MARY AIELLO,	*	IN THE
Petitioner,	*	CIRCUIT COURT
v.	*	FOR
FERRIS, BAKER, WATTS, INC., *et al.*,	*	BALTIMORE CITY
Respondents.	*	Case No.: 24-C-04-006218

* * * * * * * * * * *

MEMORANDUM OF DECISION

This matter comes before the Court on Petitioner Mary Aiello's Petition to Vacate Arbitration Award and Respondents Ferris, Baker, Watts, Inc. and David Anderson's Response thereto. Both parties have fully briefed the issues and this Court heard oral argument. For the reasons set forth below, this Court will deny Mary Aiello's Petition to Vacate Arbitration Award.

Factual and Procedural Background

After the death of her husband, Claimant Mary Aiello ("Mrs. Aiello" or "Claimant"), invested approximately $3.2 million with her deceased husband's stockbroker, Respondent David Anderson ("Mr. Anderson") of Respondent Ferris, Baker, Watts, Inc. ("FBW") (collectively referred to as "Respondents") during 2000 and 2001. These funds were used to purchase numerous variable annuities, at least one life insurance policy and other investments. Claimant contended that these investments were inappropriate for her, who at age 64 sought more conservative investments. According to Mrs. Aiello, the investments were inappropriate because they were not liquid, were unable to generate sufficient

income and some were speculative and risky. As a result of these purportedly inappropriate investments, she contended that she lost approximately $1.7 million.

Based on these facts, on November 25, 2002 Mrs. Aiello filed an arbitration complaint against FBW, in which she complained about Mr. Anderson's recommendations and the transactions he executed in 2000 and 2001 on her behalf. On August 6, 2003 she amended her claim to include Mr. Anderson as a respondent. On December 18, 2003 once again amended her claim altering some of the factual allegations against the respondents. On February 3, 2004, Mrs. Aiello then filed a pre-hearing legal brief in support of her claims. She addressed the following counts individually:

> Count I – Violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. §§ 78j & t, and S.E.C. Rule 10b-5, 17 C.F.R. § 240.10b-5. "These claims were based on omissions of material fact, and deceptive practices arising from recommending the purchase of unsuitable annuities, and failure to diversify."
>
> Count II - Violation of Section 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78t, for lack of supervision.
>
> Count III – Violation of the Maryland Securities Act. Specifically the count sought damages under Section 11-703 (a)(1)(ii) of the Maryland Securities Act (the "Act"), Md. Code, Corps. & Ass'ns § 11-703 (a)(1)(ii). As Mrs. Aiello explained in the pre-hearing brief, this section created civil liability for one who "[o]ffers or sells the security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, the buyer not knowing of the untruth or omission, and if he does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission." Likewise, as also

highlighted by Mrs. Aiello in the same brief, under certain conditions a claimant may be entitled to reasonable attorney's fees and costs. Section 11-703 (b)(1) of the Act.

Count IV – Violation of the NASD Rules of Conduct.

Count V – Breach of Contract.

Count VI – Constructive Fraud.

Count VII – Fraud and Deceit.

Count VIII – Breach of Fiduciary Duty.

Nowhere in any of the above filings did Mrs. Aiello mention or discuss any violation of Section 11-401(b) of the Act which, with certain limited exceptions, requires that an investment advisor be registered, or Section 11-703 (a)(3)(i) which provides for civil liability for a violation of Section 11-401(b).

On February 23, 2004 the hearing commenced. Mrs. Aiello's counsel made no reference to Mr. Anderson's registration status, to investment advisor registration requirements, or to Section 11-401(b) of the Act. However, evidence was introduced at the hearing that in August 2000 Mr. Anderson gave Mrs. Aiello a business card bearing the title "Registered Investment Adviser" when he was not in fact registered as an investment adviser representative until February. *See* Hearing Transcript, Testimony of David Anderson, June 25, 2004, at pp. 57-58. One of Mrs. Aiello's expert witnesses, Ellyn Brown, did testify regarding Mr. Anderson's registration status as well as investor advisor registration requirements. In addition, Mr. Anderson, himself, and Ralph Abollo, one of FBW's

office managers, also offered testimony pertaining to Mr. Anderson's registration status. This Court will specifically address these references in the analysis below.

