

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

STATE OF WISCONSIN,

Petitioner,

v.

HO-CHUNK NATION,

Respondent.

ORDER

12-cv-505-bbc

Petitioner State of Wisconsin has filed what it calls a motion under Fed. R. Civ. P. 59(e) for “reconsideration and remand” of this court’s December 5, 2012 order vacating an arbitration award under 9 U.S.C. § 10(a)(4). In that order, I concluded that the arbitrator exceeded his powers because he “explained his award as an interpretation and enforcement of federal and state law, not as an interpretation or enforcement of the [gaming] compact” between the parties. Dkt. #12 at 7. In its motion, petitioner asks the court to remand the case to the arbitrator “for purposes of addressing the issue . . . whether the award involved an interpretation or enforcement of the Compact.” Dkt. #15 at 1.

The obvious question raised by petitioner’s motion for reconsideration is, “reconsider what?” The purpose of a Rule 59 motion is to allow a court to correct an error, Charles v. Daley, 799 F.2d 343, 348 (7th Cir. 1986), but petitioner does not argue in its motion that it was error to conclude that the arbitrator exceeded his authority. Instead, petitioner cites

Galt v. Libbey-Owens-Ford Glass Co., 397 F.2d 439, 441 (7th Cir. 1968), for the proposition that 9 U.S.C. § 10(d) gives a federal court authority “to vacate awards and direct rehearings by the arbitrators where a mutual, final, and definite award was not made if the time for rendering the award had not expired.”

Petitioner’s reliance on Galt is misplaced. That case did not involve a postjudgment motion. Rather, the original petition included a request to order the arbitrator to address certain questions that he did not resolve in his opinion. Id. at 441-42. In this case, petitioner acknowledges that it has never asked for clarification of the arbitrator’s opinion until now. It is well established that a party may not use Rule 59 to raise new issues that it could have raised earlier. United States v. 47 West 644 Route 38, Maple Park, Illinois, 190 F.3d 781, 783 (7th Cir. 1999) (“A party may not introduce evidence or make arguments in a Rule 59 motion that could or should have been presented to the court prior to judgment.”); Frietsch v. Refco, Inc., 56 F.3d 825, 828 (7th Cir. 1995) (“It is not the purpose of allowing motions for reconsideration to enable a party to complete presenting his case after the court has ruled against him.”).

Petitioner says that it could not have predicted how the court would rule on its petition, but that argument is not persuasive for two reasons. First, the conclusion in this case was that the arbitrator’s award had to be vacated because he failed to justify his decision by relying on the compact, the only source of his authority. In fact, the only references to the compact that he made were that the dispute fell outside its scope. E.g., Dkt. #6-17 at 2 (“[The gaming facility in dispute], however, is not governed by the Compact.”). Instead,

he relied solely on federal and state law. Because respondent had been arguing consistently that the arbitrator exceeded his authority for that reason, it is disingenuous for petitioner to suggest that the court's decision came out of left field. Second, the cases petitioner cites are about unforeseen *errors*. Miller v. Safeco Insurance Co. of America, 683 F.3d 805, 813 (7th Cir. 2012); Sosebee v. Astrue, 494 F.3d 583, 589-90 (7th Cir. 2007). Again, petitioner is not arguing that it was error to vacate the arbitration award, so Miller and Sosebee are not instructive.

In sum, regardless whether the problems with the arbitration award could be resolved through an amendment, it is too late for petitioner to seek a remand now. I express no opinion on the question whether petitioner may ask the arbitrator directly to clarify his award.

ORDER

IT IS ORDERED that petitioner State of Wisconsin's "Motion for Reconsideration and Remand," dkt. #14, is DENIED.

Entered this 25th day of February, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge