C Chase Bank USA, N.A. v. Hale
N.Y.Sup.,2008.

Supreme Court, New York County, New York.
CHASE BANK USA, N.A. s/h/a Bank One,
Petitioner,
v.
Andrea HALE, Respondent.
No. 601044/07.

March 31, 2008.

Background: Credit card issuer commenced proceeding seeking confirmation of an arbitration award in its favor against cardholder of $5,600 in attorney fees and, upon confirmation, to enter judgment accordingly. Cardholder moved to vacate or modify the arbitration award.

Holdings: The Supreme Court, New York County, Marcy L. Kahn, J., held that:
(1) arbitrators were empowered under parties' arbitration agreement to award both attorney fees and sanctions based on bad faith conduct;
(2) arbitrators did not exceed their authority in awarding attorney fees to issuer;
(3) arbitrators' award was not in manifest disregard of the law, as would warrant vacatur; and
(4) arbitrators' award was not irrational or violative of strong public policy under the Truth in Lending Act (TILA).

Motion denied and petition granted.

[1] Alternative Dispute Resolution 25T 235

25T Alternative Dispute Resolution
25TII Arbitration
25TII(E) Arbitrators
25Tk228 Nature and Extent of Authority
25Tk235 k. Scope of Relief. Most Cited Cases
Pursuant to applicable National Arbitration Forum rules as incorporated into arbitration agreement between credit card issuer and cardholder, arbitrators were empowered to award both attorney fees and sanctions upon a finding that the party to be sanctioned engaged in bad faith conduct.

[2] Costs 102 194.16

102 Costs
102VIII Attorney Fees
102k194.16 k. American Rule; Necessity of Contractual or Statutory Authorization or Grounds in Equity. Most Cited Cases
Generally, pursuant to the "American Rule," parties are to bear their own costs in litigation as well as in arbitration.

[3] Costs 102 194.44

102 Costs
102VIII Attorney Fees
102k194.44 k. Bad Faith or Meritless Litigation. Most Cited Cases
A recognized exception to the general "American Rule" may be found where the court finds that one of the parties has engaged in bad faith conduct, in which case attorney fees may be awarded to the non-offending party.

[4] Costs 102 194.44

102 Costs
102VIII Attorney Fees
102k194.44 k. Bad Faith or Meritless Litigation. Most Cited Cases
A court may appropriately award attorney fees when the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons.

[5] Costs 102 194.44

102 Costs
102VIII Attorney Fees
102k194.44 k. Bad Faith or Meritless Litigation. Most Cited Cases
The rationale for the bad faith exception to the general "American Rule" is that if a party brings an unsupportable claim in bad faith, causing the opposing party to incur legal fees in opposing a claim that should never have been raised in the first instance, the opposing party should be compensated

for those fees by the offending party.

[6] Alternative Dispute Resolution 25T 229

25T Alternative Dispute Resolution
25TII Arbitration
25TII(E) Arbitrators
25Tk228 Nature and Extent of Authority
25Tk229 k. In General. Most Cited Cases

Alternative Dispute Resolution 25T 235

25T Alternative Dispute Resolution
25TII Arbitration
25TII(E) Arbitrators
25Tk228 Nature and Extent of Authority
25Tk235 k. Scope of Relief. Most Cited Cases
Under federal law, arbitrators have broad authority to decide disputes and to fashion remedies, especially where a commercial contract is governed by applicable rules of an arbitration forum authorizing the arbitrators to do so.

[7] Alternative Dispute Resolution 25T 235

25T Alternative Dispute Resolution
25TII Arbitration
25TII(E) Arbitrators
25Tk228 Nature and Extent of Authority
25Tk235 k. Scope of Relief. Most Cited Cases
When arbitrators find a claim to have been brought in bad faith, they may, in the exercise of their broad powers to fashion remedies, award attorney fees.

[8] Alternative Dispute Resolution 25T 325

25T Alternative Dispute Resolution
25TII Arbitration
25TII(G) Award
25Tk325 k. Amount of Award, or Overvaluation and Undervaluation. Most Cited Cases
Credit cardholder's claim that issuer violated the Truth in Lending Act (TILA) by failing to disclose reduced rate of a special offer in monthly statements was completely without merit, and, thus, arbitrators did not exceed their authority in awarding attorney fees to issuer, pursuant to applicable National Arbitration Forum rules as incorporated into parties' arbitration agreement, where cardholder's counsel in the arbitration had advanced the same legal argument unsuccessfully in a prior action. Truth in Lending Act, § 102 et seq., 15 U.S.C.A. § 1601 et seq.

[9] Alternative Dispute Resolution 25T 329

25T Alternative Dispute Resolution
25TII Arbitration
25TII(G) Award
25Tk327 Mistake or Error
25Tk329 k. Error of Judgment or Mistake of Law. Most Cited Cases
Arbitrators' award of attorney fees to credit card issuer, on basis of cardholder's assertion of a meritless claim against issuer, was not in manifest disregard of the law, as would warrant vacatur of the arbitration award pursuant to the Federal Arbitration Act and Delaware law, where arbitrators knew of and applied the relevant legal principle allowing for award of attorney fees based on bad faith conduct. 9 U.S.C.A. § 10; 10 Del.C. § 5714(a)(3).

[10] Alternative Dispute Resolution 25T 362(1)

25T Alternative Dispute Resolution
25TII Arbitration
25TII(H) Review, Conclusiveness, and Enforcement of Award
25Tk360 Impeachment or Vacation
25Tk362 Grounds for Impeachment or Vacation
25Tk362(1) k. In General. Most Cited Cases
Where a party has agreed to arbitration, it retains the right to judicial review of the arbitrator's decision, but the court will set that decision aside only in very unusual circumstances. 9 U.S.C.A. § 10.

[11] Alternative Dispute Resolution 25T 329

25T Alternative Dispute Resolution
25TII Arbitration
25TII(G) Award
25Tk327 Mistake or Error
25Tk329 k. Error of Judgment or Mistake of Law. Most Cited Cases
An arbitrator is deemed to have manifestly

disregarded the law, warranting vacatur of the arbitration award under the Federal Arbitration Act, where the record shows that the arbitrator knew of the relevant legal principle, appreciated that this principle controlled the outcome of the disputed issue, and nonetheless willfully flouted the governing law by refusing to apply it. 9 U.S.C.A. § 10.

[12] Alternative Dispute Resolution 25T 329

25T Alternative Dispute Resolution
25TII Arbitration
25TII(G) Award
25Tk327 Mistake or Error
25Tk329 k. Error of Judgment or Mistake of Law. Most Cited Cases
To vacate an arbitration award on ground of manifest disregard of the law, pursuant to the Federal Arbitration Act, it must be found that the law ignored by the arbitrators was well defined, explicit, and clearly applicable to the case. 9 U.S.C.A. § 10.

[13] Alternative Dispute Resolution 25T 329

25T Alternative Dispute Resolution
25TII Arbitration
25TII(G) Award
25Tk327 Mistake or Error
25Tk329 k. Error of Judgment or Mistake of Law. Most Cited Cases
Mere erroneous interpretation or application of the law on the part of the arbitrators will not suffice to establish manifest disregard of the law, as would warrant vacating the arbitration award, pursuant to the Federal Arbitration Act. 9 U.S.C.A. § 10.

[14] Alternative Dispute Resolution 25T 329

25T Alternative Dispute Resolution
25TII Arbitration
25TII(G) Award
25Tk327 Mistake or Error
25Tk329 k. Error of Judgment or Mistake of Law. Most Cited Cases
The doctrine of manifest disregard of the law, under the Federal Arbitration Act, gives extreme deference to arbitrators. 9 U.S.C.A. § 10.

[15] Alternative Dispute Resolution 25T 324

25T Alternative Dispute Resolution
25TII Arbitration
25TII(G) Award
25Tk324 k. Consistency and Reasonableness; Lack of Evidence. Most Cited Cases
An arbitral award should be enforced, despite a court's disagreement with it on the merits, if there is a barely colorable justification for the outcome reached, even if the reasoning is based on factual or legal error.

[16] Alternative Dispute Resolution 25T 329

25T Alternative Dispute Resolution
25TII Arbitration
25TII(G) Award
25Tk327 Mistake or Error
25Tk329 k. Error of Judgment or Mistake of Law. Most Cited Cases
Manifest disregard of the law under the Federal Arbitration Act involves more than an erroneous application or interpretation of the law, and will be found only where no colorable basis exits for the arbitrator's award. 9 U.S.C.A. § 10.

[17] Alternative Dispute Resolution 25T 312

25T Alternative Dispute Resolution
25TII Arbitration
25TII(G) Award
25Tk312 k. Conformity to Public Policy. Most Cited Cases

Alternative Dispute Resolution 25T 324

25T Alternative Dispute Resolution
25TII Arbitration
25TII(G) Award
25Tk324 k. Consistency and Reasonableness; Lack of Evidence. Most Cited Cases
Arbitrators' award of attorney fees to credit card issuer, on basis of cardholder's assertion of a meritless claim against issuer, that issuer violated the Truth in Lending Act (TILA) by failing to disclose reduced rate of a special offer in monthly statements, was not irrational or violative of strong public policy under TILA, where Court of Appeals had rejected same claim in prior action involving cardholder's counsel, and cardholder was not a “private attorney general” as contemplated by TILA's public policy of

enforcement of TILA-based rights by private attorneys general. Truth in Lending Act, § 102 et seq., 15 U.S.C.A. § 1601 et seq.

