Enforceable copies issued to the parties on

FRENCH REPUBLIC
ON BEHALF OF THE FRENCH PEOPLE

Paris Court of Appeal
Division Pole 5 - Chamber 16

Judgment of July 12, 2021

General Directory Entry Number : **N° RG 19/11413 - N° Portalis 35L7-V-B7D-CACDK**

Decision referred to the Court: order of () -Paris Court of First Instance 17 – RG n°

CLAIMANT IN THIS ACTION :
Mr. (A)
Born on () in ()
Residing at ()
Represented by Mr/Ms(), a lawyer at the Bar Council of Paris and byMr/Ms (), a lawyer at the Bar Council of Paris, whose internal mailing box's number is:

Company (B)
US law company registered in New York State under number () whose registered office is located at (), the United States, acting through its legal representatives.
Represented by Mr/Ms(), a lawyer at the Bar Council of Paris and by Mr./Ms. (), a lawyer at the Bar Council of Paris, whose internal mailing box's number is:

RESPONDENT IN THIS ACTION
Mr. (C)
born on ()
residing at ()
Represented by Mr./Ms. (), a lawyer at the Bar Council of Paris, whose internal mailing box's number is:

COMPOSITION OF THE COURT

Pursuant to the provisions of articles 805 and 907 of the French Code of Civil Procedure, the hearing of the case took place on May 10, 2021, in open court with no objections from the lawyers, before Mr. François ANCEL, the President of the Court, and Ms. Fabienne SCHALLER, the judge, in charge of the report.

The judges gave an account of the pleadings in the deliberation of the Court, composed of

Mr. François ANCEL, the President of the Court
Ms. Fabienne SCHALLER, the Judge
Ms. Laure ALDEBERT, the Judge

The Court Clerk at the hearing: Ms. Anaîs DECEBAL.

JUDGMENT :

- ADVERSARIAL
- judgment made available at the Clerk's Office of the Court, the parties, having been notified in advance under the conditions set forth in the second paragraph of Article 450 of the Code of Civil Procedure.

- signed by François ANCEL, the President of the Court and by Ines VILBOIS, the Court Clerk to whom the signed original was delivered by the signatory judge.

I. FACTS AND PROCEEDINGS

1. Company (B), a financial entity registered at (), in the United States, is a broker registered at the Financial Industry Regulatory Authority (FINRA). Mr. (A) (hereinafter referred to as Mr. (A)) is an US citizen employed by (B), now retired.

2. Mr. (C) (hereinafter referred to as Mr. (C)) is a US and Italian citizen. At the beginning of 2006, (B) and Mr. (A) managed an investment portfolio on behalf of Mr. (C).

3. Presuming that he had suffered financial damage as a result of the financial crisis of 2008, Mr. (C), requested an arbitration procedure before the FINRA dispute resolution center in the United States against Mr. (A) and (B), due to the decrease in value of his portfolio. He reproached them for failing to manage the said portfolio.

4. This arbitration procedure led to an award of () in favor of Mr. (C), holding liable company (B) and Mr. (A) and ordering them to pay Mr. (C) compensatory damages in the amount of USD 10,750,000.00 and USD 250,000,00 respectively.

5. On January 2, 2014, the arbitral award was set aside by the Supreme Court of New York State on the ground that the Arbitral Tribunal ruled on a dispute that had already been compromised. The annulment judgment was upheld by the Appellate Division and the Court of Appeal of New York State, on April 9 and October 20, 2015, respectively.

6. On March 30, 2016, Mr. (C) was granted, before the Paris Court of First Instance, an order for enforcement of the arbitral award of (), on the basis of which he had executed multiple attachment orders, all of them had been unsuccessful.

7. Company (B) and Mr. (A) appealed against this order for enforcement according to a notice submitted to the Court Clerk of the Paris Court of Appeal, on September 29, 2016, which is registered under number RG ().

8. Simultaneously, upon challenging the execution in France of the award set aside in the United States, company (B) and Mr. (A) requested before the US judge of the Supreme Court of New York State, the prohibition on pursuing any action in order to execute or recover the debt obligation in question.

9. On January 2017, the US judge of the aforementioned Court issued a definitive injunction, ordering Mr. (C) to cease any enforcement measure of the arbitral award set aside, including on French territory. This order was upheld by the Appellate Division of the Supreme Court of New York State, on June 29, 2017.

10. According to the submissions transmitted electronically on February 13, 2017, Mr.(C) requested the Court of Appeal to record his waiver to the benefit of the order rendered on March 30, 2016 by the President of the Paris Court of First Instance, which had granted him an order for enforcement of the award rendered in New York on () under the direction of FINRA's dispute resolution center, by the Arbitral Tribunal, composed of Mr. (D) and Mr. (E), arbitrators and Ms. (F), the President.

11. By judgment of May 30, 2017, the Paris Court of Appeal notified Mr. (C) of his irrevocable waiver to the benefit of the order of March 30, 2016 by which the President of the Paris Court of First Instance granted him the order for enforcement in dispute.

