IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CLP TOXICOLOGY, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 2018-0560-TMR
	)	
CASLA BIO HOLDINGS LLC,	)	
	)	
Defendant.	)	

ORDER

WHEREAS, Plaintiff CLP Toxicology, Inc. ("CLP"), Defendant Casla Bio Holdings LLC ("Casla"), and non-party Alternative Biomedical Solutions LLC (the "Company") entered into a Securities Purchase Agreement dated December 18, 2017;

WHEREAS, under the dispute resolution provision in Section 3.2 of the Securities Purchase Agreement, CLP and Casla engaged in mandatory, binding arbitration in June 2018 regarding the Company's total accounts receivable reserve (the "Total AR Reserve");

WHEREAS, the arbitrator issued a report on June 29, 2018, determining the Total AR Reserve was $661,165;

WHEREAS, Plaintiff filed a Verified Complaint to Vacate or Modify Arbitration Award on July 30, 2018 (the "Complaint");

WHEREAS, Defendant moved to dismiss the Complaint for failure to state a claim on August 21, 2018;

NOW, THEREFORE, THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

1. The Court has reviewed the parties' briefs, supporting submissions, and the applicable law.

2. Defendant's motion to dismiss is GRANTED.

3. When considering a motion to dismiss for failure to state a claim under Court of Chancery Rule 12(b)(6), a court must accept all well-pled factual allegations in the complaint as true, accept even vague allegations in the complaint as well-pled if they provide the defendant notice of the claim, "draw all reasonable inferences in favor of the non-moving party," and deny the motion unless the plaintiff could not recover "under any reasonably conceivable set of circumstances susceptible of proof." *Savor, Inc. v. FMR Corp.*, 812 A.2d 894, 896-97 (Del. 2002). The Court may consider a document outside the pleadings if "the document is integral to a plaintiff's claim and incorporated into the complaint" or "the document is not being relied upon to prove the truth of its contents." *Vanderbilt Income & Growth Assocs., L.L.C. v. Arvida/JMB Managers, Inc.*, 691 A.2d 609, 613 (Del. 1996) (citing *In re Santa Fe Pac. Corp. S'holder Litig.*, 669 A.2d 59, 69-70 (Del. 1995)); *see Allen v. Encore Energy P'rs, L.P.*, 72 A.3d 93, 96 n.2 (Del. 2013).

4. The parties agree that the Federal Arbitration Act applies here. Under the Federal Arbitration Act, the Court may vacate an arbitral award "where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." 9 U.S.C. § 10(a). "When considering 'whether the arbitrator exceeded its authority,' the court must 'resolve all doubts in favor of the arbitrator.'" *Carl Zeiss Vision, Inc. v. Refac Hldgs., Inc.*, 2017 WL 3635568, at *5 (Del. Ch. Aug. 24, 2017) (quoting *TD Ameritrade, Inc. v. McLaughlin, Piven, Vogel Sec., Inc.*, 953 A.2d 726, 732 (Del. Ch. 2008)). "When 'an arbitration award rationally can be derived from either the agreement of the parties or the parties' submission to the arbitrator, it will be enforced.'" *TD Ameritrade*, 953 A.2d at 732 (quoting *Brennan v. CIGNA Corp.*, 2008 WL 2441049, at *4 (3d Cir. June 18, 2008)).

5. Under the Federal Arbitration Act, the Court may also modify an arbitral award "[w]here there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award." 9 U.S.C. § 11(a). An "evident material miscalculation" is one "of mathematical or computational error," rather than "a substantive conclusion of the arbitrator" that is "largely based on fact." *Roncone v. Phoenix Payment Sys., Inc.*, 2014 WL 6735210, at *7 (Del. Ch. Nov. 26, 2014) (applying 10 *Del. C.* § 5715, which is substantively identical to 9 U.S.C. § 11). "[W]here no mathematical error

appears on the face of the award . . . an arbitration award will not be altered." *TD Ameritrade*, 953 A.2d at 737 (omission in original) (quoting *Apex Plumbing Supply, Inc. v. U.S. Supply Co.*, 142 F.3d 188, 194 (4th Cir.1998)). Regarding "evident material mistake," federal courts have held that "where the record that was before the arbitrator demonstrates an unambiguous and undisputed mistake of fact and the record demonstrates strong reliance on that mistake by the arbitrator in making his award, . . . vacation [or modification] may be proper." *Valentine Sugars, Inc. v. Donau Corp.*, 981 F.2d 210, 214 (5th Cir. 1993) (quoting *Nat'l Post Office v. U.S. Postal Serv.*, 751 F.2d 834, 843 (6th Cir.1985)).

6. Under Section 3.2(c)(iii) of the Securities Purchase Agreement, the arbitrator's determination of the Closing Net Working Capital Amount, of which the Total AR Reserve is a component, "shall be conclusive, binding upon the Parties, . . . nonappealable, and not be subject to further review, and shall be considered final for all purposes hereunder absent manifest error." Compl. Ex. B § 3.2(c)(iii). "'[M]anifest error' is most sensibly understood as a corollary to 'evident material mistake'" as used in 9 U.S.C. § 11. *Viacom Int'l, Inc. v. Winshall*, 2012 WL 3249620, at *11 n.80 (Del. Ch. Aug. 9, 2012).