Thomas E. Stagg, Jacqueline Della Chiesa, Esquire, Simmons, Jannace & Stagg, LLP, Attorneys for Petitioners.
Harley J. Schnall, Esquire, New York, Syosset, Attorney for Respondent Andrea Hale.
MARCY L. KAHN, J.
***1** Chase Bank USA, N.A. s/h/a Bank One ("Chase" or "petitioner") has commenced this proceeding pursuant to sections 7510 and 7514 of the Civil Practice Law and Rules ("CPLR") to confirm an arbitration award in its favor against respondent Andrea Hale ("Hale" or "respondent") of $5,600 in attorneys' fees and, upon confirmation, to enter judgment accordingly. The arbitration award was originally rendered by a single arbitrator appointed by the National Arbitration Forum ("NAF") in an order dated March 31, 2006 (the "March 31, 2006 Order"), which order was then amended [FN1] by the same arbitrator on May 5, 2006 (the "Amended Order") and was affirmed on November 19, 2007 (the "November 19, 2007 Order") by a three-member appellate panel of NAF-appointed arbitrators after a document hearing. Respondent opposes the petition and cross-moves to vacate or modify the arbitration award. For the reasons stated below, the cross-motion is denied and the petition to confirm the arbitration award is granted.

I. *FACTUAL AND PROCEDURAL BACKGROUND*

In September 1998, Hale opened a Visa credit card account with Chase. Pursuant to the Cardmember Agreement, Chase issued three "convenience checks" to Hale along with her January 26, 2004 statement.

* * * [FN2]

The convenience checks were mailed to Hale as part of a promotional offer inviting her to use the checks for purchases or balance transfers at a reduced annual percentage rate ("APR") of 4.99%, provided that the checks were used between January 27, 2004 and May 25, 2004.

* * *

Hale asserted that the lower APR associated with the convenience checks should have been applied to her monthly account statements for February through May of 2004, and that Chase's failure to do so violated the Truth in Lending Act (15 USC §§ 1601 *et seq.*["TILA"]) and the Periodic Statement section of Regulation Z of the Board of Governors of the Federal Reserve System (12 CFR § 226.7). By letter dated February 24, 2005, Hale brought a claim before the NAF for redress of the violation, seeking $2,000 in statutory damages [FN3] and any attorneys' fees to which Hale might be entitled under TILA.

On March 3, 2006, Chase opposed the claim in a pre-hearing memorandum, contending that Hale's claim was frivolous, and requesting attorneys' fees and costs. (Supplemental Reply Mem. of Law in Further Support of Petitioner's Notice of Pet. to Confirm the Arbitration Award and in Opp. to Respondent's Request to Vacate or Modify the Arbitration Award, Exh. P).On March 14, 2006, a hearing on Hale's claim was held before arbitrator David E. Robbins, Esq. ("Robbins" or the "original arbitrator"). On March 31, 2006, Robbins issued an order denying Hale's TILA-based claim, including her request for attorneys' fees pursuant to TILA, on the ground that the claim was "completely without merit in law," and awarded Chase $5,600 in attorneys' fees (Pet., Exh. B), citing *Schnall v. Marine Midland Bank*, 225 F.3d 263, 269 (2nd Cir.2000), in which the Second Circuit held that a bank is not required to disclose the reduced rate of a special offer in monthly statements.[FN4]On May 5, 2006, the original arbitrator issued the Amended Order.[FN5]

***2** Upon Hale's appeal of the Amended Order, on October 29, 2007, a panel of three NAF arbitrators conducted a document hearing and, in an order dated November 19, 2007, affirmed the award of $5,600 in attorneys' fees.

Chase now seeks confirmation of the award, including attorneys' fees. Hale opposes the petition and has cross-moved for vacatur or modification of the arbitration award pursuant to CPLR §§ 7511(b)(1)(iii) or 7511(c), respectively.

* * *

The sole issue before this court is whether or not the award of attorneys' fees must be confirmed.

II. *DISCUSSION*

A. *Does Federal Law, Delaware Law or New York Law Govern This Proceeding?*

* * *

A review of the Arbitration Agreement reveals that it makes no mention of New York law. Rather, the only governing law mentioned in the Agreement other than the FAA and federal law is Delaware law. Therefore, with respect to enforcement of the arbitration award in this proceeding, this court should first look to the FAA and, should the FAA not address a pertinent enforceability issue, then to Delaware law.

* * *

B. *Did the Arbitrators Exceed their Authority by Awarding Attorneys' Fees to Chase?*

[1] Hale contends that the arbitration award should be vacated because the arbitrators exceeded their authority in awarding attorneys' fees to Chase. Specifically, Hale avers that TILA provides strictly for the award of attorneys' fees against a creditor, such as Chase, and in favor of a consumer, such as Hale, rather than the reverse. Chase contends that this proceeding is governed by the FAA, not TILA, and that the FAA authorizes arbitrators to award attorneys' fees.

Section 10[a][4] of the FAA provides that, upon motion, an arbitration award shall be vacated:

> 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 USC § 10[a][4]).

In language virtually identical to the FAA, Delaware law provides for the vacatur of an arbitration award, upon motion, where:

> the arbitrators exceeded their powers, or so imperfectly executed them that a final and definite award upon the subject matter submitted was not made....

(Del.Code Ann. tit. 10, § 5714[a][3]).

Whether Hale is correct in maintaining that the arbitrators exceeded their power by awarding attorneys' fees to Chase depends upon the answers to two questions. The first question is whether the original arbitrator had the power to award attorneys' fees. If so, then the second question is whether he exercised his power appropriately.

[2][3][4][5] Generally, pursuant to the "American Rule," parties are to bear their own costs in litigation as well as in arbitration. (*Alyeska Pipeline Svc. Co. v. Wilderness Society*, 421 U.S. 240, 247 [1975];*Todd Shipyards Corp. v. Cunard Line, Ltd.*, 943 F.2d 1056, 1064 [9th Cir.1991]). A recognized exception to the general "American Rule" may be found where the court finds that one of the parties has engaged in "bad faith" conduct, in which case attorneys' fees may be awarded to the non-offending party. (*Todd Shipyards Corp., supra,* citing *Alyeska Pipeline Svc., supra; InterChem Asia 2000 Pte. Ltd. v. Oceana Petrochemicals AG*, 373 F.Supp.2d 340, 355 [SDNY 2005]). A court may appropriately award attorneys' fees where "the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons."(*Todd Shipyards Corp., supra*, 943 F.2d at 1064,*quoting Dollar Systems Inc. v. Avcar Leasing Systems, Inc.*, 890 F.2d 165, 175 [9th Cir.1989]). The rationale for this exception is that if a party brings an unsupportable claim in bad faith, causing the opposing party to incur legal fees in opposing a claim that should never have been raised in the first instance, the opposing party should be compensated for those fees by the offending party. (*See Synergy Gas Co. v. Sasso*, 853 F.2d 59, 65 [2nd Cir.1988], *cited in Allied Int'l Union v. Tristar Patrol Svcs., Inc.*, No. 06 Civ. 15515(LAP), 2007 WL 2845227 at *3 [SDNY Sept. 26, 2007]).

***3**[6][7] Under federal law, arbitrators have broad authority to decide disputes and to fashion remedies, especially where a commercial contract is governed by applicable rules of an arbitration forum authorizing the arbitrators to do so. (*See Todd Shipyards Corp., supra*, 943 F.2d at 1064). Thus, where arbitrators find a claim to have been brought in

bad faith, they may, in the exercise of their broad powers to fashion remedies, award attorneys' fees. (*Id.*).

Here, the Arbitration Agreement provides that "[a]rbitration is conducted under the rules of the selected arbitration administrator...." (Pet., Exh. A at 4). In this case, the parties selected NAF. Thus, the Arbitration Agreement incorporates the NAF rules by reference.

Rule 37(C) of the NAF Code of Procedure authorizes an arbitrator to award attorneys' fees as follows:

> An Award may include fees and costs awarded by an Arbitrator in favor of any Party only as permitted by law. A Party with a Claim for attorney fees or costs may seek to recover those expenses by bringing a timely request in accord with Rules 18 and 12B. An opposing Party may object in accord with Rule 18. The Arbitrator may include attorney fees and costs in the final Award or in a separate Award.

(National Arbitration Forum Code of Procedure dated August 1, 2007 ["NAF Code"], Rule 37[C]).[FN6]

Rule 46 of the NAF Code, which authorizes an arbitrator to impose sanctions by requiring an offending party to pay the fees of another party, provides:

> An Arbitrator may Sanction a Party or Representative, or both, for violating any Rule, notice, ruling, Order or for asserting an unsupportable Claim or Response. A Party may be Sanctioned on the initiative of the Arbitrator or at the Request of the Forum or a Party. An Arbitrator shall Sanction a Party who refuses to pay fees as required by agreement, these Rules, an Arbitrator Order, or the applicable law, unless the offending Party establishes reasonable neglect. A Sanction Order may require an offending Party to pay for fees and costs incurred by another Party, unpaid fees, and other appropriate monetary Sanctions, and may require payment to another Party or the Forum.

(NAF Code, Rule 46).

Thus, pursuant to the applicable NAF rules as incorporated into the Arbitration Agreement, the arbitrators were empowered to award both attorneys' fees and sanctions as permitted by law, which requires that the arbitrators find bad faith conduct by one of the parties in order to exercise their power. Having found that it was within the power of the arbitrators to award attorneys' fees, this court must now determine whether those powers were exercised appropriately.