The hearing then adjourned until June 22, 2004. During that four-month recess, Mrs. Aiello did not amend her complaint to include any reference to Sections 11-401 (b) or 11-703 (a)(3)(i) or (ii) of the Act. When the hearing resumed Mrs. Aiello offered no additional testimony regarding these sections of the Act. Mrs. Aiello then waived her closing argument, deciding instead to reserve her time for rebuttal. During her rebuttal, again, Mrs. Aiello's counsel made no references to Sections 11-401 (b) or 11-703 (a)(3)(i) or (ii) of the Act. However, in the rebuttal, Mrs. Aiello's counsel did reference Mr. Anderson's registration status and investor advisor registration requirements. This Court will address these references, as well, in the analysis below.

The arbitration panel rendered it's 2-1 decision in favor of Mr. Anderson and FBW as to all counts on July 14, 2004. On August 13, 2004 Mrs. Aiello filed her Petition to Vacate Arbitration Award with this Court. In her Petition to Vacate she argues that the arbitration panel erred when it failed to award Mrs. Aiello damages based on Sections 11-401 (b) and 11-703 (a)(3)(i) of the Act. Petition to Vacate, at ¶ 8. She also contends that the arbitration erred when it failed to find against FBM and in favor of Mrs. Aiello on her supervision claim because respondents failed to contest it. Id. at ¶ 9. Finally, she argues that the arbitration panel should have awarded her damages because respondents failed to take "appropriate and timely action, as specified in various variable annuity

contracts" resulting in Mrs. Aiello incurring surrender charges. Id. at ¶ 10. For the reasons that follow, and for those set forth in Respondents' Brief, this Court will deny Mrs. Aiello's Petition to Vacate Arbitration Award.

Analysis

The party seeking to vacate an arbitration award bears the "heavy burden" of proving one of the few narrow grounds that warrant vacatur. *See Remmy v. PaineWebber, Inc.*, 32 F.3d 143, 149 (4th Cir. 1994).[1] Courts should not vacate arbitration awards lightly for the arbitrators are judges both of the law and of the facts. *Baltimore Teachers Union, Am. Fed'n of Teachers, Local 340, AFL-CIO v. Mayor and City Council for Baltimore*, 108 Md. App. 167, 180 (1996). The Court's review is "to determine only whether the arbitrator did his job – not whether he did it well, correctly or reasonably, but simply whether he did it." *Mountaineer Gas Co. v. Oil, Chem. & Atomic Workers Int'l Union*, 76 F.3d 606, 608 (4th Cir. 1996). Courts may vacate an arbitration award if the arbitrators committed a "palpable mistake of law... apparent on the face of the award... so gross as to work manifest injustice," or a "manifest disregard of the law." *Id.* at 180-81. This mistake must be "so gross as to imply bad faith or the failure to exercise honest judgment on part of the arbitrators." *Mayor & City Council of Baltimore v. Allied Contractors, Inc.*, 236 Md. 534, 545 (1964).

[1] Because the "same policy favoring enforcement of arbitration agreements is present" in the Maryland Arbitration Act, Md. Code Ann., Corps. & Jud. Proc. Art., § 3-201 *et seq.*, and the Federal Arbitration Act, this Court may, and will, rely on decisions interpreting the Federal Arbitration Act in interpreting the Maryland Arbitration Act. *See Holmes v. Coverall N. Am., Inc.*, 336 Md. 534, 541 (1994).