12. On (), Mr. (C) was granted a new order for enforcement of the arbitral award of () by the Paris Court of First Instance.

13. Company (B) and Mr. (A) brought the case before the US judge of the Supreme Court of New York State which issued on April 24, 2019, a new temporary injunction the content of which is similar to that of the definitive injunction of January 18, 2017 to prevent Mr. (C) from pursuing any action that would execute the arbitral award in France or in any other country.

14. On May 31, 2019, Company (B) and Mr. (A) appealed the order for enforcement issued on () based on the article 1520 of the Code of Civil Procedure.

15. On October 25, 2019, the US judge of the Supreme Court of New York State issued a contempt of court, ordering the detention of Mr. (C) (who now resides at) until he discontinued pursuing the proceedings initiated in France. This contempt of court was accompanied by an arrest warrant issued on October 25, 2019 against Mr. (C).

16. On August 24, 2020, Mr. (C) submitted two motions to request the implementation of the arbitral award and to request an injunction to cease the legal effects of the decisions issued by the US Court. All of his requests were dismissed.

II. CLAIMS AND GROUNDS OF THE PARTIES

17. **According to their submissions transmitted electronically on May 3, 2021, company (B) and Mr. (A) request the Court to:**
Primarily,

- FIND AND HOLD that the request for an order for enforcement of the arbitral award issued on () under the FINRA's direction in the dispute between B, Mr. (A) and Mr. (C) is inadmissible due to the waiver recorded by the Paris Court of Appeal, May 30, 2017;

- FIND AND HOLD that the request for an order for enforcement of the arbitral award issued the () under the FINRA's direction in the dispute between B, Mr. (A) and Mr. (C) is inadmissible because it is time-barred;

- **FIND AND HOLD** that the request for an order for enforcement for the arbitral award issued the () under the FINRA's direction in the dispute between B, Mr. (A) and Mr. (C) is inadmissible with regard to the transaction concluded on April 29, 2012;

Therefore,

-SET ASIDE or at the very least OVERTURN the order for enforcement issued by Ms. Vice-president of the Paris Court of First Instance, which depositary number is () ;

And ruling again:

- **DISMISS** the order for enforcement for the arbitral award issued on () under the FINRA's direction in the dispute between B, Mr. (A) and Mr. (C);

In the alternative

- **FIND AND HOLD** that the transaction concluded on April 29, 2012 has the legal force of res judicata;

- **FIND AND HOLD** that Mr. (D) and Ms. (F), arbitrators, forming the Arbitral Tribunal, did not reveal multiple pieces of evidence relative to their impartiality;

- **FIND AND HOLD** that these misconducts may lead to doubts as to the arbitrator's impartiality;

- **FIND AND HOLD** that B and Mr. (A) had no awareness of these pieces of evidence during the arbitral proceedings;

Therefore

- FIND AND HOLD that the authority of res judicata, having effect on the transaction concluded on April 29, 2012, opposes the recognition of the arbitral award of ( ) due to the principle of International Public Policy;

- **FIND AND HOLD** that the failure by Mr. (D) and Mr. (F) to reveal the evidence relative to their impartiality result in the irregularity of the formation of the Arbitral Tribunal and the violation of the International Public Policy;

Therefore,

- **OVERTURN** the order for enforcement issued by Ms. the Vice-President of the Paris Court of First Instance, which depositary number is ()

Ruling again,

- **REJECT** the order for enforcement of the arbitral award issued on () under the FINRA's direction in the dispute between B, Mr. (A) and Mr. (C);

In any event,

- **DISMISS** all of Mr. (C)'s requests, claims and submissions;

- **RULE** that Mr. (C) has shown disloyalty in the proceedings and fraudulent intent;

- **RULE** that Mr. (C)'s action was an abuse of process;

Therefore,

- ORDER Mr. (C) to pay B and Mr. (A) the amount of EUR 50,000 of damages based on article 32-1 of the Code of Civil Procedure;

- ORDER Mr. (C) to pay B and Mr. (A) an amount of EUR 100,000 pursuant to the provisions of Article 700 of the Code of Civil Procedure;

- ORDER Mr. (C) to pay all costs of the current proceedings, to be collected by Mr./Ms. ().

18. According to his final submissions transmitted electronically on April 27, 2021, Mr. (C) requests the Court to:

- UPHOLD the order for enforcement ();

- **DISMISS** the appeal submitted against the order for enforcement issued on () in favor of the FINRA judgment of ();

- **DISMISS** the Appellants of their request for the order for enforcement to be overturned of (), giving effect to the FINRA arbitral award of ();

- **DISMISS** the Appellants of all their requests and more specifically;

- **DISMISS the inadmissibility based on the alleged existence of the transaction from April 29 2012;**

- **FIND WELL-FOUNDED** the claim's admissibility based on the res judicata legal effect of the two decisions rendered by the FINRA arbitrators on June 19, 2012 and March 18, 2013 with respect to the exception of a transaction raised by the Appellants and rejected twice by the Arbitral Tribunal;

