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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

MARIA BREZDEN, et al.)
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 Plaintiffs,)
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 v.)
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 ASSOCIATED SECURITIES CORP.,)
 et al.,)
)
 Defendants.)
 _____)

CASE NO. CV 09-2771 AG (RNBx)

**ORDER DENYING MOTION TO
REMAND; MOTION TO DISMISS;
PETITION TO VACATE**

This case involves allegations of securities fraud in violation of the federal securities statutes. The matter was arbitrated in February 2009, and the arbitrator issued and served a written decision in favor of Plaintiffs on March 24, 2009. Defendants then filed a petition to vacate that award (“Petition”) in this Court, asserting that federal jurisdiction is appropriate given the subject matter of the underlying claims. Plaintiffs have now filed a motion to remand this case to state court (“Motion to Remand”) and a motion to dismiss the case based on lack of jurisdiction (“Motion to Dismiss”). Finding that this Court has subject matter jurisdiction over the Petition, the Court DENIES the Motion to Dismiss and the Motion to Remand. The Court also DENIES the Petition to Vacate, finding that the arbitrators in this case did not act in manifest disregard of federal law.

BACKGROUND

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3 Plaintiffs all invested in the Apex Equity Options Fund and L/P Premier Fund. (Markun
4 Decl. Ex. 1 at 10.) Before each plaintiff invested in Apex, each was given an Apex Private
5 Placement Memorandum (“PPM”) and a Supplement to the PPM, and each executed a
6 Subscription Agreement. Both the PPM and its Supplement note that the investment involves “a
7 high degree of risk.” (Markun Decl. Ex. 2 at 57, Ex. 3 at 118, 125.) The Subscription
8 Agreement provides that the subscriber has “been furnished,” “carefully read,” and “relied
9 solely” on the information contained in the PPM. (Markun Decl. Ex. 4 at 136.)

10 The Apex investments were not successful, and Plaintiffs suffered substantial losses. In
11 October 2007, Plaintiffs initiated an arbitration action against Defendant Associated Securities
12 Corp. (“ASC”) and Defendant Jeffrey Forrest (“Forrest”), seeking to recover their losses
13 resulting from the Apex investments. Plaintiffs alleged that Forrest, while working as a broker
14 for ASC, fraudulently induced them to invest in Apex by falsely stating that Apex was a safe,
15 secure, and liquid investment. Plaintiffs brought claims for federal securities fraud under Rule
16 10b-5 and common law fraud under the California Civil Code.

17 In responsive pleadings, ASC asserted that:

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19 [Plaintiffs] were provided written disclosures that set forth the risks
20 of investing in APEX but nevertheless decided to make the
21 investment. To the extent that the written materials contained
22 disclosures that were inconsistent with what [Plaintiffs] allege
23 Forrest said to them about APEX, such reliance on the verbal
24 statements of Forrest was unreasonable.

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26 (Markun Decl. Ex. 5 at 191.) During the arbitration, ASC also cited *Calvi v. Prudential*
27 *Securities, Inc.*, 861 F. Supp. 69 (C.D. Cal. 1994), and *Carr v. Cigna Securities, Inc.*, 95 F.3d
28 544 (7th Cir. 1996), for the proposition that claims for securities and common law fraud are

1 barred for lack of justifiable reliance when the investor claims to have relied upon
2 representations made by a broker that are at odds with clear and comprehensible investment
3 documents provided to the investor.

4 Nevertheless, the arbitration panel found Forrest liable for both securities fraud and
5 common law fraud, and found ASC liable for failing to properly supervise Forrest. (Markun
6 Decl. Ex. 1 at 11.) The panel wrote:

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8 . . . it is apparent that [Plaintiffs] reasonably and justifiably
9 relied on Forrest's advice. None of the [Plaintiffs] had any
10 experience in understanding about investing in options (with the
11 possible exception of Mark Baker), much less investing in an options
12 trading fund. Forrest held himself out as an expert in matters of this
13 sort and that is precisely why [Plaintiffs] hired him as their financial
14 advisor/planner. Indeed, when the [Plaintiffs] asked Forrest about
15 the contents of the PPM before they signed the Apex Subscription
16 Agreements, he told them that they did not need to read it themselves
17 because he had read it and "that was what they were paying him for."
18 The one claimant, Rena Stathacopulous, who did in fact read the
19 PPM and saw the various disclaimers about risk that were
20 inconsistent with what Forrest was touting about Apex was
21 essentially told to ignore it as "legalese." Forrest then went on to tell
22 her that he rated the risk of investing in Apex on a scale of 1 to 10
23 (with 1 being the "safest") as a 2 or 3 notwithstanding that options
24 trading, especially naked options trading, as was done here, is
25 probably a 9 or 10 on that same 10 point scale

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27 At bottom, the evidence is undisputed that [Plaintiffs] put their faith
28 and trust in Forrest. They had every right to rely on his purported

1 expertise in matters of finance – particularly here where they paid
2 him substantial fees to look after their interests in such matters.

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4 (Markun Decl. Ex. 1 at 10-12.)

5 Defendants now move to vacate that award, arguing that the arbitrators acted in manifest
6 disregard of federal securities law embodied in *Calvi* and *Carr*. Plaintiffs assert that the petition
7 must be remanded or dismissed for lack of federal jurisdiction, and that, in any case, the
8 arbitrators' award is consistent with federal law.