[8] Here, the original arbitrator reviewed the facts as presented by Hale and found that Hale's claim was "completely without merit" in light of *Schnall v. Marine Midland Bank, supra*, in which Hale's counsel in this arbitration had advanced the same legal argument unsuccessfully. Under the *Alyeska* standard, this finding justifies awarding of attorneys' fees as an exception to the American Rule. (*Alyeska Pipeline Svc. Co., supra*, 421 U.S. at 258-59;*see Todd Shipyards Corp., supra*, 943 F.2d at 1064). Accordingly, the arbitrators did not exceed their authority in awarding the attorneys' fees to Chase.

C. *Did the Arbitrators Act in "Manifest Disregard of the Law" in Awarding Attorneys' Fees to Chase?*

***4**[9] Hale next argues that the award should be vacated pursuant to the FAA because, in making the award, the arbitrators acted in manifest disregard of the law. Hale bases her contention on the original arbitrator's reliance in the May 5, 2006 Amended Order on *Schnall v. Marine Midland Bank,supra*, 225 F.3d at 269. Hale maintains that that decision is not binding on fora other than the courts of the Second Circuit, such as arbitration panels. In addition, Hale argues that *Schnall* constituted an aberrational departure from TILA jurisprudence. She further maintains that 22 NYCRR § 130-1.1 ("Rule 130-1.1") [FN7], a New York court rule empowering courts to award attorneys' fees as sanctions in civil actions and cited by the original arbitrator in the May 5, 2006 Amended Order, does not apply to private arbitration proceedings. Hale asserts that, in basing the award on an aberrational decision and an inapplicable rule, the arbitrator exhibited manifest disregard of the law without any colorable justification.

Chase disputes the assertion that the May 5, 2006 Amended Order wrongly relied upon *Schnall*, stating that this argument ignores the fact that the Arbitration

Agreement provides that an arbitrator "will apply applicable substantive law consistent with the FAA ..." (Pet., Exh. A at 4), and that, in *Schnall*, the Second Circuit ruled on the same issues, based on similar facts to those presented here.

[10] Where a party has agreed to arbitration, it retains the right to judicial review of the arbitrator's decision,

> but the court will set that decision aside only in very unusual circumstances. *See, e.g.*,9 U.S.C. § 10 (award procured by corruption, fraud, or undue means; arbitrator exceeded his powers); *Wilko v. Swan*, 346 U.S. 427, 436-37, 74 S.Ct. 182, 98 L.Ed. 168 (1953)(parties bound by arbitrator's decision not in "manifest disregard" of the law), *overruled on other grounds, Rodriguez de Quijas v. Shearson American Express*,
>
> 490 US 477 (1989).

(*First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 942 [1995]).In *Wilko*, the Supreme Court, in shielding from judicial review arbitral errors in interpretation which did not amount to "manifest disregard" of law, cited its own long-standing precedent (*see, e.g.*, *United States v. Farragut*, 89 U.S. 406, 420 [1874];*Burchell v. Marsh*, 58 U.S. 344, 349-350 [1854]). Some courts, including the United States Court of Appeals for the Second Circuit, have interpreted *Wilko* as recognizing an independent common law ground for vacation of an arbitral award beyond those listed in FAA § 10. (*See, e.g.*, *Hoeft v. MVL Group*, 343 F.3d 57, 64 [2nd Cir.2003]).

The Supreme Court has now announced, however, that section 10 of the FAA provides the exclusive route for expedited judicial vacatur of an arbitral award under the federal statutory scheme. In *Hall Street Assocs., LLC v. Mattel, Inc.*, --- U.S. ----, 128 S.Ct. 1396, --- L.Ed.2d ---- (Mar. 25, 2008), the Court examined the "manifest disregard" standard of the *Wilko* Court for the first time, and found the concept ambiguous:

> ***5** Maybe the term "manifest disregard" was meant to name a new ground for review, but maybe it merely referred to the § 10 grounds collectively, rather than adding to them.... Or, as some courts have thought, "manifest disregard" may have been shorthand for
>
> § 10(a)(3) or § 10(a)(4), the subsections authorizing vacatur when the arbitrators were "guilty of misconduct" or "exceeded their powers."

(*Id.* at 1404 [citations omitted]). Although the Court in *Hall*

Street did not settle on its own definition of the term, it rejected the notion that "manifest disregard" embodies a separate, non-statutory ground for judicial review under the FAA. (*See id.* at 1404-1405, 1406). Nonetheless, by favorably citing the above-quoted language from its earlier decision in *Kaplan, supra*, the *Hall Street* Court appears to have done nothing to jettison the "manifest disregard" standard of *Wilko*.(*Id.* at 1404). Accordingly, this court will view "manifest disregard of law" as judicial interpretation of the section 10 requirement, rather than as a separate standard of review. It seems appropriate, however, since the standard has apparently not been overruled by the Court, to resort to existing case law to determine its contours.

