movant. Elliott v. Kieseewetter, 98 F.3d 47, 57-58 (3d Cir. 1996). While not appropriate in a typical run-of-the-mill damages action, such an injunction is appropriate when the movant establishes that "the freeze is necessary to prevent the consumption, dissipation or fraudulent conveyance of the assets that the party pursuing the asset freeze seeks to recover in the underlying litigation." Id. at 58; see also Mendelsohn, Drucker, & Associates, P.C. v. Titan Atlas Mfg., No. 12-cv-453, 2013 WL 247245, at \*3 (E.D. Pa. Jan. 23, 2013) (quoting Hoxworth v. Blinder, Robinson & Co., 903 F.2d 186, 197 (3d Cir. 1990)).

We agree that, absent a preliminary injunction, Walker has shown a strong likelihood of not paying the arbitration award. As noted above, Walker improperly transferred the assets securing his promissory notes with MSSB Holdings, which became due

immediately upon his termination in 2010. And despite testifying at the arbitration proceedings that he had set this money aside so that he could repay Petitioners if so ordered, Walker has not done so. Moreover, Walker has informed FINRA that he now has an inability to pay the arbitration award. This shiftiness, coupled with his demonstrated ability to move funds beyond MSSB's reach, persuades us that a preliminary injunction is proper and necessary to prevent Walker from consuming, dissipating, or fraudulently conveying the assets that the arbitration panel has already determined that he owes Petitioners.

Lastly, we note that MSSB is a company with an enormous asset sheet. But its size relative to the arbitration award does not reduce the irreparable injury that it stands to suffer absent the preliminary injunction. The Third Circuit has "rejected the view that a monetizable injury which is small in relation to a plaintiff's total assets cannot be irreparable." Hoxworth, 903 F.2d at 206 (citing A.O. Smith Corp. v. FTC, 530 F.2d 515, 527 n.9a (3d Cir. 1976)).

### **3. Relative Harm**

Third, the court must weigh the possibility of harm to the nonmoving party and any other interested person. Continental Group, Inc., 614 F.2d at 357.

We find that Walker will not suffer from the requested injunctive relief. The arbitration panel has already determined that Walker owes MSSB Holdings nearly \$2 million. This award accounts for all of Walker's liquid assets, as well as the equity that he has in his second home, which is currently listed for sale. Preventing Walker from tapping into these assets, beyond his necessary and ordinary expenses, and from dissipating and secreting these assets, does not harm Walker in any way.<sup>1</sup>

We also note that Green is not harmed by the issuance of the requested preliminary injunction. The arbitrators awarded Walker, not Green, \$525,000 in compensatory damages from MSSB. Accounting for the \$15,000 offset, MSSB issued a check payable to Walker, not Green, in the amount of \$510,000. MSSB sent that check to Green given the simple fact that he was Walker's attorney. (Pet. Ex. E). The preliminary injunction only relates to Green because he was Walker's attorney, which is how he took possession of the MSSB Payment. See Fed. R. Civ. P. 65(d)(2)(B). We cannot find injury in Green being forced to return the MSSB

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<sup>1</sup> The only possible manner in which Walker is injured by the preliminary injunction is if we do in fact vacate the arbitration award. If this does happen, however, Walker's injury would be merely temporary. This temporary freeze over assets not owed to Petitioners in the unlikely event we vacate the arbitration award does not outweigh the irreparable harm Walker may cause in the likely event we do confirm the arbitration award.

Payment, which has now been called into question by Walker, when the only reason Green took possession of the check was because he accepted it on Walker's behalf.

#### **4. Public Interest**

Last, we consider the public interest in the issuance of the preliminary injunction. Continental Group, Inc., 614 F.2d at 357. We find that the public does not have a cognizable interest in the issuance of the preliminary injunction in this case.

#### **CONCLUSIONS OF LAW**

1. This Court has jurisdiction over the parties and the subject matter of this action under 28 U.S.C. § 1332.

2. Petitioners have demonstrated a strong likelihood of success on the merits.

3. Except for those required for Walker's necessary and ordinary living expenses, Petitioners will suffer immediate and irreparable harm as a result of Walker, or anyone acting on Walker's behalf, from transferring, dissipating, secreting or otherwise disposing of any money, property, or other assets, including without limitation the MSSB Payment pursuant to the arbitration award that is the subject of this proceeding.

4. Greater injury will be inflicted upon Petitioners by the denial of injunctive relief than would be inflicted upon Walker

by the granting of such relief.

5. The public interest does not favor the grant or denial of the requested preliminary injunction.

An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MORGAN STANLEY SMITH BARNEY LLC,	:	
et al.,	:	
	:	
Petitioners,	:	CIVIL ACTION
	:	
vs.	:	NO. 17-CV-5635
	:	
STEPHEN T. WALKER,	:	
	:	
Respondent.	:	

**ORDER**

AND NOW, this                    day of March, 2018, upon consideration of Petitioners' Motion for a Temporary Restraining Order and Preliminary Injunction against Respondent (Doc. No. 3), Respondent's Response in Opposition thereto (Doc. No 27), Petitioners' Reply in Support thereof (Doc. No. 32), and following a Hearing in this matter and for the reasons set forth in the accompanying Decision, it is hereby ORDERED as follows:

1. The Motion is GRANTED;

2. Pending further order of the Court, Respondent Stephen T. Walker, and anyone acting on his behalf, is ENJOINED and RESTRAINED from transferring, dissipating, secreting or otherwise disposing of any money, property, or other assets, except as required to cover Respondent's necessary and ordinary living expenses, which were set forth in the schedule Respondent has previously provided Petitioners' counsel (Hearing, 2/1/18, Ex. P-3);
3. Walker and his attorney in the underlying arbitration proceedings, Gary Green, Esq., are ORDERED to return the MSSB Payment, as defined in the accompanying Decision, to MSSB's attorney in this matter;
4. This Order is STAYED as it relates to Gary Green, Esq., pending his appeal of this Order or any previous Order the Court has issued in the above-captioned case so that he may retain - but may not use, deposit, attach, or otherwise burden - the MSSB Payment; and
5. Petitioners are required to post a bond of \$100,000 within one week of the entry of this Order.

BY THE COURT:

s/J. Curtis Joyner

J. CURTIS JOYNER, J.