

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D20548
W/prt

_____AD3d_____

Argued - September 11, 2008

STEVEN W. FISHER, J.P.
MARK C. DILLON
WILLIAM E. McCARTHY
ARIEL E. BELEN, JJ.

2007-08210

DECISION & ORDER

In the Matter of Robert Steinberg, appellant,
v Novitt & Sahr, respondent.

(Index No. 25540/04)

Godosky & Gentile, P.C., New York, N.Y. (Brian J. Isaac and Jillian Rosen of counsel), for appellant.

Goldstein & Greenlaw LLP (Abbey F. Goldstein and Mauro Goldberg & Lilling LLP, Great Neck, N.Y. [Matthew W. Naparty], of counsel), for respondent.

In a proceeding pursuant to CPLR article 75 to vacate an arbitration award dated September 26, 2006, which awarded Novitt & Sahr two-thirds of certain disputed attorney's fees collected by the petitioner, the petitioner appeals, as limited by his brief, from so much of a judgment of the Supreme Court, Queens County (Agate, J.), entered August 30, 2007, as, upon a decision of the same court dated May 8, 2007, denied the petition and granted that branch of the cross petition of Novitt & Sahr which was to confirm the arbitration award.

ORDERED that on the Court's own motion, the notice of appeal from the decision is deemed a premature notice of appeal from the judgment (*see* CPLR 5520[c]); and it is further,

ORDERED that the judgment is affirmed insofar as appealed from; and it is further,

ORDERED that one bill of costs is awarded to the respondent.

An arbitration award may not be vacated unless it is irrational, violates a strong public policy, or clearly exceeds a limitation imposed on the arbitrator as enumerated in CPLR 7511(b) (*see*

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Matter of Board of Educ. of Arlington Cent. School Dist. v Arlington Teachers Assn., 78 NY2d 33, 37; *Matter of County of Nassau v Civil Serv. Empls. Assn., Inc.*, 19 AD3d 414, 415). An arbitrator exceeds his or her power under CPLR 7511(b)(1)(iii) if the award "g[ives] a completely irrational construction to the provisions in dispute and, in effect, ma[kes] a new contract for the parties" (*Matter of National Cash Register Co. [Wilson]*, 8 NY2d 377, 383; see *Rochester City School Dist. v Rochester Teachers Assn.*, 41 NY2d 578, 582; *Matter of County of Nassau v Civil Serv. Empls. Assn., Inc.*, 19 AD3d at 415). Contrary to the appellant's contention, the arbitrator's determination was within her power, did not violate a strong public policy, and was not irrational. Accordingly, the award was properly confirmed.

FISHER, J.P., DILLON, McCARTHY and BELEN, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court