[11][12] An arbitrator is deemed to have manifestly disregarded the law where the record shows that "the arbitrator knew of the relevant [legal] principle, appreciated that this principle controlled the outcome of the disputed issue, and nonetheless willfully flouted the governing law by refusing to apply it."(*Westerbeke Corp. v. Daihatsu Motor Co.*, 304 F.3d 200, 217 [2nd Cir.2002]; *see Travelers Ins. Co. v. Nationwide Mut. Ins. Co.*, 886 A.2d 46,48 & n. 9 [Del.Ch. 2005] [arbitrator must have been cognizant of the controlling law but clearly have chosen to ignore it in reaching a decision]). In addition, it must be found that "the law ignored by the arbitrators was well defined, explicit and clearly applicable to the case."(*Wallace v. Buttar*, 378 F.3d 182, 189 [2nd Cir.2004]; *Banco de Seguros del Estado v. Mutual Mar. Off., Inc.*, 344 F.3d 255, 263 [2nd Cir.2003]).

[13][14][15] Mere erroneous interpretation or application of the law on the part of the arbitrators will not suffice to establish "manifest disregard." (*Duferco Intern. Steel Trading v. T. Klaveness Shipping A/S, supra*, 333 F.3d 383, 389 [2nd Cir.2003]; *see Travelers Ins. Co. v. Nationwide Mut. Ins. Co., supra*, 886 A.2d at 49 [error must be "so obvious that it would instantly be perceived as such by the average person qualified to serve as an

arbitrator"(citation omitted)]).[FN8] Thus, the doctrine of manifest disregard "gives extreme deference to arbitrators...." (*DiRussa v. Dean Witter Reynolds Inc.*, 121 F.3d 818, 821 (2nd Cir.1997); *see also Beebe Medical Center v. InSight Health Svcs. Corp.*, 751 A.2d 426, 441 [Del.Ch. 1999] [court applies manifest disregard standard notwithstanding "deferential scrutiny" applied to arbitration awards]). Moreover, an arbitral award "should be enforced, despite a court's disagreement with it on the merits, if there is a *barely colorable justification* for the outcome reached'" (*Wallace v. Buttar, supra*, 378 F.3d at 190, citing *Banco de Seguros del Estado, supra*, 344 F.3d at 260 [emphasis in original]), even if the reasoning is based on factual or legal error. (*Wallace v. Buttar, supra*, 378 F.3d at 193;*Duferco Intern. Steel Trading v. T. Klaveness Shipping A/S, supra*, 333 F.3d at 389;*Westerbeke Corp. v. Daihatsu Motor Co., supra*, 304 F.3d 200 at 218;*InterChem Asia 2000 Pte. Ltd. v. Oceana Petrochemicals AG*, 373 F.Supp.2d 340, 355 [SDNY 2005]).

***6** To the extent that this court has correctly understood the *Hall Street* decision and "manifest disregard of the law" remains an applicable interpretive standard in this proceeding, the original arbitrator did not violate that standard. Here, far from flouting the law, the original arbitrator took into account the Second Circuit decision in *Schnall*, which decision was adverse to Hale's position on the same issue, and apparently concluded that Hale commenced an arbitration proceeding in an attempt to have yet another forum revisit the issues previously presented unsuccessfully to the Second Circuit by Hale's counsel. The appellate panel in its November 19, 2007 Order affirmed the May 5, 2006 Amended Order and ordered that the case be dismissed with prejudice, and that Hale pay Chase's attorneys' fees of $5600.[FN9]

The original arbitrator apparently reasoned that under these circumstances, where Hale submitted to arbitration a claim she knew to be frivolous, it was appropriate to award attorneys' fees to Chase as a sanction against her. The citation to Rule 130-1.1 in the Amended Order was not intended as a citation to a provision authorizing the arbitrator to award attorneys' fees, but rather, explains the arbitrator's rationale for doing so: in submitting a frivolous claim, Hale acted in bad faith, thereby entitling Chase to the award pursuant to the "bad faith" exception to the American Rule.

[16] Moreover, even if the arbitrator had applied Rule 130-1.1 erroneously, such error would not constitute manifest disregard of the law as that term has been recognized historically. Manifest disregard of the law involves more than an erroneous application or interpretation of the law, and will be found only where no colorable basis exits for the arbitrator's award. (*Wallace v. Buttar, supra*, 378 F.3d at 193;*Duferco Intern. Steel Trading v. T. Klaveness Shipping A/S, supra*, 333 F.3d at 389;*Westerbeke Corp. v. Daihatsu Motor Co., supra*, 304 F.3d 200 at 218;*InterChem Asia 2000 Pte. Ltd. v. Oceana Petrochemicals AG, supra*, 373 F.Supp.2d at 355;*see Travelers Ins. Co. v. Nationwide Mut. Ins. Co., supra*, 886 A.2d at 48-49. It will be found only where the arbitrators "knew of the relevant [legal] principle, appreciated that this principle controlled the outcome of the disputed issue, and nonetheless willfully flouted the governing law by refusing to apply it."(*Westerbeke Corp. v. Daihatsu Motor Co., supra*, 304 F.3d at 217). There is no evidence of any of these circumstances here.