To obtain vacatur of an award on the ground that the arbitrators manifestly disregarded the law, the petitioner must prove "both that (1) the arbitrators knew of a governing legal principle yet refused to apply it or ignored it altogether, and (2) the law ignored by the arbitrators... [was] well defined, explicit, and clearly applicable to the case." *DiRussa v. Dean Witter Reynolds Inc.*, 121 F.3d 818, 821 (2d Cir. 1997). With respect to the first prong, the petitioner bears the burden of establishing "that the arbitrators were aware of the law, understood it correctly, found it applicable to the case before them, and yet chose to ignore it in propounding their decision." *Rosenbaum v. Imperial Capital, LLC*, 169 F. Supp. 2d 400, 408 (D. Md. 2001) (Internal quotation marks and citations omitted). In other words, the petitioner must not simply show that the arbitrators were "wrong in their application of the law, but rather acted in overt disregard of the law" "after it was brought to the arbitrator's attention in a way that assures that the arbitrator knew its controlling nature." *Id.* at 413; *Goldman v. Architectural Iron Co.*, 306 F.3d. 1214, 1216 (2d Cir. 2002). Mrs. Aiello has not met this burden.

A. The Arbitration Panel Did Not Act in "Manifest Disregard for the Law" When It Did Not Find in Petitioner's Favor for Violations of Sections 11-401 (b) and 11-703(a)(3) of the Act

As the primary basis for vacating the arbitration award, Mrs. Aiello asserts that she presented unchallenged evidence at her hearing that Mr. Anderson advised her on investments even though he was not registered with the State in violation of Section 11-401 (b) of the Act. Petition to Vacate, at ¶ 8. She further

contends that the arbitration panel acted in "manifest disregard for the law" when it failed to award her damages pursuant to Section 11-703 (a)(3) of the Act which provides for strict liability of Section 11-401 (b). It may be true that Mr. Anderson should have been strictly liable to Mrs. Aiello for a violation of Section 11-401 (b). However, Mrs. Aiello failed to adequately apprise the arbitration panel of the law regarding a Section 11-401 (b) violation in a manner that assures that they knew its controlling nature, and, therefore, can hardly argue that the arbitrators knew the "governing legal principle yet refused to apply it or ignored it altogether." *DiRussa*, 121 F. 3d at 821.

1. Pleadings and Briefings

Prior to the hearing Mrs. Aiello did not, despite numerous opportunities to amend, mention a violation of Sections 11-401 (b) or 11-703(a)(3) of the Act in any pleading or briefing. Even more significantly, she never discussed Mr. Anderson's registration status in any document prior to the hearing.

Mrs. Aiello claims that in her December 18, 2003 Amended Statement of Claim and in her Pre-Hearing Brief she alleged violations of Section 11-703 of the Act. However, simply alleging violations of Section 11-703 is not sufficient to alert the arbitrators of the underlying claims. Asserting a claim under Section 11-703 , without more, is similar to saying someone committed an intentional tort without stating which tort he or she committed. Section 11-703 cites numerous bases on which persons may be civilly liable for violations of the securities laws. It does so, generally, by referencing other sections of the Act that specifically proscribe

certain conduct such as Section 11-401 (b). In fact, Mrs. Aiello specifically cited to Section 11-703 (a)(1)(ii) in her Pre-Hearing Brief to the arbitrators, which is the only provision within Section 11-703 that actually details the underlying misconduct giving rise to civil liability without referencing other sections of the Act. That provision creates liability for one who:

> Offers or sells the security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made....

Md. Code. Ann., Corps. & Ass'ns § 11-703 (a)(1)(ii).

Section 11-703 (a)(3)(i), on the other hand, provides strict liability for one who "[a]cts as an investment advisor... in violation of [] § 11-401(b)...." Md. Code. Ann., Corps. & Ass'ns § 11-703 (a)(3)(i). Section 11-401 (b) requires an investment advisor to be registered. Thus, acting as an investment adviser without having registered as required by Section 11-401(b), gives rise to civil liability under Section 11-703 (a)(3)(i). This is a completely different basis of liability than Section 11-703 (a)(1)(ii), on which Mrs. Aiello focused the arbitrators' attention in her Pre-Hearing Brief. Under Section 11-703(a)(1)(ii) the arbitrators would have to decide, among other elements, whether Mr. Anderson made an untrue statement and whether that statement was material. Under Section 11-703(a)(3)(i), they would have to decide whether Mr. Anderson had acted as an investment adviser. It imposes strict liability. Therefore, simply citing to Section 11-703 for civil liability, without more, is insufficient to adequately apprise the arbitrators of the relevant basis of liability.

