

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

UNIVERSAL UNDERWRITERS GROUP,	:	
	:	
Plaintiff,	:	
	:	
v.	:	NO. 02- MC-163
	:	
DENISE CHAKMAKLIAN	:	
	:	
Defendant.	:	
	:	

ROBERT F. KELLY, Sr. J.

OCTOBER 8, 2002

MEMORANDUM

Plaintiff, Universal Underwriters Group, filed this miscellaneous action petitioning this Court to vacate the Philadelphia Court of Common Pleas arbitration award which was entered in favor of Defendant, Denise Chakmaklian, and against Charles Gentile and Integrity Auto Parts, Inc. Presently before this Court is Defendant’s Motion to Dismiss pursuant to Civil Rule of Procedure 12(b)(1). For the following reasons, Defendant’s Motion will be granted and the case will be dismissed with prejudice.

I. BACKGROUND

On March 11, 1999, Defendant, Denise Chakmaklian (“Chakmaklian”) was involved in a motor vehicle accident with a vehicle driven by Charles R. Gentile (“Gentile”) who was insured by Plaintiff, Universal Underwriters Group (“Universal”). Chakmaklian filed a cause of action in the Philadelphia Court of Common Pleas (“state court matter”) against Gentile

and Integrity Auto Parts, Inc. (“Integrity”) which was scheduled for trial on November 26, 2001.¹ Both Gentile and Integrity are residents of Philadelphia, Pennsylvania and are insured by Universal.

Following a pre-trial conference before the Honorable Sandra Mazer Moss, the presiding judge in the state court matter, counsel for both parties agreed to discontinue the civil action and to submit the case to common law arbitration. Shortly thereafter, the parties entered into a High/Low Arbitration Agreement and Stipulation (“the Agreement”). The parties stipulated, *inter alia*, that the arbitration would be a high/low arbitration, that it would be held before ADR Options, Inc., that it would be conducted pursuant to the rules of common law arbitration, that the decision of the arbitrator will be final and binding, and that Chakmaklian would file an Order with the Prothonotary of the Court of Common Pleas of Philadelphia County marking the lawsuit settled, discontinued and ended. The parties proceeded to arbitration on May 7, 2002, and an award in favor of Chakmaklian was entered on May 30, 2002.²

II. STANDARD

A motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) may challenge the Court’s jurisdiction of the pending matter either based upon the complaint on its face or based upon the facts of the matter. Mortensen v. First Fed. Sav. and Loan Ass’n, 549 F.2d 884, 889 (3d Cir. 1977). When evaluating a facial attack to subject matter

¹ The lawsuit in the state court matter is captioned, Denise Chakmaklian v. M. Christopher’s Inc., t/a Integrity Auto Parts & Charles Gentile, April Term 2000, No. 2773.

² The parties did participate in an arbitration on December 10, 2001, however, they both agreed to re-try the arbitration after the arbitrator recused himself. The terms of the Agreement remained in effect for the second arbitration hearing on May 7, 2002.

jurisdiction, the Court must accept the allegations in the complaint as true. Id. However, in resolving a factual 12(b)(1) motion, like the one *sub judice*, there is no presumption of truthfulness and the Court is free to weigh evidence outside the pleadings and to resolve factual issues bearing on the jurisdiction of the Court. Employers Ins. of Wausau v. Crown Cork & Seal Co., 905 F.2d 42, 45 (3d Cir. 1990). In addition, under a factual attack the plaintiff bears the burden of persuading this Court that it has subject matter jurisdiction. Mortensen, 549 F.2d at 891.

III. DISCUSSION

Universal filed this petition to vacate the arbitration award entered on May 30, 2002, in favor of Chakmaklian alleging that this Court has jurisdiction premised upon diversity of the parties as enumerated in 28 U.S.C. §1332. Universal contends that jurisdiction based upon diversity is proper because Universal, a Missouri corporation with its principle place of business in Kansas, entered into the Agreement with Chakmaklian, a resident of Pennsylvania. According to Universal, the state court matter was “removed” from the state court system and “transferred” to private arbitration thereby divesting the state court of further jurisdiction over this matter. Therefore, Universal argues that once the Agreement was signed, Universal became the party in interest and the state court matter was ended. Accordingly, Universal contends that its petition to vacate the arbitration award has no connection with the state court matter and that there is diversity between the parties.