- **DISMISS** the inadmissibility based on Mr. (C)'s waiver to his rights pertaining to the judgment of ();

- **DISMISS** the inadmissibility based on the statute of limitations of Mr. (C)'s rights;

- HOLD that the Court does not have jurisdiction to rule on the matter of the existence and validity of a settlement agreement as well as its infringement of the public order

- **DISMISS AND HOLD** unfounded all the arguments made by the Appellants in the alternative on the basis of an alleged transaction of April 29, 2012 or the lack of impartiality of the arbitrators (D) and (F) and that consequently the Arbitral Tribunal was validly formed and could rule on the merits of the dispute;

- **FIND AND RULE** that Mr. (C) did not show disloyalty during the proceedings and that all his requests should be admissible;

- **FIND AND RULE** that Mr. (C)'s action was not an abuse of process;

- ORDER the Appellants to pay Mr. (C) an amount of EUR 250,000 pursuant to article 700 of the Code of Civil Procedure;

- **ORDER** the Appellants to pay Mr. (C) an amount of EUR 150,000 pursuant to article 32-1 of the Code of Civil Procedure and article 1240 of the French Civil Code;

- **ORDER** the Appellants to pay all costs pursuant to the provisions of article 699 of the Code of Civil Procedure.

19 The case was closed on May 4, 2021. The hearing took place on May 10, 2021.

20. For a complete statement of the facts, claims and grounds of the parties, the Court refers to the decisions previously rendered and the aforementioned pleadings, pursuant to the provisions of article 455 of the Code of Civil Procedure.

III. GROUNDS OF THE DECISION

Regarding the request for annulment, based on article 122 of Code of Civil Procedure

21. The appellants request the annulment and at least the order for enforcement to be overturned on the basis of article 122 of the Code of Civil Procedure, on the grounds that Mr. (C) was inadmissible to request the order for enforcement of ( ), that his request for enforcement was time-barred pursuant to article 2224 of the Civil Code and that the request for enforcement was inadmissible in view of the transaction that he had concluded with the appellants in 2012.

22. They specify that Mr. (C) waived the benefit of the first order for enforcement that he had obtained on March 30, 2016, since he no longer had an interest in acting to request a second order for enforcement, and, in any event, he submitted his second order for enforcement more than five years after the arbitral award had been issued and that the transaction concluded on April 30, 2012, before the arbitral award was made, had the effect of prohibiting him from pursuing any litigation relating to the subject matter of the transaction.

23. In response, Mr. (C) contests the ground for annulment based on the breach of article 122 of the Code of Civil Procedure. He asks the court to set aside the grounds of inadmissibility and recalls that his waiver related only to the first order for enforcement and did not constitute a waiver of his rights arising from the arbitral award, having therefore retained his interest in acting. He contests any statute of limitations, arguing that the ten-year time limit of article L.111-4 of the Code of Civil Enforcement Procedures applies. Finally, he contests the very existence of a transaction, the arbitrators having twice considered that the formal condition of a transaction had not been met. He indicates that no judgment, having res judicata legal effect, has been rendered on this issue.

ON THIS GROUNDS,

24. It should be recalled that the only recourse available against an order granting enforcement of an award rendered abroad is the appeal set forth in article 1525 of the Code of Civil Procedure, and the court may refuse recognition or enforcement only in the cases set forth in article 1520 of that Code, which refers to the award itself and not to the order granting enforcement, which, as such, is not, therefore, subject to any appeal.

25. As a result, unless the appeal is null and void for excess use of power or violation of an essential principle of procedure, which is not argued in this case, the appeal of the order for enforcement is only available in the cases listed in article 1520 of the same code, namely if :
- the Arbitral Tribunal has wrongly declared itself competent or incompetent, or
- The Arbitral Tribunal was improperly formed or
- The Arbitral Tribunal has ruled without complying with the mission entrusted to it or

- The adversarial principle was not respected, or
- The recognition or enforcement of the award is contrary to International Public Policy.

26. In this case, the claim's admissibility raised relating only to the admissibility of the request for enforcement do not constitute one of the cases in which an appeal against an order for enforcement may be filed.

27. The request for annulment on this basis must therefore be dismissed.

On the reversal of the order for enforcement with regard to article 1520 of the Code of Civil Procedure.

- ***Regarding the claim that the award is contrary to International Public Policy (Article 1520, 5° of the Code of Civil Procedure).***

28**. Company (B) and Mr.(A)** argue that the arbitral award is contrary to International Public Policy, stating that the res judicata legal effect attached to the transaction concluded on April 29, 2012 precludes the recognition of the arbitration award of ( ) made in breach of that transaction.

28. **In response, Mr. (C)** contests the validity of the alleged transaction and argues that there can be no ground for invoking International Public Policy in order to retain the effects of a non-existent transaction. It adds that the appellants cannot in good faith invoke the benefit of an oral settlement agreement that they have never executed.