To the extent Mrs. Aiello argues that Mr. Anderson violated Section 11-703 (a)(1)(ii) by representing himself to her as an investment adviser, she has failed to meet her burden of proving that the arbitrators acted in manifest disregard for the law. Any finding in Mrs. Aiello's favor under this section would have required the arbitrators to have found that any misrepresentation made by Mr. Anderson to Mrs. Aiello, including the fact that he held himself out as a registered investment adviser, was "material." The arbitrators may have simply determined that the purported misrepresentation was not material. Mrs. Aiello did not raise this argument in her Motion to Vacate and has not cited evidence in the record for this Court to find that the arbitrators acted in manifest disregard for the law if they indeed did determine that the misrepresentation was immaterial.

2. Closing/Rebuttal Argument

Likewise, Mrs. Aiello argues that in rebuttal argument her counsel raised Mr. Anderson's violations of Sections 11-401(b) and 11-703(a)(1)(ii). After stating that Mrs. Aiello had a claim for a "violation of the Maryland Securities Act," Mrs. Aiello's counsel argued the following:

> The Maryland Securities Act does not require the showing of, we will submit that the representation made by Mr. Anderson that he was a [sic] registered investment advisor when he was not is a material—is an untrue statement of a material fact and we believe that under this section of the Maryland Securities Act we are statutorily entitled to attorney fees and costs.

Hearing Transcript, Closing Rebuttal Argument by Mrs. Aiello's Counsel, June 25, 2004, pp. 207-08.

While this Court understands that this transcript is not exactly clear, the argument propounded by Mrs. Aiello's counsel is: Mrs. Aiello was entitled to attorney's fees and costs because Mr. Anderson's representation that he was an investment advisor when he was not so registered was an "untrue statement of a material fact." The words selected by Counsel clearly implicate Section 11-703(a)(1)(ii) which would entitle Mrs. Aiello to attorney's fees and costs under Section 11-703(b)[2] just as would any violation of Section 11-703(a)(3)(i). This implication is only strengthened by Mrs. Aiello's specific reference to Section 11-703(a)(1)(ii) in her Per-Hearing Brief as discussed above. Therefore, this Court finds that counsel's statement during rebuttal closing arguments fails to apprise the arbitrators of liability under Sections 11-401(b) and 11-703(a)(3)(i) of the Act.

3. Testimony of Ellyn Brown

Mrs. Aiello also contends that the testimony of Ellyn Brown, a former Securities Commissioner of the State of Maryland, should be sufficient to implicate violations of Sections 11-401(b) and 11-703(a)(3)(i) of the Act. Indeed, during her testimony at the hearing before the arbitrators on February 26, 2004 she testified that a "registered investment advisor is someone who is registered with the State of Maryland or under the SEC under the Investment Advisors Act of 1940." Hearing Transcript, Testimony of Ellyn Brown, February 26, 2004, at p. 263. She further testified that if Mr. Anderson were working as an investment advisor for FBW, FBW would have filed its "registration with the State of Maryland,

[2] Section 11-703 (b)(1)(i) provides the legal remedy for Section 11-703(a)(1)(i) and Section 11-703 (b)(4)(i) provides the remedy for Section 11-703 (a)(3)(i). Both provide for reasonable attorneys fees as part of the remedy.

and Mr. Anderson would have been listed as an investment advisor representative with the State of Maryland." *Id.* at 263-64. Mr. Anderson "would nonetheless be required to be a registered investment advisor." *Id.* at 263.