In any event, the original arbitrator's finding of bad faith in submitting a frivolous claim more than satisfies the threshold "barely colorable" interpretive standard of review for manifest disregard of law to be applied by this court under FAA § 10(a)(4), as well as the parallel interpretive standard under 10 Del.Code Ann. § 5714(a)(3). Therefore, the court finds that neither the original arbitrator nor the appellate panel of arbitrators manifestly disregarded the law in awarding attorney's fees to Chase.

D. *Should the Arbitrators' Award be Vacated Pursuant to New York Law?*

* * *

E. *Were the Arbitrators' Awards Irrational or Violative of Strong Public Policy Under TILA?*

***7**[17] Hale further contends that the award must be vacated as irrational, as the arbitrators offered no rationale for the award, and urges that the award violates TILA's strong public policy favoring the consumer. She argues that the award has a chilling effect on her ability to seek redress as a private attorney general acting to enforce TILA, citing *Sosa*

v. Fite, 498 F.2d 114, 121 (5th Cir.1974).

Chase responds that it was reasonable for the arbitrators to recognize that the Second Circuit had already held that a bank is not required to disclose the reduced rate of a special offer in monthly statements (*Schnall v. Marine Midland Bank*, *supra*, 225 F.3d at 269) and that Hale, through her counsel, was well aware of that holding, yet still pursued an arbitration claim based on the same issue. Such conduct, Chase avers, may reasonably be characterized as frivolous, justifying an award of attorneys' fees as a sanction. Chase notes that the arbitration panel undoubtedly was influenced by the fact that Hale's counsel in the instant proceeding was the plaintiff in the *Schnall* case. Chase further argues that Hale's reliance on the concerns of the civil liability provision of TILA in opposing the arbitration award is misplaced, as the arbitrators based their award of attorneys' fees not upon TILA, but upon their power under the NAF rules to sanction Hale for her frivolous conduct.

Historically, it has been held that courts may vacate an arbitration award where the award is either irrational (*I/S Stavbourg (O.H.Meling, Manager) v. National Metal Converters, Inc.*, 500 F.2d 424, 431 [2nd Cir.1974]; *Falcon Steel v. HCB Contractors, Inc.*, 1991 WL 50139 at *2 [Del. Ch. Apr. 4, 1991]) or violative of some strong public policy (*United Paperworkers Int'l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 43 [1987];*Beebe Medical Center Inc. v. InSight Health Svcs. Corp.*, 751 A.2d 426, 433 [Del.Ch. 1999] [arbitration award vacated as violative of Delaware public policy disfavoring "evident partiality" of arbitrator]). Assuming that these lines of cases may be viewed merely as judicial interpretations of section 10(a)(4) of the FAA or of 10 Del.Code Ann. § 5714(a)(3), and not as establishing any additional common law grounds for vacation of arbitral awards, they would retain vitality for analysis post-*Hall Street.*

The original arbitrator reviewed Hale's TILA-based claim, namely, that Chase had violated TILA by failing to apply the lower interest rates associated with their special offer of convenience checks on Hale's monthly statements, and rejected it as completely without merit, noting that the Second Circuit had addressed and rejected the identical claim in *Schnall.*The original arbitrator then determined that, in light of Hale's frivolous claim, an award of attorneys' fees was appropriate. The arbitration panel affirmed this award based on its review of the factual record. There is nothing irrational in the findings and conclusions of any of the arbitrators, each of whom proffered grounds for making and affirming the award, despite being under no obligation to do so under the Arbitration Agreement. (*See* Pet., Exh. A at 4 ["The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party."]).

***8** Even had the arbitrators not stated their reasoning, however, where the grounds for the arbitrators' decision can be inferred from the facts of the case, the award must be confirmed. (*See Siegel v. Titan Indus. Corp.*, 779 F.2d 891, 895 [2nd Cir.1985]; *Prudential-Bache Securities, Inc. v. Caporale*, 664 F.Supp. 72, 75 [SDNY 1987]; *Falcon Steel Co., Inc. v. HCB Contractors, Inc.*, *supra*, 1991 WL 50139 at *2]). Although the arbitration panel did not refer either to the *Schnall* decision or Rule 130-1.1 in its November 19, 2007 Order, it may be inferred from the order that the arbitration panel's reasoning in affirming the award was congruent with that of the original arbitrator, namely, that the award was intended as a sanction against Hale for submitting a frivolous claim.