ON THE GROUNDS,

30. It follows by reference from article 1525 of the Code of Civil Procedure recalled above that the appeal of orders for enforcement is limited to the means of overtuning set forth in article 1520, and that under the terms of article 1520, 5° of the same Code, recourse for annulment is available if the recognition or enforcement of the award is contrary to International Public Policy.

31. The International Public Policy in relation to which the annulment judge's review is carried out is considered to be the concept of the French legal system, i.e., the values and principles which it cannot disregard even in an international context.

32. The review by the judge who sets aside or treats appeals against the order for enforcement in defence of International Public Policy is limited to examining whether the implementation of the measures taken by the Arbitral Tribunal clearly, effectively and concretely violates the principles and values of International Public Policy.

33. In this case, the appellants argue in substance that the recognition of an arbitral award contrary to the res judicata legal effect of a previously concluded transaction is contrary to French International Public Policy.

34. However, a disregard of the res judicata legal authority by an award does not itself constitute a violation of International Public Policy.

35. Only the recognition or enforcement of an award that is irreconcilable with a decision, rendered by a domestic or foreign court, which was previously granted in France with enforcement, is likely to violate International Public Policy in a manifest, effective and concrete manner. It has been specified that court decisions with mutually exclusive legal consequences are irreconcilable.

36. Therefore, in this case, the arbitration award at issue is not irreconcilable with any decision rendered in France, and none of the decisions rendered by US courts, which found the existence of a settlement between the parties was enforceable in France.

37. Moreover, the fact that several U.S. courts have found that there was a transaction and have set aside the award in dispute has no effect on these proceedings for recognition of the award in the French legal system.

38. As a matter of fact, the provisions of French International Arbitration Law do not provide that the annulment of the award in its country of origin constitutes a ground for refusing recognition and enforcement of the award in France.

39. Moreover, it is common ground that an international award which is not connected to any State legal order is an international judicial decision the regularity of which is examined in the light of the rules applicable in the country where its recognition and enforcement are sought and not in the light of the rules of the country in which it was issued.

40. Finally, the co-existence of two irreconcilable decisions is specifically challenged in this case, and the very existence of a transaction was challenged before the FINRA arbitrators, who found in their award of ( ) that evidence of a settlement agreement had not been established.

41. As a matter of fact, the arbitrators twice, on June 19, 2012 and March 18, 2013, rejected the request of company (B) and Mr.(A) for recognizing the existence of a transaction, denying before the arbitrators that the emails or oral exchanges had any character of "transaction" equivalent to a court decision.

42. However, it is not within the court's powers to retry the merits.

43. Therefore, the ground alleging the breach of article 1520-5° of the Code of Civil Procedure must be rejected.

- ***Regarding the ground of lack of impartiality of the arbitrators (Article 1520, 2° and 5° of the Code of Civil Procedure)***

44. **Company (B) and Mr. (A)** claim that two of the three arbitrators, Mr. (D) and Ms. (F), were not impartial. Mr. (D) and Ms. (F) and argue that the lack of impartiality of the arbitrators can be used as a basis for setting aside the award on the basis of both the irregularity of the constitution of the tribunal (article 1520, 2° of the Code of Civil Procedure) and the infringement of International Public Policy (article 1520, 5° of the Code of Civil Procedure) due to the violation of the principle of equality between the parties and of the rights of the defense that it implies.

45. They argue that the lack of impartiality resulted from a breach of the duty of disclosure under the FINRA rules. In this respect, they maintain that Mr. (D), co-arbitrator, concealed numerous significant pieces of evidence that were neither public nor notorious and which the arbitration institution nevertheless required to be disclosed, which raised serious doubts as to his impartiality. They stated that he had concealed the fact that he held several brokerage accounts with (G), a division of (B), with which Mr. (C) had also placed his funds, and that he had complained on several occasions about the management of his accounts. They also alleged that he failed to disclose his status as a defendant in several arbitration and court proceedings related to his professional duties, including proceedings conducted under the direction of the NASD and the SEC.

46. They also claim that the Chair of the Arbitral Tribunal, Ms. (F), failed to inform the parties that she had been a defendant in two court proceedings charging her with fraudulent conduct and her disqualification from a FINRA arbitration proceeding (Case (H)) due to her failure to disclose these proceedings, as well as her withdrawal on ( ), from the roster of arbitrators by FINRA. They indicate that they had not been aware of this information until the award had been made.

47. **In response, Mr. (C)** argues that there is no evidence that the arbitrators were not impartial. The statements of the arbitrators were, in his view, sufficiently precise to allow company (B) and Mr. (A) to verify them in order to withdraw them if they so desired. He argues that the two federal civil proceedings for fraud in which the president of the arbitral tribunal was a defendant do not prove a conflict of interest or a lack of impartiality since they concerned the matters relating to her husband's projects and for which she had not been convicted. He adds that the Appellants misrepresented the facts about Ms. (F) and mentions, in particular, that she voluntarily withdrew from the arbitration (H) and that she was not withdrawn from the FINRA arbitration rosters, but that FINRA informed her that it had found during a routine check that she was no longer on the rosters.

48. With respect to Mr. (D), he states that all the necessary information concerning him was genuinely accessible. The arbitrator has mentioned in his declaration form of the rules of disclosure concerning professionals acting as traders, whose information is public and transparent by virtue of the effect of declarations in the form of "CRD Records", which can be consulted freely. He also argues that the NASD and SEC cases did not result in a conviction of Mr. (D).

ON THIS GROUNDS,

49. It should be noted that the Appellants rely on the claim for lack of impartiality of the arbitrators both in support of a ground of annulment based on the irregular constitution of the Tribunal and in support of a ground based on the infringement of International Public Policy, without considering these two grounds separately.

50. Nonetheless, the Court will examine such a claim separately, depending on whether it is raised in support of either of the aforementioned grounds for annulment.

On the claim of lack of impartiality in support of the ground based on the infringement of the constitution of the Arbitral Tribunal (article 1520, paragraph 5).

51. According to Article 1520, 2° of the Code of Civil Procedure, an action for annulment is available if the Arbitral Tribunal was improperly constituted.

52. According to Article 1456 (2) of the Code of Civil Procedure, applicable to international arbitration by virtue of Article 1506 of the same Code, "It is the duty of the arbitrator, before accepting his mission, to disclose any circumstance likely to affect his independence or impartiality. He shall also be obliged to disclose forthwith any such circumstances that may arise after the acceptance of his mission.

53. It should be recalled that, where it is useful for considering this claim to determine the content of the duty of disclosure, which is imposed on an arbitrator, the failure to comply with this duty is not itself sufficient to characterize a lack of independence or impartiality. The failure to comply with the duty of disclosure is not itself sufficient to constitute a lack of independence or impartiality, unless such failure raises doubts among the parties as to the arbitrator's impartiality and independence, i.e. doubts that could arise among persons in the same situation, which would have access to the same reasonably available information.

54. In this case, as the arbitration was conducted under the FINRA's direction, reference should be made to the recommendations provided in relation to this issue by that arbitration center in order to clarify the content of the duty of disclosure imposed on the arbitrators.

55. In this respect, it is clear from the FINRA (Financial Industry Regulatory Authority) Rules governing the arbitration that led to the disputed award of ( ), and from the guide issued by this authority (the FINRA Dispute resolution Arbitrator's Guide, that it is the responsibility of the appointed arbitrator to be "impartial in facts and circumstances" and that several requirements are imposed on the arbitrator, including that *"Arbitrators shall submit detailed biographical information at the time they submit an application for inclusion on the FINRA Arbitrator Panel. The information collected from the application is gathered in order to create an arbitrator disclosure report (disclosure report). During the list selection process, the parties have the opportunity to review the Disclosure Report of arbitrators randomly selected for potential service. The disclosure report lists the arbitrator's prior FINRA awards, as well as the current cases to which the arbitrator is assigned"* ("submit detailed biographical information at the time they submit an application to join FINRA's arbitrator roster. The information collected from the application is compiled to create an Arbitrator Disclosure Report (Disclosure Report). During the list selection process, the parties are given the opportunity to review the Disclosure Report of the arbitrators randomly listed for potential service. The Disclosure Report lists previous FINRA awards rendered by the arbitrator, and also lists the current cases to which the arbitrator is assigned").

56. Similarly, this guide states that:

"In order to ensure that arbitrators' disclosure reports are accurate and updated, FINRA will send arbitrators their disclosure report each time the arbitrator is appointed to a case. It is extremely important that arbitrators update their disclosure reports frequently.

« Arbitrator disclosure is the cornerstone of FINRA arbitration, and the arbitrator's duty to disclose is continuous and imperative. Disclosure includes any relationship, experience and background information that may affect—or even appear to affect—the arbitrator's ability to be impartial and the parties' belief that the arbitrator will be able to render a fair decision. When making disclosures, arbitrators should consider all aspects of their professional and personal lives and disclose all ties between the arbitrator, the parties and
the matter in dispute, no matter how remote they may seem. If you need to think about whether a disclosure is appropriate, then it is: make the disclosure (...) »).

("In order to ensure that the arbitrators' Disclosure Reports are accurate and up-to-date, FINRA will send the arbitrators their Disclosure Report each time the arbitrator is appointed to a case. It is extremely important that arbitrators update their Disclosure Reports frequently.
"Arbitrator disclosure is the cornerstone of FINRA arbitration, and the arbitrator's duty to disclose is continuous and imperative. Disclosure includes any relationship, experience and background information that may affect-or even appear to affect-the arbitrator's ability to be impartial and the parties' belief that the arbitrator will be able to render a fair decision. When making disclosures, arbitrators should consider all aspects of their professional and personal lives and disclose all ties between the arbitrator, the parties and the matter in dispute, no matter how remote they may seem. If you need to think about whether a disclosure is appropriate, then it is: make the disclosure (...)").