Shortly thereafter, she testified that after reviewing Mr. Anderson's business card which did represent him to be a "Registered Investment Adviser," she called the Maryland Securities Division and discovered that he was not listed as such under FBW's notice filing to the state. *Id.* at 267-268. She then stated: "It is a violation of Maryland law to hold [oneself] out as a registered investment advisor or a financial planner or a financial consultant of any kind without a registration under either the federal or state statute." *Id.* at 268.

On the following day, February 27, 2004, Ms. Brown expanded somewhat on this statement.

> Q. What is the legal impact of someone who sets themselves – who represents themselves to be a registered investment adviser when, in fact, he is not?
>
> A (Brown). It's a violation of the Maryland act to hold out as an investment adviser, financial planner, investment consultant, et cetera, any sort of similar like title unless you are one.
>
> And I know there have been cases in which the failure to register and holding out in violation of the act have compelled recision of any contracts entered into during the time that the holding out was being – was in effect with the clients who were influenced by that, who relied on that.

Hearing Transcript, Testimony of Ellyn Brown, February 27, 2004, at p. 7.

Ms. Brown's testimony, even taken out of context as cited above and discussed below, does little to apprise the arbitrators of the relevant basis of

liability. At best, it informs the arbitrators that those who purchase from an unregistered investment advisor *may* be entitled to recision of the contracts, but it fails to identify the parameters in which recision is warranted or required. First, Ms. Brown's testimony cites no statute to support her conclusions and upon which the arbitrators could confer. Ms. Brown did not even employ the language of Sections 11-401(b) and 11-703 (a)(3)(i) of the Act. In fact, especially considering her last statement regarding reliance, the arbitrators may have believed that holding oneself as an investment adviser, without having registered as such, was a material misstatement argument under Section 11-703 (a)(1)(ii) rather than strict liability under Sections 11-401(b) and 11-703(a)(3)(i).

Additionally, she simply stated that she is familiar with cases that compelled recision but did not provide citations or even the circumstances under which those cases were decided. At no point did Ms. Brown state that these cases stood for the proposition that acting as an unregistered investment adviser results in strict liability. Again, having identified reliance as an element, the arbitrators may have believed that Mrs. Aiello had to have relied on Mr. Anderson's statement that he was an investment adviser and did not find enough evidence to support such a conclusion. Moreover, Ms. Brown stated that "there have been cases in which the failure to register and holding out in violation of the act have compelled recision," but such a statement leaves open the possibility that there may have been cases that did not so compel. Without providing the arbitrators the exact basis of liability for these cases, Ms.

Brown's testimony certainly cannot be said to have provided the arbitrators with the governing legal principles for violations under Sections 11-401(b) and 11-703(a)(3)(i), and, most certainly not in a manner that alerted the arbitrators to their controlling nature.

Finally, these isolated statements regarding the purported legal consequences of representing oneself as a legal adviser when one is not registered were situated between testimony related to Mrs. Aiello's lack of supervision claim against FBW under Section 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78t. The following testimony occurred immediately prior to and immediately after Ms. Brown's February 27, 2004 testimony referenced above (separated by lines below):

> Q. And specifically making reference to Mr. Anderson during the period he was dealing with Mrs. Aiello, the stationary, he was a registered investment advisor. Is that the type of thing that a *supervisor* should be aware of?
>
> A. Certainly. I would say -- I was very surprised to see this on two fronts. First of all, on this stationary, and I actually looked through to see if I could find a copy of Mr. Anderson's business card and couldn't, but on this type of stationary to be dominated [sic] as a registered investment advisor would cause me concerns on a couple of levels.
>
> First of all, I think it calls into question the capacity in which he was dealing with Mrs. Aiello, what he believed his was, was it as a stock broker or was it as an investment advisor, and that provokes the application of two very different standards, the fiduciary standard for investment advisors and the know your customer best execution suitability kind of standard for a registered rep of a broker dealer.