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10 **ANALYSIS**

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12 **1. MOTION TO REMAND**

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14 In their Motion to Remand, Plaintiffs argue that federal jurisdiction over Defendants'
15 petition to vacate the arbitration award is inappropriate. Defendants, on the other hand, assert
16 that the Petition "requires the Court to determine whether the arbitrators manifestly disregarded
17 federal law concerning securities fraud under Section 10b-5 of the Securities Exchange Act of
18 1934." As a result, Defendants argue, "this process so immerses this Court in questions of
19 federal law and their proper application that federal question subject matter jurisdiction is
20 present." (Notice of Removal 1:19-21.) The Court agrees.

21 It is well-settled that claims under the Federal Arbitration Act ("FAA") do not
22 automatically confer federal jurisdiction. *See, e.g., Southland Corp. v. Keating*, 465 U.S. 1, 16
23 (1984). Plaintiffs cite *Goodman v. Oppenheimer & Co.*, 131 F. Supp. 2d 1180, 1183 (C.D. Cal.
24 2001), for the holding that federal jurisdiction over a petition to vacate an arbitration award is
25 improper even where the petition argues that the arbitrator acted in manifest disregard of federal
26 law. But that holding was apparently overruled in *Luong v. Circuit City Stores, Inc.*, 368 F.3d
27 1109 (9th Cir. 2004). In *Luong*, the Ninth Circuit held that where a petition to vacate an
28 arbitration award alleges that the award was rendered "in manifest disregard of federal law," a

1 substantial federal question is presented and federal jurisdiction is proper. The court explained:

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3 in contrast to grounds of review that concern the arbitration process
4 itself—such as corruption or abuse of power—review for manifest
5 disregard of federal law necessarily requires the reviewing court to
6 do two things: first, determine what the federal law is, and second,
7 determine whether the arbitrator’s decision manifestly disregarded
8 that law. This process so immerses the court in questions of federal
9 law and their proper application that federal question subject matter
10 jurisdiction is present.

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12 *Id.* at 1112 (quoting *Greenberg v. Bear, Stearns & Co.*, 220 F.3d 22, 27 (2d Cir. 2000), *cert.*
13 *denied*, 531 U.S. 1075 (2001)). There is no question that Defendants’ Petition argues that the
14 arbitrators in this case acted in “manifest disregard of federal law.” Indeed, the Petition
15 primarily asserts that the arbitrators ignored two relevant federal securities laws cases: *Calvi* and
16 *Carr*. Consequently, under the clear holding of *Luong*, a substantial federal question has been
17 presented, and federal jurisdiction is proper. The Motion to Remand is DENIED.

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19 **2. MOTION TO DISMISS**

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21 Plaintiffs also move to dismiss the case for lack of subject matter jurisdiction. But in
22 Section 1 of this Order, the Court found that this case presents a substantial federal question and
23 that jurisdiction in this Court is appropriate. The Motion to Dismiss is DENIED.

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25 **3. PETITION TO VACATE**

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27 In their Petition, Defendants argue that the arbitrators’ award should be vacated because
28 the arbitrators found for Plaintiffs despite being “well aware that the law bars claims for

1 securities and common law fraud where an investor purports to have relied on representations by
2 the securities broker that are at odds with the investment documents.” (Mot. 1:7-9.)

3 An arbitration award must be vacated if “exhibits a manifest disregard of the law.”
4 *Schoenduve Corp. v. Lucent Technologies, Inc.*, 442 F.3d 727, 731 (9th Cir. 2006). An award
5 exhibits manifest disregard of the law where it is “clear from the record that arbitrators
6 recognized the applicable law and then ignored it.” *Luong*, 368 F.3d at 1112 (quoting *Mich.*
7 *Mut. Ins. Co. v. Unigard Sec. Ins. Co.*, 44 F.3d 826, 832 (9th Cir. 1995)).

8 Here, Defendants argue that *Calvi* and *Carr* “clearly state” that ASC’s “no justifiable
9 reliance” defense “absolutely bars [Plaintiffs’] securities and common law fraud claims as a
10 matter of law.” (Mot. 7:9-10.) The Court disagrees. The *Calvi* case primarily addresses when
11 the statute of limitations begins to run on an investor’s claim for fraud against a broker, and does
12 not hold that claims like Plaintiffs’ are barred as a matter of law. *Carr*, while more applicable to
13 the issues in this case, explicitly limits its holding, stating:

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15 We do not say that a written disclaimer provides a safe harbor in
16 every fiduciary case. Not all principals of fiduciaries are competent
17 adults; not all disclaimers are clear; and the relationship may involve
18 such a degree of trust invited by and reasonably reposed in the
19 fiduciary as to dispel any duty of self-protection by the principal.

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21 *Carr*, 95 F.3d at 548. Here, the arbitrators could have found that the relationship between
22 Forrest and Plaintiffs involved “such a degree of trust invited by and reasonably reposed in the
23 fiduciary as to dispel any duty of self-protection” by Plaintiffs. *See Carr*, 95 F.3d at 548. The
24 arbitrators clearly emphasized the relationship between Plaintiffs and Forrest, including his
25 statements that the investors did not need to read the investment documents and, if they did read
26 the investment documents, were free to ignore their contents as mere “legalese.” The arbitrators’
27 holding does not exhibit a “manifest disregard of the law,” and the Petition is DENIED.
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1 **DISPOSITION**

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3 The Motion to Dismiss, Motion to Remand, and Petition to Vacate are DENIED.

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5 IT IS SO ORDERED.

6 DATED: June 1, 2009

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8 Andrew J. Guilford
9 United States District Judge
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