57. In this regard, the above-mentioned guide also notes that *"FINRA Rule 12405 requires arbitrators to disclose any direct or indirect financial or personal interest in the outcome of the arbitration, as well as any existing or past direct or indirect financial, business, professional, familial, social or other relationship with any of the parties, representatives, witnesses or co-arbitrators. The duty of disclosure is ongoing. Accordingly, arbitrators are also required to make reasonable efforts on an ongoing basis to inform themselves of relationships and interests, including changes in their employment, duties or clients, or those of their immediate family members, as these facts may result in a change in their classification as a public or non-public arbitrator" ("FINRA Rule 12405 requires arbitrators to disclose any direct or indirect financial or personal interest in the outcome of the arbitration, as well as any existing or past, direct or indirect, financial, business, professional, family, social or other relationships with any of the parties, representatives, witnesses or co-panelists. The duty to disclose is ongoing. Therefore, arbitrators are also required to continually make reasonable efforts to inform themselves of relationships and interests including changes in their or their immediate family member's employment, job functions or clients since these facts can result in a change to their classification as a public or non-public arbitrator".)*

58. Finally, the Guide also states that *"once an arbitrator has accepted his appointment, FINRA sends the arbitrator the Arbitrator Oath (Oath), which includes the Arbitrator Disclosure Checklist (Checklist).* This list included in its 2010 version a series of 33 questions that the arbitrator was required to answer yes or no.

59. Among several others, these included the following questions:

60. Question No. 4: "Have you had any professional or social relationships with counsel for any party in this proceeding or the firm for which they work?"

61. Question No. 5: "Have you had any professional or social relationships with any party in this proceeding or the firm for which they work?

62. Question No. 7: "Have you served as an arbitrator in a proceeding in which any of the identified witnesses or named parties gave testimony?"

63. Question No. 8: "Have you, your spouse, or any member of your immediate family maintained an account individually, jointly, or beneficially with a brokerage firm named in this proceeding?"

64. Question No. 12: "Have you ever been named as a party by an investor in any civil lawsuit or arbitration proceeding?"

65. Question No. 19: "Has your conduct been an issue in an arbitration or litigation proceeding (other than a proceeeding in which you served as an arbitrator ?"

66. Question No. 26: "Are you presently serving as an arbitrator in another matter involving any party or counsel in this proceeding or the firm for which they work?"

67. It is clear from these recommendations that the arbitrator's duty of disclosure in a FINRA arbitration is very broad since it covers, with respect to his or her relationship with any of the parties, their representatives, witnesses or co-arbitrators, any interest or direct or indirect relationship with them, whether existing or past, but also, outside of his or her relationship with these persons, the situations and/or conduct of each arbitrator in the past and, in particular, any litigation and proceedings in which he or she has been involved (other than those in which he or she was an arbitrator).

68. It is in the light of this consideration that it is necessary to assess in this case whether Mr. (D) and Ms. (F) have fulfilled their duty of disclosure under the FINRA rules and whether, in the event of failure to fulfil this duty, this failure was likely to create reasonable doubts among the appellants as to their impartiality.

<u>With respect to the reconsideration of Mr. (D)'s impartiality</u>;

69. With respect to Mr. (D), the Appellants essentially criticize him for not disclosing that, starting from 2008, he "had several brokerage accounts with (G), a division of (B)" for which he issued claims but that they were the subject of an NASD (National Association of Securities Dealers) investigation in 1999 due to improper business practices when he was a compliance officer at Sterling Foster & Co, Inc. a now defunct brokerage and resale firm, and that civil actions and enforcement actions were brought against Sterling Foster & Co. and its officers.

70. It should firstly be noted that all of the alleged facts that may be the cause of a lack of impartiality alleged by company (B) and Mr. (A) predate the statement that he filed on June 12, 2010 along with the answer to the questionnaire he provided pursuant to the FINRA regulations.

71. In addition, it is clear from the above-mentioned questionnaire that, in response to the above-mentioned question 12, M. (D) answered affirmatively so that the appellants were aware of this information and could therefore ask the arbitrator for additional information and clarification if they considered it necessary in view of the doubts that she might have had regarding her impartiality.

72. In this regard, the Arbitrator expressly states at the end of this questionnaire that this information has been previously disclosed and is included in its Central Registration Depository (CRD) Record, which is a software maintained by FINRA that covers the registration records of brokerage firms and their associated individuals, including their qualification, employment and disclosure history.

73. In view of this evidence, the fact that the arbitrator did not, as the Appellants erroneously maintain, answer "no" to the above-mentioned question 19, but simply failed to answer "yes" or "no" cannot be analysed as a desire to conceal the facts, since the evidence is furthermore available, and the arbitrator has already revealed the facts about his past, those about the proceedings that the appellants refer to while he was working for Sterling Foster & Co are old (they date from 1996, 1998, 2000 and 2003) and it is maintained without being contested on this point that some of these proceedings were withdrawn and that others were not successful against him.