Secondly, it causes me concern because certainly Mr. Anderson was not a registered investment advisor. He was, if anything, a [*sic*] investment advisor representative, so whatever -- *in whatever case this stationary is wrong. How did this get printed? How did it get through [FBW's] compliance?*

I have worked with a lot of firms. In fact, a good part of my practice is looking hopefully on the preventative side at compliance systems and review systems, and most firms I know are compulsive about stationary review*. It's very important to a firm how the -- how an individual employee is represented to the world, that it needs to be accurate and not in any was misleading.*

So -- and I've been in debates where I've been included whether we were going to spell advisor with an O like the world generally spells it or adviser with an E like the act spells it, so I am very surprised to see this and *I can't understand what happened here and why there was a neglect of oversight on something this important, and candidly what concerned me is it fits in with the pattern of omission of any evidence of supervisory controls that I think we see* (inaudible 10.3) [*sic*].

Q. What is the legal impact of someone who– who represents themselves to be a registered investment adviser when, in fact, he is not?

A. It's a violation of the Maryland act to hold out as an investment adviser, financial planner, investment consultant, et cetera, any sort of similar like title unless you are one.

And I know there have been cases in which the failure to register and holding out in violation of the act have compelled recision of any contracts entered into during the time that the holding out was being – was in effect with the clients who were influenced by that, who relied on that.

Q. Now with respect to your review of... the *supervisory procedures in place*, was there anything significant with respect to those procedures....

Hearing Transcript, Testimony of Ellyn Brown, February 27, 2004, at p. 4 –8 (emphasis added).

Based on the italicized text above, the primary thrust of Ms. Brown's testimony regarding Mr. Anderson's registration status focused on FBW's lack of supervision and it's compliance systems. Mrs. Brown stated that she didn't understand how Mr. Anderson's letterhead representing him as an investment advisor when he was not so registered could get though FBW's compliance systems without some sort of supervision failure. Ms. Brown's short reference to the "legal impact of someone who… represents themselves to be a registered investment adviser" was buried in protracted testimony regarding FBW's supervision. Even if her testimony did adequately present the arbitrators with the legal principles defining violations of Sections 11-401(b) and 11-703(a)(3)(i) of the Act, such an isolated and oblique reference to registration status can hardly be said to sufficiently alert the arbitrators of a claim not identified in a Pre-Hearing Brief or Statement of Claim or in a manner indicating their controlling nature.

4. Testimony of Mr. Anderson and Mr. Abollo

Lastly, Mrs. Aiello cites to the testimony of Mr. Anderson and Ralph Abollo, one of FBW's office manager's as further support that they raised the issue of Mr. Anderson's registration status at the arbitration hearing. However, neither witness' testimony cures Mrs. Aiello's failure to provide the arbitrators with the governing legal principles for Section 11-401(b) and 11-703(a)(3)(i) violations. Essentially, Mr. Anderson testified that both his 2000 letterhead and the business

card he purportedly gave Mrs. Aiello in 2000 indicated that he was a "Registered Investment Adviser" even though he did not become a registered investment adviser until February 2003. *See* Hearing Transcript, Testimony of David Anderson, June 22, 2004, at pp. 108-09. This is factual testimony and fails to advise the arbitrators of *any* governing legal principles.

Likewise, Mr. Abollo's testimony fails to support Mrs. Aiello's argument for the same reason. In fact, Mr. Abollo's testimony even strengthens the contention that the issue of Mr. Anderson's registration status was raised, or at least understood by the arbitrators to be raised, in the context of Mrs. Aiello's lack of supervision claim against FBW. Mr. Abollo testified that as the office manager he was tasked with the responsibility of insuring that "people were not misrepresenting their registration status" and that he was not aware of Mr. Anderson's 2000 business card indicating that he was a "Registered Investment Adviser." Hearing Transcript, Testimony of Ralph Abollo, June 24, 2004, at p. 166. Moreover, even the questions posed to Mr. Abollo focused on Mr. Abollo's knowledge as office manager: ""[Y]ou were tasked with among other responsibilities insuring that you're [sic] people were not misrepresenting their registration status isn't that correct?" and "There is with broker dealers a requirement that any business cards or business stationary using the broker dealer logo be reviewed by the office manager, isn't that correct?" *Id.*