Chakmaklian responds that there is no diversity since the real parties in interest are the defendants in the Philadelphia action, Gentile and Integrity, both of whom are Pennsylvania residents living in Philadelphia. Chakmaklian asserts that the Philadelphia Court

of Common Pleas still retains jurisdiction over the instant matter pursuant to the Pennsylvania statutory structure governing common law arbitration (Chapter 73 of the Pennsylvania Judicial Code). Chakmaklian also alleges that Universal named itself as the party in interest for the first time in this instant action in order to evade the jurisdiction of the state court.

A. Universal Has Failed to Follow the Proper Procedure to Appeal a Common Law Arbitration Award in Pennsylvania.

We reject Universal's proposition that the Agreement is the locus of the present dispute thereby giving this Court jurisdiction based upon diversity. Universal is correct that the Agreement controls the future procedure of the state court matter since it specified the application of common law arbitration, however, the instant cause of action is not grounded in contract. The arbitration award is controlled by the statutory framework in Chapter 73 of the Pennsylvania Judicial Code, specifically, Sections 7341 and 7342 of Subchapter B which sets forth the rules and provisions for common law arbitration proceedings. *See also* 42 Pa. C.S.A. §§ 7301-7362.

Title 42 Pa. C.S.A. § 7342(a) sets forth the applicable procedures for common law arbitration. The right to appeal a common law arbitration award is governed by 42 Pa. C.S.A. § 7320 which governs appeals from court orders. Synder v. Cress, 791 A.2d 1198, 1200 (Pa. Super. 2002). The right to appeal an arbitration award as set forth in § 7320 is then to be read in conjunction with § 7342(b) which describes the manner in which the court confirms and enters judgment of a common law arbitration award. Id. Section 7342(b) provides for the following: "On application of a party made more than 30 days after an award is made by an arbitrator under § 7341 (relating to common law arbitration) the court shall enter an order confirming the award

and shall enter a judgment or decree in conformity with the order.” 42 Pa. C.S.A. §7342(b). Pennsylvania courts have consistently interpreted this section to require that there is only one way to challenge an arbitration award: file a motion to vacate and/or modify the arbitration award with the court of common pleas within thirty (30) days of the date of the award. Synder, 791 A.2d 1200 (rejecting an untimely appeal made two years after the arbitration award was confirmed by the trial court); Sage v. Greenspan, 765 A.2d 1139 (Pa. Super. 2001)(finding it procedurally inadequate to raise objections to an arbitration award as “new matter” in response to a petition to confirm the award); Lowther v. Roxborough Mem’l Hospital, 738 A.2d 480 (Pa. Super. 1999)(finding that the filing of a declaratory judgment does not satisfy the proper procedure to challenge an arbitration award; the proper procedure is to file a motion to vacate and/or modify the arbitration award); Hall v. Nationwide Mut. Ins. Co., 629 A.2d 954 (Pa. Super. 1993)(affirming trial court’s dismissal of arbitration appeal made after the 30 day statutory limit). Accordingly, Universal has failed to comply with the Pennsylvania statutes governing appeals from common law arbitration awards by failing to file an appropriate petition with the Philadelphia Court of Common Pleas.

Universal’s proposition that the arbitration is a separate and distinct cause of action from the state court matter suggests that there is no unitary nature to the arbitration process in Pennsylvania. In West v. Zurich Amer. Ins. Co., No. 02-546, 2002 WL 1397465 (E.D. Pa. June 26, 2002), the Honorable Clifford Green examined the procedure for appealing arbitration awards in Pennsylvania.³ In West, Zurich filed a petition to compel arbitration, which is

³ While West dealt with state compelled arbitration, not common law arbitration, the jurisdictional question presented in West applies to common law arbitration as well.

equivalent to a complaint, in the state court and the parties proceeded to state compelled arbitration. After the arbitration, West filed a petition to vacate the arbitration award with the court of common pleas, and in response, Zurich removed the matter to federal court based upon diversity. Zurich contended that removal was proper because the petition to vacate was an initial pleading and completely unrelated to West's earlier petition to compel arbitration which began the arbitration process. In rendering its decision, the Court concluded that the arbitration proceeding should be viewed as a unitary action and not a series of unrelated steps as proposed by Zurich. In its examination of the Pennsylvania arbitration structure, the West court noted that the Pennsylvania statutes governing arbitrations are set forth consecutively in the code with "inter-dependant sections which were obviously constructed with the understanding that the controversy would continue in a single fashion." West, 2002 WL 1397465, at *2. The court also cited to § 7319(3) which requires that "all subsequent applications to a court shall be made to the court hearing the initial application unless the court directs otherwise" as further proof that the legislative intent was to have the same court handle all proceeding which arise during the course of controversy. 42 Pa. C.S.A. § 7319(3); West, 2002 WL 1397465, at *3.