With respect to the argument that the award violates TILA's strong public policy favoring consumers, in that it would deter the enforcement of TILA by aggrieved consumers seeking redress as private attorneys general, the arbitrators found that Hale's claim was completely without merit. *Sosa v. Fite*, *supra*, 498 F.2d at 121, cited by Hale, makes clear that the statute's public policy of enforcement of TILA-based rights by private attorneys general applies only to those whose claims are meritorious. (*Id.*). As Hale's claim was not meritorious, she does not qualify as a "private attorney general" as contemplated by TILA and the arbitrators did not violate public policy concerns by making the award of attorneys' fees.

Therefore, this court finds that the arbitration award was neither irrationally based nor violative of strong public policy. Accordingly, there is no legal basis for vacatur of the arbitration award under FAA § 10(a)(4) or 10 Del.Code Ann. § 5714(a)(3) on these grounds.

F. *Should the Arbitration Award Be Modified?*

* * *

G. *Is Chase's Petition to Confirm the Arbitration Award Procedurally Deficient?*

* * *

H. *Should Chase's Claim for Administrative Fees be Granted?*

* * *

III. *CONCLUSION*

For the reasons stated above, respondent's cross-motion to vacate or modify the arbitration award is denied and the petition to confirm the arbitration award is granted. Petitioner's application for administrative fees is denied.

The foregoing constitutes the decision, order and judgment of this court.

FN1. The March 31, 2006 Order was amended to add a direction to Chase to produce to Hale a breakdown of its attorneys' fees or costs within fifteen days of the date of the order. In all other respects, including the award itself, the Amended Order is identical to the March 31, 2006 Order.

FN2. Ellipses represent portions of opinion omitted for publication.

FN3. TILA provides for the recovery of damages of up to $1,000 per violation. (15 USC § 1640). In the arbitration proceeding, Hale alleged two violations of TILA.

FN4. Undoubtedly, although not expressly stated in the order, the fact that Hale's counsel and husband was the plaintiff in *Schnall* was not lost on the original arbitrator.

FN5. The Amended Order reiterated the March 31, 2006 Order and directed Chase to provide to Hale within fifteen days thereof the detailed itemization of Chase's attorneys' fees provided to the original arbitrator on March 15, 2006. (Pet., Exh. C). On May 15, 2006, Chase complied with the directive. The NAF confirmed Chase's compliance and directed that the $5,600 attorneys' fee award was the original arbitrator's final decision. (Pet., Exh. D).

FN6. Rule 18 sets forth the procedures by which a request is made for an arbitrator's order and how an opposing party may object to a request. Rule 12B sets forth the procedures by which a claimant may seek costs or attorneys' fees.

FN7.Section 130-1.1(a) provides, in pertinent part:

> The court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court ... costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorneys' fees, resulting from frivolous conduct as defined in this Part.

(22 NYCRR § 130-1.1[a]).Section 130-1.1(c)(1) provides that:

> conduct is frivolous if: ... it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law....

(22 NYCRR § 130-1.1[c][1]). While the May 5, 2006 Amended Order cites section 130.1-1 and quotes the definition of "frivolous conduct" as set forth in section 130-1.1(c)(1) as a basis for making the award, the November 19, 2007 Order does not.

FN8. Because Delaware's arbitration statute was modeled on the FAA, its courts find federal decisional law "most helpful" in interpreting the provisions for vacatur of

arbitral awards of Del.Code Ann. tit. 10, § 5714(a).(*Travelers Ins. Co. v. Nationwide Mut. Ins. Co., supra,* at 49). This is "particularly" so with respect to the jurisprudence on "manifest disregard" of the law, the Delaware Court of Chancery stated in *Travelers,* due to the paucity of such cases under Delaware law.(*Id.*). The Chancery Court there also characterized the origins of Delaware's manifest disregard doctrine as based in the *Wilko v. Swan* decision of the Supreme Court. (*Id.*). Notably, the *Travelers* Court stated that manifest disregard as a ground for vacatur exists under Delaware law "as an outgrowth of the statutory vacatur grounds for cases in which the arbitrator exceeds his powers...."(*Travelers Ins. Co. v. Nationwide Mut. Ins. Co., supra,* at 48 [citations omitted]). Thus, to the extent that Delaware law, rather than federal law, governs the court's decision in the instant case, the manifest disregard doctrine would similarly be applied as an interpretive standard of the statutory ground for vacatur where arbitrators exceeds their powers, whether by application of *Hall Street,* or under existing Delaware law.

FN9. Had the arbitrators been made aware of the series of other meritless filings made by respondent, her counsel and other members of their family, that would have been all the more reason for the arbitrator to award attorneys' fees as sanctions in the subject arbitration proceeding. (*See* Supplemental Reply Mem. of Law in Further Support of Petitioner's Notice of Pet. to Confirm the Arbitration Award and in Opp. to Respondent's Request to Vacate or Modify the Arbitration Award, Exh. A-X.)

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