7. As part of the arbitration process, the parties each provided to the arbitrator an initial submission, a reply submission, and responses to the arbitrator's three sets of questions and requests. Compl. ¶¶ 19-20. In its submissions, CLP

argued that two components determine Total AR Reserve: an existing reserve (the "Existing AR Reserve") and the excess reserve (the "Excess AR Reserve"). Compl. ¶ 25. The Existing AR Reserve "was determined as an amount equal to 0.5% of the Company's revenue through November 30, 2017," or $501,750. Compl. ¶ 22. CLP did not dispute this amount during arbitration. Compl. 9 ("Undisputed Existing AR Reserve"); Compl. Ex. F Attach. I ("Estimated reserve [of $501,750] at December 17, 2017 agrees to [Casla]'s First Submission"). Specifically identified delinquent accounts receivable comprise the Excess AR Reserve. *See* Compl. Ex. F Attach. I. The parties disputed whether these accounts were uncollectible. *See* Compl. Ex. F, at 4-7; Compl. Ex. J, at 4-6. CLP identified $795,341 in uncollectible accounts. *See* Compl. Ex. F Attach. I. In his Report, the arbitrator deemed only $661,165 as uncollectible. Compl. Ex. A, at 13.

8. CLP represented to the arbitrator in its rebuttal submission that the Total AR Reserve is the sum of the Existing AR Reserve and the Excess AR reserve. Compl. Ex. F Attach. I. Later, CLP described a different method of calculating Total AR Reserve in its response to the arbitrator's first set of questions: "The total of the receivables on the list [of specifically identified accounts] is compared to the general reserve at year-end," and the Company adjusts the general reserve to match the total of the receivables. Compl. Ex. G, at 4. In the face of this conflicting information, the arbitrator presented a simplified hypothetical to the parties:

> After recording the [Existing AR Reserve] in an amount equal to 0.5% of revenue each month, at year end the Reserve account has a balance of $3 million.
>
> As part of the year-end review of the accounts receivable aging, specific accounts totaling $4 million are identified as uncollectible[, forming the Excess AR Reserve].
>
> [The Company] would record an adjustment of $1 million to the Reserve account, leaving a total reserve of $4 million.

Compl. Ex. I, at 2. CLP confirmed that the "[arbitrator]'s example of the Company's reserve procedure is accurate." *Id.* Applying this hypothetical and CLP's confirmation to the dispute at hand, the arbitrator determined a Total AR Reserve of $661,165 in his June 29, 2018 Report. Compl. Ex. A ¶ 49.

9. After the arbitrator issued the Report, CLP contacted the arbitrator and requested that he correct the Total AR Reserve. Compl. ¶ 35. CLP explained, after the close of the arbitration process, that the Existing AR Reserve was not, as CLP had previously stated, 0.5% of revenue. *See* Compl. Ex. N; Def.'s Opening Br. Ex. 1, at 2. CLP described a different process, whereby the $501,750 Existing AR Reserve was a reserve consisting of two parts. CLP argued that only approximately $74,000 of the $501,750 was calculated as 0.5% of revenue. *See* Def.'s Opening Br. Ex. 1, at 2. The remaining portion represented formerly identified uncollectible accounts that were different from the accounts in the Excess AR Reserve. *See id.* Therefore, CLP posited, the arbitrator was incorrect to compare the Existing AR

Reserve and Excess AR Reserve, as he had done. He should have instead added the two.

10. The arbitrator responded to CLP's request.

> [I]n [response to] question 3 of my third set of questions, [CLP] confirmed that the [Existing AR Reserve] is compared to the [Excess AR Reserve], NOT added to it. As such, using [CLP]'s own Exhibit, I compared the $501,750 of [Existing AR Reserve] to an adjusted [Excess AR Reserve].
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> . . . .
>
> The Parties were given the opportunity to explain their positions and provide whatever documents they deemed necessary to educate me, as neutral. I prepared my report dated June 29, 2018 based on my understanding of the submissions provided to me, and to the extent something was unclear, I sought clarification through my questions. Therefore, I will not be altering my report as a result of [CLP] seeking to explain its position outside the arbitration process when it was granted numerous opportunities to do so during the process.

Id.

11. In this action, CLP requests that this Court modify or correct the Report under 9 U.S.C. § 11. Pl.'s Answering Br. 15. CLP argues that the arbitrator made an evident material miscalculation in his determination of Total AR Reserve when he compared the Existing AR Reserve and the Excess AR Reserve, instead of summing the two. *Id.* at 18-23.

12. The dispute here is not a "mathematical or computational error." *Roncone*, 2014 WL 6735210, at *7. CLP argues that the arbitrator used the wrong methodology to compute the Total AR Reserve. CLP argues that the arbitrator should have added the Existing AR Reserve and the Excess AR Reserve; instead, the arbitrator compared the two to calculate the Total AR Reserve. The arbitrator's choice of methodology in calculating the Total AR Reserve represents a "substantive conclusion of the arbitrator." *Id.* Therefore, I cannot find that the arbitrator's Report contains an evident material miscalculation.

13. Nor does the arbitrator's Report contain an evident material mistake. The parties disputed the methodology to calculate Total AR Reserve. The arbitrator considered the parties' submissions in his determination, as represented in his Report. There was no material "unambiguous and undisputed mistake of fact" in the record before the arbitrator. *Valentine Sugars*, 981 F.2d at 214. To the contrary, the arbitrator attempted to clarify any ambiguous or disputed facts, including ambiguity created by CLP's own contradictory submissions, by requesting additional information from the parties.

14. In the absence of any reasonably conceivable evident material miscalculation or evident material mistake, I must GRANT Defendant's motion to dismiss.

/s/ Tamika Montgomery-Reeves
Vice Chancellor