Further, Judge Moss' refusal to comply with the provision in the Agreement which required Chakmaklian to file an order with the Prothonotary of the Court of Common Pleas of Philadelphia County, marking the state court matter settled, discontinued and ended is additional evidence of the unitary nature of the arbitration process. When Chakmaklian tried to comply with this provision, Judge Moss refused to allow her to do so until after an arbitration award was either granted or denied. (N.T., p. 11; *See also* Def. Mot for Sanctions, Ex. A). Judge Moss' instruction is consistent with § 7342(b) which then requires the court to confirm the

arbitration award upon application of a party “made **more than** 30 days after” the arbitration award is granted by the arbitrators. 42 Pa. C.S.A. § 7342(b) (emphasis added). This statute is very clear that the trial court may not enter an order confirming the arbitration award until after the thirty day appellate period expires. This clearly defined structure is further proof that the arbitration process is a unitary action and not a series of unrelated filings as suggested by Universal. While Universal argues that Chakmaklian breached the Agreement by failing to comply with this arbitration provision, such a clause violates Pennsylvania procedure, and Pennsylvania courts do not allow provisions in an arbitration agreement to alter Pennsylvania procedure. Miller v. Allstate Ins. Co., 763 A.2d 401 (Pa. Super. 2000).

After examining the relevant Pennsylvania statutes, as well as their application by the Pennsylvania courts, it is clear that there is only one way to appeal from a common law arbitration award in Pennsylvania, and Universal did not follow this appropriate channel. In its petition to vacate, Universal challenges the arbitration award based upon one of the arbitrator’s conduct during the arbitration. Any irregularities in the arbitration process, such as that alleged by Universal, must be raised in a timely petition to vacate or modify the arbitration award with the court of common pleas. Sage, 765 A.2d at 1142. Although Universal did file a timely appeal on June 14, 2002, it do so in the wrong court despite its knowledge of the applicable statutes that govern common law arbitration in Pennsylvania. (Petition to Vacate, ¶ 23). The proper procedure requires the filing of a timely petition to vacate or modify the arbitration award with the court of common pleas. Lowther 738 A.2d at 485. Therefore, this court does not have subject matter jurisdiction over this action.

B. Universal Is Not the Party in Interest.

The Court would also like to address Universal's assertion that it became the party in interest when counsel for Universal signed the Agreement. There is no indication that at any time Universal became the party in interest in the state court matter. First, after reading the language in the Agreement, this Court concludes that those intended to be bound by its terms were the parties as illustrated in the state court matter caption: Chakmaklian, Gentile and Integrity. Specifically, the caption Denise Chakmaklian v. M. Christopher's Inc., t/a Integrity Auto Parts & Charles Gentile is referenced in the first line of the Agreement and those agreements reached immediately following are between "the parties." Then, the stipulations reached in the Agreement between the parties were agreed to by the plural "Defendants." Therefore, any logical reading of the Agreement would conclude that the Defendants are Charles R. Gentile and Integrity Auto Parts, Inc., not Universal which would require a singular noun. Moreover, any other agreements and/or correspondence dated after the execution of the Agreement references the state court matter caption. Further, the arbitration award was granted in favor of Chakmaklian, and against the Defendants, Gentile and Integrity. Universal has never moved to substitute itself as the defendant, and did not appear in the caption until it filed the instant motion with this Court. Therefore, Universal is not the party in interest in the state court matter.

IV. CONCLUSION

For all the foregoing reasons, this Court does not have subject matter jurisdiction over this matter as this Court may not hear an appeal from a common law arbitration award entered by the Philadelphia Court of Common Pleas. Universal has failed to follow the proper

procedural methods to challenge an arbitration award as proscribed by Pennsylvania law.

An appropriate Order follows.

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

UNIVERSAL UNDERWRITERS GROUP,	:	
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Plaintiff,	:	
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v.	:	NO. 02- MC-163
	:	
DENISE CHAKMAKLIAN	:	
	:	
Defendant.	:	
	:	

ORDER

AND NOW, this 8th day of October, 2002, upon consideration of the Motion to Dismiss filed by Defendant Chakmaklian (Dkt. No. 4), and any responses thereto, it is hereby **ORDERED** that said motion is **GRANTED** and the above-captioned matter is **DISMISSED WITH PREJUDICE**. The Clerk of Court is directed to mark this case as **CLOSED**.

BY THE COURT:

ROBERT F. KELLY, Sr. J.