

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

D33919  
W/kmb

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Argued - January 19, 2012

REINALDO E. RIVERA, J.P.  
THOMAS A. DICKERSON  
CHERYL E. CHAMBERS  
LEONARD B. AUSTIN, JJ.

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2010-01283  
2010-05789  
2010-05790

DECISION & ORDER

In the Matter of Cheskil Shimon, respondent-appellant,  
v Herman Silberman, also known as Zvi Elimelach  
Silberman, et al., appellants-respondents.

(Index No. 1281/09)

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Meissner, Kleinberg & Finkel, LLP, New York, N.Y. (George S. Meissner of counsel), for appellants-respondents.

J. Michael Gottesman, New York, N.Y., for respondent-appellant.

In a proceeding pursuant to CPLR article 75 to confirm an arbitration award, Herman Silberman, also known as Zvi Elimelach Silberman, and Chaim Silberman appeal (1) from an order of the Supreme Court, Kings County (Schneier, J.), dated December 21, 2009, which granted the petition and denied their motion to dismiss the petition and their cross petition to vacate the arbitration award, (2) as limited by their brief, from so much of an order of the same court dated May 13, 2010, as, upon reargument, adhered to the determination in the order dated December 21, 2009, and (3) from a judgment of the same court entered June 1, 2010, which, upon the orders, is in favor of the petitioner and against them in the principal sum of \$465,000, and the petitioner cross-appeals from so much of the judgment as awarded him interest only from January 1, 2010.

ORDERED that the appeal from the order dated December 21, 2009, is dismissed, as that order was superseded by the order dated May 13, 2010, made upon reargument; and it is further,

ORDERED that the appeal from the order dated May 13, 2010, is dismissed; and it is further,

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ORDERED that the judgment is modified, on the law, by deleting the provision thereof awarding prejudgment interest only from January 1, 2010, and substituting therefor a provision awarding prejudgment interest from September 15, 2008; as so modified, the judgment is affirmed, and the matter is remitted to the Supreme Court, Kings County, for calculation of the interest due in accordance herewith and the entry of an appropriate amended judgment thereafter; and it is further,

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

The appeal from the intermediate order dated May 13, 2010, must be dismissed because the right of direct appeal therefrom terminated with the entry of judgment in the action (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on the appeal from the order dated May 13, 2010, are brought up for review and have been considered on the appeal from the judgment (*see* CPLR 5501[a][1]).

The Supreme Court did not err in confirming the subject arbitration award, in denying the motion of Herman Silberman, also known as Zvi Elimelach Silberman, and Chaim Silberman (hereinafter together the appellants), to dismiss the petition, and in denying their cross petition to vacate the award. An arbitration award may be vacated pursuant to CPLR 7511(b)(1)(iii) on one of three grounds: that it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation of the arbitrator's power (*see Matter of New York City Tr. Auth. v Transport Workers Union of Am., Local 100*, 14 NY3d 119, 123; *Matter of United Fedn. of Teachers, Local 2, AFT, AFL-CIO v Board of Educ. of City School Dist. of City of N.Y.*, 1 NY3d 72, 79; *Matter of Tsikitas v Nationwide Ins. Co.*, 33 AD3d 928, 929). Here, contrary to the appellants' contention, the award was not irrational (*see Matter of Miro Leisure Corp. v Prudence Orla, Inc.*, 83 AD3d 945, 946; *Shnitkin v Healthplex IPA, Inc.*, 71 AD3d 979, 981-982; *Matter of Salco Constr. Co. v Lasberg Constr. Assoc.*, 249 AD2d 309). Further, under the circumstances, in issuing the final arbitration award, the arbitrators did not exceed an enumerated limitation on their power by improperly modifying a prior award (*see* CPLR 7509, 7511[c]; *see also Matter of Meisels v Uhr*, 79 NY2d 526, 535).

Moreover, as the Supreme Court properly determined, the appellants failed to demonstrate that the award should be vacated based on the alleged inconsistency of the award with Not-For-Profit Corporation Law § 720-a, as no such inconsistency was shown to exist (*see Bernbach v Bonnie Briar Country Club*, 144 AD2d 610, 611; *see also Matter of Metrobuild Assoc., Inc. v Nahoum*, 51 AD3d 555, 557).

The appellants' contention regarding a purported violation of the right to counsel is without merit, as the record does not show that the appellants were denied the right to be represented by an attorney at law at the arbitration proceedings (*see* CPLR 7506[d]). There is no merit to the appellants' contention that the right to counsel at an arbitration proceeding encompasses the right to be represented by a religious representative (*id.*). The appellants' contention regarding the alleged improper service of a copy of the arbitration award was properly rejected by the Supreme Court, as the appellants failed to allege any prejudice stemming from the manner of service, nor is any prejudice apparent from the record (*see Matter of Westminster Constr. v Peconic Bay Golf*, 288 AD2d 231; *Matter of Jones v Progressive Cas. Ins. Co.*, 237 AD2d 358).

Upon confirmation of an arbitrator's award, interest should be awarded from the date of the award (*see Board of Educ. of Cent. School Dist. No. 1 of Towns of Niagara, Wheatfield, Lewiston & Cambria v Niagara-Wheatfield Teachers Assn.*, 46 NY2d 553, 558; *Matter of Curtis Lbr. Co., Inc. [American Energy Care, Inc.]*, 81 AD3d 1225; *Matter of County of Westchester v Doyle*, 43 AD3d 1055, 1056) or, where an arbitration award "provides for payment within a certain time period," interest should be awarded from the expiration of that period (*Matter of Meehan v Nassau Community Coll.*, 242 AD2d 155, 160). Accordingly, we modify the judgment to award interest from September 15, 2008, the date on which the payment period expired.

RIVERA, J.P., DICKERSON, CHAMBERS and AUSTIN, JJ., concur.

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DECISION & ORDER ON MOTION

In the Matter of Cheskil Shimon, respondent-appellant,  
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Motion by the appellants-respondents on appeals from two orders of the Supreme Court, Kings County, dated December 21, 2009, and May 13, 2010, respectively, and on an appeal and cross appeal from a judgment of the same court entered June 1, 2010, to strike Point II of the respondent-appellant's reply brief on the ground that the respondent-appellant improperly raises arguments for the first time in reply. By decision and order on motion of this Court dated April 12, 2011, the motion was held in abeyance and referred to the panel of Justices hearing the appeals for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, and upon the argument of the appeals and cross appeal, it is,

ORDERED that the motion to strike Point II of the respondent-appellant's reply brief is granted, and that portion of the respondent-appellant's reply brief has not been considered in the determination of the appeals and cross appeal.

RIVERA, J.P., DICKERSON, CHAMBERS and AUSTIN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court