

[Savine v. Interactive Brokers, LLC](#)

United States Court of Appeals for the Second Circuit

April 3, 2020, Decided

No. 19-2747

Reporter

799 Fed. Appx. 97 *; 2020 U.S. App. LEXIS 10500 **

ANTOINE SAVINE, Petitioner-Appellant, v. INTERACTIVE BROKERS, LLC, Respondent-Appellee.

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History: **[**1]** Appeal from a judgment of the United States District Court for the District of Connecticut (Dooley, J.).

[Savine v. Interactive Brokers, LLC, 2019 U.S. Dist. LEXIS 130264 \(D. Conn., Aug. 5, 2019\)](#)

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FOR RESPONDENT-APPELLEE: John W. Cerreta, Day Pitney LLP, Hartford, CT; Matthew B. Danzer, Thomas D. Goldberg, Day Pitney LLP, Stamford, CT.

Judges: PRESENT: DENNIS JACOBS, SUSAN L. CARNEY, JOSEPH F. BIANCO, Circuit Judges.

Opinion

[*98] SUMMARY ORDER

UPON DUE CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment entered on August 5, 2019, is **AFFIRMED**.

Petitioner-Appellant Antoine Savine ("Savine") appeals from the District Court's judgment dismissing his petition to vacate an August 2018 arbitral award (the "Award") in favor of Respondent-Appellee Interactive Brokers, LLC. The Award was rendered in the United Kingdom under the procedural arbitral law of the United Kingdom and the substantive law of Connecticut. The District Court

determined that it lacked subject matter jurisdiction over the petition. We assume the parties' familiarity with the underlying facts, procedural history, and arguments on appeal, to which we refer only as necessary to explain our decision to affirm the District Court's judgment. **[**2]**

We review *de novo* a dismissal for lack of subject matter jurisdiction under [Federal Rule of Civil Procedure 12\(b\)\(1\)](#). [Jaghory v. N.Y. State Dep't of Educ.](#), *131 F.3d 326, 329 (2d Cir. 1997)*.

Under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), to which the United States has acceded and which governed the parties' arbitration, "the country in which the award is made is said to have primary jurisdiction over the arbitration award. The New York Convention specifically contemplates that the state in which, or under the law of which, an award is made, will be free to set aside or modify an award" [CBF Indústria de Gusa S/A v. AMCI Holdings, Inc.](#), *850 F.3d 58, 71 (2d Cir. 2017)* (emphasis, quotation marks, citation, and brackets omitted); see also [Yusuf Ahmed Alghanim & Sons v. Toys "R" Us, Inc.](#), *126 F.3d 15, 21 (2d Cir. 1997)* ("We read Article V(1)(e) of the Convention to allow a court in the country under whose law the arbitration was conducted to apply domestic arbitral law, in this case the [FAA](#), to a motion to set aside or vacate that arbitral award."). In this case, the country with primary jurisdiction is the United Kingdom. The arbitration took place in the United Kingdom and the arbitral law of the United Kingdom governed its proceedings. See [Yusuf](#), *126 F.3d at 21 n.3* (explaining that, in addition to the country in which the arbitration took place, the country that supplies **[**3]** the procedural arbitral law has primary jurisdiction). Therefore, the courts of the United Kingdom have jurisdiction to entertain a motion to set aside or vacate the Award.

In contrast, the United States District Court for the District of Connecticut sits in secondary jurisdiction with respect to the Award. See [CBF Indústria](#), *850 F.3d at 71* ("All other signatory States are secondary jurisdictions, in which parties can only contest whether that State should enforce the arbitral award." (internal quotation marks and emphasis omitted)). As a secondary jurisdiction, the District Court has the power only to enforce or to refuse to enforce the Award; it may not set aside or vacate it. See *id.*; [Yusuf](#), *126 F.3d at 21* (citing with approval District Court statement that "only the state under whose procedural law the arbitration was conducted has jurisdiction under [the New York Convention] to vacate the award"). Only a court sitting in the country with **[*99]** primary jurisdiction may entertain a motion to vacate or set aside an award issued under the Convention. The courts of the United States have no such power in this case.

Savine argues that the District Court here may exercise jurisdiction over his claim because the Award violates United States **[**4]** public policy as expressed in its substantive securities and commodities laws and regulations. Consistent with the international arbitration principles just described, however, the provision of the New York Convention that Savine cites leaves no doubt that an alleged violation of public policy of the secondary jurisdiction provides only a reason for a court to refuse to enforce an arbitral award. Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, [21 U.S.T. 2517, Art. V\(2\)\(b\)](#) ("Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that . . . [t]he recognition or enforcement of the award would be contrary to the public policy of that country."). It does not confer jurisdiction over a petition to vacate.

* * *

We have considered Savine's other arguments and do not find them persuasive. For the reasons set forth above, the District Court's judgment is **AFFIRMED**.