

**SHORT FORM ORDER/JUDGMENT**

NEW YORK SUPREME COURT : QUEENS COUNTY

P R E S E N T : HON. JOSEPH P. DORSA  
**Justice**

**IAS PART 12**

- - - - - x

IN THE MATTER OF THE APPLICATION TO  
CONFIRM AN ARBITRATION AWARD UNDER  
ARTICLE 75, CPLR, BY

Index No.: 21225/06

TEAMSTERS LOCAL 814 WELFARE, PENSION  
AND ANNUITY FUNDS, by their trustees,  
DENNIS FARRELL, STEPHEN McINERNEY,  
GEORGE DANIELLO and JAMES O'MARA,

Motion Date: 3/14/07

Motion No.: 28

Petitioners,

- against -

COUNTY VAN LINES, INC.,

Respondent.

- - - - - x

The following papers numbered 1 to 12 on this motion:

	<u>Papers Numbered</u>
Petitioners' Notice of Petitioner & Petition- Affirmation-Affidavit(s)-Service-Exhibit(s)	1-4
Respondent's Notice of Cross-Petition & Affirmation in Opposition-Affidavit(s)-Exhibit(s)	5-8
Petitioners' Affirmation in Opposition & Reply Exhibit(s)	9-10
Respondent's Reply Affirmation	11-12

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By notice of petition and petition, Teamsters Local 814 Welfare Pension, and Annuity Funds (Local 814), seeks an order of the Court confirming the award of the arbitrator, directing judgment to be entered thereon; and, granting petitioners their costs and disbursements.

Respondent, County Van Lines, Inc. (County), opposes and cross-petitions for an order pursuant to CPLR § 7511, on the

grounds that there was a miscalculation, and that there was no agreement for arbitration or payments.

Petitioner files an opposition to the cross-petition and a reply to respondent's opposition. Respondent files a reply.

The underlying action is a claim by petitioners that respondents failed to contribute to certain employee funds as required by their collective bargaining agreement. Petitioner maintains that despite requests to respondent that the contributions be forthcoming, respondent failed and refused to do so. Petitioners, therefore submitted the issue to arbitration, again pursuant to the parties agreement.

A hearing was ordered and held before an arbitrator on March 14, 2006, where respondent attended, represented by counsel.

After consideration of the testimony and evidence presented, the arbitrator rendered a decision on May 19, 2006, awarding petitioners the following sums:

Teamsters Local 814	
Welfare Fund	\$44,550
Pension Fund	44,410
Annuity Fund	29,491

plus interest on arrears in the sum of \$9,242.17; liquidated damages in the sum of \$23,690.26; attorneys' fees in the sum of \$3,000 and costs in the sum of \$800; for a total of \$155,183.74, representing the period March 2005 to January 2006.

Respondent has failed to comply with or pay the awarded amount.

Instead, respondent maintains, as they did before the arbitrator, that the collective bargaining agreement upon which petitioner relies, terminated on April 30, 2005 and that no contributions by County could be considered owed after that date. Furthermore, respondent maintains that the arbitrator ignored their e-mail evidence explaining that the parties agreement allowed for interest on the amount owed or liquidated damages, but not both.

Thus, respondent argues the award should be modified to reflect such. Respondent, however, does not provide the Court with the amount to be substituted.

Petitioner responds that the arbitrator specifically considered each of those issues and the arguments raised by respondent and found that the agreement applied to the period in question and that the agreement called for interest plus liquidated damages when the employer failed to make contributions to the fund.

It is well settled that "[o]nce a dispute has moved to arbitration, a party seeking to vacate the award has a heavy burden because questions of law and fact are merged in the award and are not within the power of the judiciary to resolve" (citations omitted) Fishman v. Roxanne Mgt., 24 AD3d 365, 366, 806 NYS2d 541 (1<sup>st</sup> Dep't 2005).

"It is equally well settled that a party who participates in an arbitration may seek to vacate an arbitration award only on the grounds that the rights of that party were prejudiced by corruption, fraud, or misconduct in procuring the award, that the arbitrator lacked impartiality, that the arbitrator exceeded his power or failed to make a final or definite award, or that there was a procedural failure that was not waived. (See CPLR 7511[b][1]; Matter of Sims v. Siegelson, 246 AD2d 374, 376 [1998])." Id.

Finally, "...New York Courts have uniformly held that an arbitrator exceeds his powers only when he ignores specific limitations on the powers delegated to him in the arbitration clause or he gives a completely irrational construction to the provisions of the parties agreement, thereby effectively rewriting it. Integrated Sales v. Maxwell Corp. of Am., 94 AD2d at 225; see also Matter of Silverman, 61 NY2d at 307..." Id.

Moreover, "[a]n arbitrator's award will not be vacated even [if] the court concludes that his interpretation of the agreement misconstrues or disregards its plain meaning or misapplies substantive rules of law, unless it is violative of a strong public policy, or is totally irrational, or exceeds a specifically enumerated limitation on his power (Matter of Silverman [Benmor Coats], 61 NY2d 299, 308; see Matter of Neiman v. Backer, 211 AD2d 721)." Matter of 645 First Avenue Manhattan Co. v. Kalisch-Jarcho, Inc., 220 AD2d 517, 518 (2d Dep't 1995).

Respondent fails to meet his burden herein. Nothing about the arbitrator's determination and award rises to the high level necessary for this Court to vacate his findings.

Respondent also makes the claim, however, that the arbitrator simply "miscalculated," that is, that the awarded sum

was the result of some mathematical error. Respondent submits no proof of such a mathematical error, however.

In fact, what respondent mischaracterizes as a claimed error in math is their repeated claim of misinterpretation of the provision which the arbitrator concluded allowed for an award of interest and liquidated damages. Matter of Kew Queens Corp., 277 AD 1003, 100 NYS2d 185 (2d Dep't 1950). (See also, Matter of Bay Ridge Med. Group v. Health Ins. Plan of Greater N.Y., 22 AD2d 807, 254 NYS2d 616 (2d Dep't 1964) ("the Court may not modify the award on the basis of [alleged] miscalculation of figures unless there is a miscalculation of figures within the meaning of CPLR 7511...").

Accordingly, upon all of the foregoing, respondent's cross-motion is denied in its entirety; and, it is further

**ORDERED AND ADJUDGED**, that the petition is granted and the award rendered in favor of petitioner and against respondent is confirmed; and, it is further

**ORDERED AND ADJUDGED**, that petitioner, Teamsters Local 814 Welfare, Pension and Annuity Funds, having an address at 33-01 38<sup>th</sup> Avenue, Long Island City, N.Y. shall have judgment and recover against respondent, County Van Lines, Inc., having an address at 250 West Nyack Road, West Nyack, N.Y., in the amount of 155,183.74, plus interest at the statutory rate of 9% per annum from the date of May 19, 2006, as computed by the Clerk in the amount of \$\_\_\_\_\_, together with costs and disbursements in the amount of \$\_\_\_\_\_, as taxed by the Clerk, for the total amount of \$\_\_\_\_\_, and that the petitioner have execution therefore.

Dated: Jamaica, New York  
April 23, 2007

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**JOSEPH P. DORSA**  
**J.S.C.**