In short, not one document filed by Mrs. Aiello with the Arbitration Panel or any testimony or argument presented to the arbitrators at the hearing even

mentioned Sections 11-401(b) and 11-703(a)(3)(i) of the Act. That failure notwithstanding, Mrs. Aiello now complains that the arbitration panel acted in "manifest disregard for the law" when it rendered its 2-1 unfavorable opinion. Even the testimony provided by Mrs. Brown failed to apprise the arbitrators of the governing legal principles for deciding whether Mr. Anderson violated Sections 11-401(b) and 11-703(a)(3)(i) of the Act and could have been easily construed by the arbitrators to relate to other claims filed and briefed before the arbitrators, such as her lack of supervision claim against FBW or her Section 11-703 (a)(1)(ii) material statement claim against Mr. Anderson. Accordingly, this Court will deny Mrs. Aiello's Petition to Vacate Arbitration Award based on Sections 11-401(b) and 11-703(a)(3)(i) of the Act.

B. Remaining Bases for Vacatur

In her Petition to Vacate, Mrs. Aiello also requested this Court to vacate the arbitration award on two additional grounds. In paragraph 9 she asserts that the arbitration panel acted in "manifest disregard for the law" when it rendered its 2-1 decision in favor of FBW because FBW's "failure to supervise was uncontested by Respondents, and Anderson's conduct as a purported investment adviser led directly to Mrs. Aiello's financial losses." Petition to Vacate Arbitration Award, at ¶ 9. And, in paragraph 10 she asserts that the Respondents "failed to respond or to act on Mrs. Aiello's specific written instructions" to "take appropriate and timely action... to enable her to withdraw

funds from some of the variable annuity instruments… before the anniversary dates of those policies." *Id.* at ¶ 10.

These two additional bases for vacatur fail for numerous reasons. First, as a threshold matter, Mrs. Aiello has apparently abandoned these grounds as she has not even discussed them in either of her briefs to this Court relating to the Petition to Vacate. Second, and most importantly, Mrs. Aiello admits that "FBW and Anderson disputed most of Mrs. Aiello's contentions during the course of six days of hearings" except "[t]hey did [] not [] dispute… that, although Anderson held himself out as an investment adviser, he lacked the required registration under § 11-401(b) of the Corporations and Associations Article." Petitioner's Brief, at p. 5. Mrs. Aiello has failed to meet her "heavy burden" of proving that the arbitrators acted in "manifest disregard for the law." She has provided no evidence, or direct argument, with regards to these two grounds. She has not shown this Court that Respondents failed to dispute these claims or how the evidence she presented at the hearing in support of these claims were undisputed. Based on what has been presented to this Court, the Court concludes that the arbitrators may have heard the evidence and simply found that it did not support Mrs. Aiello's claims. Having failed to meet her burden, this Court will also deny Mrs. Aiello's Petition to Vacate Arbitration Award on these grounds as well.

Conclusion

For the afore-mentioned reasons, as well as those discussed in Respondents' Brief, this Court will deny Mary Aiello's Petition to Vacate Arbitration Award.

An Order reflecting this decision is attached.

_____ _____

Date Kaye A. Allison
Judge

MARY AIELLO,	*	IN THE
Petitioner,	*	CIRCUIT COURT
v.	*	FOR
FERRIS, BAKER, WATTS, INC., *et al.*,	*	BALTIMORE CITY
Respondents.	*	Case No.: 24-C-04-006218

* * * * * * * * * * *

ORDER

Upon consideration of Petitioner's Petition to Vacate Arbitration Award, Respondents' opposition thereto, and all supplemental briefs, and after conducting a hearing, it is this _____ day of June, 2006 by the Circuit Court for Baltimore City hereby

ORDERED that Petitioner's Petition to Vacate Arbitration Award is hereby **DENIED** for the reasons set forth in the accompanying Memorandum of Decision.

_____
Kaye A. Allison
Judge