

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

D30652
W/kmb

_____AD3d_____

Argued - March 4, 2011

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
RUTH C. BALKIN
SHERI S. ROMAN, JJ.

2010-00591

DECISION & ORDER

In the Matter of New York Central Lines, LLC, etc.,
appellant, v Frank Vitale, et al., respondents.

(Index No. 20662/02)

McGuireWoods LLP, New York, N.Y. (Richard L. Jarashow of counsel), for
appellant.

Sonnenschein Nath & Rosenthal LLP, New York, N.Y. (Richard M. Zuckerman and
Abigail d. Lauer of counsel), for respondents.

In a proceeding pursuant to CPLR article 75, inter alia, to permanently stay arbitration, New York Central Lines, LLC, appeals from a judgment of the Supreme Court, Queens County (Hart, J.), entered November 13, 2009, which, upon an order of the same court entered April 11, 2003, denying the petition and directing the parties to proceed to arbitration, and upon an order of the same court entered October 1, 2009, granting the motion of Frank Vitale and Francis Vitale to confirm an arbitration award dated February 27, 2009, and denying its cross motion to vacate the arbitration award, is in favor of Frank Vitale and Francis Vitale and against it confirming the award.

ORDERED that the judgment is affirmed, with costs.

An award made after a consensual arbitration may be vacated by a court pursuant to CPLR 7511(b)(1)(iii) on only three narrow grounds: if it is clearly violative of a strong public policy, if it is totally or completely irrational, or if it manifestly exceeds a specific, enumerated limitation on the arbitrator's power (*see Matter of Erin Constr. & Dev. Co., Inc. v Meltzer*, 58 AD3d 729, 729; *see also Matter of United Fedn. of Teachers, Local 2, AFT, AFL-CIO v Board of Educ. of City*

March 29, 2011

Page 1.

MATTER OF NEW YORK CENTRAL LINES, LLC v VITALE

School Dist. of City of N.Y., 1 NY3d 72, 79; *Matter of Board of Educ. of Arlington Cent. School Dist. v Arlington Teachers Assn.*, 78 NY2d 33, 37; *Cifuentes v Rose & Thistle, Ltd.*, 32 AD3d 816; *Matter of Rockland County Bd. of Coop. Educ. Servs. v BOCES Staff Assn.*, 308 AD2d 452, 453). An award is irrational if there is “no proof whatsoever to justify the award” (*Matter of Peckerman v D & D Assoc.*, 165 AD2d 289, 296). Even if the arbitrator misapplies substantive rules of law or makes an error of fact, unless one of the three narrow grounds applies in the particular case, the award will not be vacated pursuant to CPLR 7511(b)(1)(iii) as exceeding the arbitrator’s power (*see Wien & Malkin LLP v Helmsley-Spear, Inc.*, 6 NY3d 471, 479-480; *Matter of Silverman [Benmor Coats]*, 61 NY2d 299, 308; *Matter of Sprinzen [Nomborg]*, 46 NY2d 623, 629). “An arbitrator is not bound by principles of substantive law or rules of evidence, and may do justice and apply his or her own sense of law and equity to the facts as he or she finds them to be” (*Matter of Erin Constr. & Dev. Co., Inc. v Meltzer*, 58 AD3d 729; *see Matter of Silverman [Benmor Coats]*, 61 NY2d at 308; *Matter of MBNA Am. Bank, N.A. v Karathanos*, 65 AD3d 688, 689).

Applying these principles to the matter at bar, the Supreme Court properly confirmed the arbitration award because there was sufficient evidence in the record to establish that the arbitrator’s award was not totally or completely irrational (*see Caso v Coffey*, 41 NY2d 153, 158; *Matter of Erin Constr. & Dev. Co., Inc. v Meltzer*, 58 AD3d 729; *Matter of Salco Constr. Co. v Lasberg Constr. Assoc.*, 249 AD2d 309). In addition, the arbitrator’s award did not exhibit a “manifest disregard of [the] law” (*Rai v Barclays Capital, Inc.*, 739 F Supp 2d 364, 375; *see Matter of Teamsters Local 814 Welfare, Pension & Annuity Funds v County Van Lines, Inc.*, 56 AD3d 567, 568; *Matter of Bart v Miller*, 302 AD2d 379, 380; *cf. Stolt-Nielsen S.A. v AnimalFeeds Int’l. Corp.*, 559 US _____, 130 S Ct 1758).

MASTRO, J.P., SKELOS, BALKIN and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court