74. It is also apparent based on the submitted documents that Mr. (D) indicated that he had been a member of an organization making business involving financial instruments and he stated that the NASD arbitration proceedings in which his conduct was allegedly involved could be easily accessed through his "CRD Record" with FINRA, which can be accessed via BrokerCheck, an online tool developed by FINRA, (B) did not consider it necessary to do so or to request that the arbitrator transmit this evident himself. It has also been observed that, in case of submission of Exhibit 50-2 to the proceedings, a copy of a consultation of the CRD of the person in question, carried out on February 24, 2021, does not contain any document in the "Disclosure" tab, this evidence does not enable one to establish that it was also the case in 2010.

75. On the other hand, it is correct that, in response to the aforementioned question 8 concerning the possession by the arbitrator of a brokerage account with one of the parties, Mr. (D) answered "no", whereas a copy of an account statement opened in the name of the arbitrator with company *"(G) Reserved Client Simplified Employee Pension Plan"* dated November 2008, mentioning that the broker for this product is "B", was submitted in the proceedings.

76. Therefore, the duty of disclosure has not been fully fulfilled in this respect.

77. However, it should be noted that, on the one hand, only one account has been opened, and not a number of accounts, as the appellants claim in their pleadings. In addition, this account has not been opened directly with company (B) but with company "(G)".

78. Furthermore, this account corresponds to a retirement savings plan, and not specifically to a brokerage account.

79. Besides, in order to justify a dispute between the arbitrator and the account holder, the appellants have merely exchanged two e-mails within the "early dispute resolution group" department dated February 17 and 23, 2009, which represents internal exchanges within the amicable resolution department, and not those with Mr. (D), and those which mention only that it was a request relating to an interest rate which had remained unanswered for 60 days.

80. No other evidence was provided into the debates to justify the alleged pressure or even the existence of a dispute between Mr. (D) and company (G) concerning the management of this account since simple claims concerning the interest rate could not be deemed to be a ground for the dispute. Moreover, if Mr. (D) failed to declare this account, to which company (B) could clearly had had access in view of the document it submitted to the debates, this circumstance could not, in any event, lead to a reasonable doubt as to his impartiality in relation to company (B).

81. In the light of this evident, which do not make it possible to characterize a reasonable doubt as to the existence of prejudices or biases likely to affect Mr. (D)'s judgment and thus his impartiality, the claim will be rejected.

With regard to the reconsideration of Ms. (F)'s impartiality;

82. With regard to Ms. (F), the appellants essentially accuse her of not having declared that she knew one of the counsel of a party to the arbitration and that she was the subject of allegations of fraud.

83. It is thus clear from the answers to the above-mentioned questionnaire, which Ms. (F) completed on November 12, 2010, that she provided a negative answer to question 4 previously mentioned.

84. While the appellants maintain that she failed to disclose that she knew Mr. (C)'s second counsel, (W), because she had presided over an arbitration proceeding under the direction of FINRA in which Mr. (W) had appeared, this allegation is not supported by any document. Furthermore, it is not stated when this relationship may have taken place or whether these relationships remained isolated or multiple. In the absence of any specific and verifiable evidence, this sole failure, if established, does not create reasonable doubts as to the lack of impartiality of Ms. (F).

85. In addition, it appears from the declaration filed by Ms. (F) on November 12, 2010, together with the response to the FINRA questionnaire that she disclosed that she had served as an arbitrator in three proceedings involving the firm (B) by answering "yes" to questions 5, 7, and 26, and specifying the type of cases involved. She indicated that she believed that those appointments did not affect her impartiality, thus allowing company (B) to have all the necessary information about these cases, and, if necessary, in case of doubt, to request explanations and, if necessary, her recusal prior to the first hearing, as set forth by FINRA Rule 12407(b), which she did not do.

86. She also provided a negative answer to question 12, and question 19, previously mentioned.

87. However, it is clear from an email sent by Ms. (F) on September 14, 2012 regarding one of the other reported FINRA arbitrations in which she was an arbitrator, that she had taken note of the request for disclosure that had been made to her concerning a matter that she described as a *"previous non-investment related matter"* which, in fact, mainly concerned her husband for complaints filed in 2009 in the US District Court of New York and that she had preferred to withdraw from this case in view of this request. Nonetheless, she explained that she did not consider that this matter should be subject to disclosure.

88. It is thus clear from the documents submitted by the appellants that Ms. (F) was implicated in two claims for acts of fraud mainly involving her husband. Ms. (F) was accused of having indirectly benefited from the funds allegedly misappropriated by her husband.

89. These two complaints, which predate her statement, could have justified disclosure by Ms. (F) in the context of this arbitration, or at the very least a positive response to the aforementioned question 19, which could have left room for further clarification requested by the parties.

90. Nonetheless, the failure of Ms. (F) does not lead to reasonable doubts as to her impartiality.

91. On the one hand, only the initial claims were submitted in the proceedings, without it being possible to establish the truthfulness and the share of personal responsibility of Ms. (F) in the actions that primarily concern her husband in the proceedings that are unrelated to the FINRA arbitrations.

92. On the other hand, it is apparent from exhibit 28.4 produced by the appellants concerning a letter sent in September 2012 to FINRA requesting the withdrawal of Ms. (F) from the roster of arbitrators

that Ms. (F) had been removed from these proceedings in December 2009. In addition, this letter also mentions a settlement agreement without the court being able to receive more information on the content of the latter.

93. Finally, the fact that after the award, and more than a year after this letter, on ( ), Ms. (F) was withdrawn from FINRA's roster of arbitrators for a purely administrative reason, "periodic analysis of the roster", does not allow one to conclude that this withdrawal was the consequence of the facts thus mentioned, which are in no case connected to the arbitration and which do not cast doubt on her impartiality during the arbitration in question.

94. In the light of this evidence, which does not make it possible to characterize reasonable doubts as to the existence of prejudices or biases likely to affect Ms. (F)'s judgment and thus her impartiality, the claim will be rejected.

On the claim of lack of impartiality in support of the ground based on the infringement of International Public Policy (article 1520, paragraph 5).

95. According to Article 1520(5) of the Code of Civil Procedure, an action for annulment is available if the recognition or enforcement of the award is contrary to International Public Policy.

96. If an arbitrator is not impartial, enforcement of the award in France may be refused on the grounds of conflict with International Public Policy, since an award rendered by an arbitrator whose lack of impartiality is established would jeopardize the principle of equality between the parties and the rights of the defense, and would thus violate International Public Policy.

97. It is for the court to assess the impartiality of the arbitrator by noting any circumstance likely to affect the arbitrator's judgment and to raise reasonable doubts among the parties as to the quality of the judgment, which is the essence of the arbitral function.

98. In the light of the above evidence it should be considered that the circumstances revealed by the appellants do not make it possible to characterize a lack of impartiality on the part of the arbitrators, nor to establish that the rendered award violates the principle of equality between the parties and the rights of the defense.

99. This claim will therefore be rejected.

<u>On the claim for compensation of (B) and Mr.(A)</u>

100. **Company(B) and Mr.(A)** argue that Mr.(C)'s request for enforcement was improper since Mr.(C) had previously irrevocably waived his rights. They also argue that Mr. (C)'s collection strategies caused damage to (B).

101. **In response, Mr. (C)** argues that he did not obtain the second Order for enforcement in 2018 either through malice or fraud and that this second enforcement proceeding was conducted in a transparent manner.

ON THIS GROUNDS,

102. In this case, there is no reason to believe that by making use of the enforcement procedures available under French law, and by invoking the provisions of the New York Convention before the French Court, Mr. (C) has abused his right to sue and to pursue the enforcement of an arbitral award in France. The Court has only initiated these proceedings in relation to the appeal against the order for enforcement of ( ). It has been established that it was not obtained fraudulently or even unexpectedly since it has been proven that the second request for enforcement was accompanied by a notification explaining the context in which such a new request, referring to the order previously obtained, was submitted.

103. Accordingly, company (B) and Mr. (A) must be dismissed of their claim for damages for abuse of process.

On Mr. (C)'s claim for damages

104. **Mr. (C)** concludes that the appellants have been relentless and intimidating towards him, in particular by resort to US "anti-suit injunction" procedures, and by recent attempts to aggravate the situation by adding a criminal component. He adds that, after more than 7 years of proceedings, he has not been paid the amounts due under the 2013 FINRA award.

105. **Company (B) and Mr. (A)** indicate that the these proceedings are merely the consequence of Mr. (C)'s constant reversals to their detriment. They contest any harassment, stating that Mr. (C) has not been diligent in opposing the decisions of the U.S. courts, which have appeared to be prejudicial to him as he claims.

ON THIS GROUNDS,

106. Mr. (C) has not demonstrated that the legal remedies used by company (B) and Mr. (A) are the result of fraud or malice, even if the effects of an anti-suit injunction legally obtained before the US courts had extra-territorial effects that would have been detrimental to him.

107. Similarly, it is not for the French Court to rule on the validity or abuse of the US contempt of court proceedings of which he was the defendant before the Courts of New York State since his defense strategy in the United States is not subject to the assessment of the French courts, since only US Courts can retract or maintain the effects of such a decision.

108. Mr. (C) must be dismissed of his claim for damages.

On costs and expenses

109. Company (B) and Mr. (A), who cannot claim for the benefit of the provisions of Article 700 of the Code of Civil Procedure, must be ordered to pay the costs, which will be recovered in accordance with Article 699 of the Code of Civil Procedure, as well as the amount of €80,000 to Mr. (C) on the basis of Article 700 of the Code of Civil Procedure.

IV-JUDGMENT

On these grounds, the Court hereby

1- Dismisses the appeal of company (B) and Mr. (A) and dismisses their claims;

2- Dismisses Mr. (C)'s claim for damages;

3- Orders company (B) and Mr. (A) to pay Mr. (C) the amount of EUR 80,000 under Article 700 of the Code of Civil Procedure,

4- Orders company (B) and Mr. (A) to pay the costs, which shall be recovered in accordance with the provisions of article 699 of the same code.

The Court Clerk — The President

Inès VILBOIS — François ANCEL