SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. VERNA L. SAUNDERS, JSC** **PART** **36**

Justice

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INDEX NO. 652367/2025

MARC TORRES,
Petitioner,

MOTION SEQ. NO. 001

- v -

DECISION + ORDER ON MOTION

WELLS FARGO CLEARING SERVICES, LLC,
Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 12, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, 48, 50, 51

were read on this motion to/for **VACATE AWARD**.

Petitioner, a former financial advisor for respondent who worked in the securities industry for approximately seven (7) years, moves the court, pursuant to CPLR 7511 and the Federal Arbitration Act ("FAA") (9 USC § 10[a]), to vacate a FINRA award[1] rendered against him and in respondent's favor.[2] Petitioner asserts that vacatur of the FINRA award is warranted because Arbitrator Alfreida B. Kenny, the chairperson of the arbitration panel's, (hereinafter "chairperson"), failure to disclose pertinent information during the pre-hearing stage prejudiced his rights to a fair hearing. Petitioner commenced the subject FINRA arbitration due to issues concerning repayment of promissory notes that he had executed to secure loans from respondent. According to petitioner, three arbitrators were ultimately selected[3] to sit on the arbitration panel after the parties ranked arbitrators based on Arbitrator Disclosure Reports (Profiles) that were submitted as required by FINRA Rule 13400. In addition, FINRA Rule 13408 has disclosure requirements mandating a potential arbitrator to "make a reasonable effort to learn of, and must disclose to the Director, any circumstances which might preclude the arbitrator from rendering an objective and impartial determination in the proceeding." Petitioner posits that the FINRA Arbitrator Guide, annexed herein at Exhibit B, further directs that any such "[d]isclosure includes any relationship, experience and background information that may affect or even appear to affect the arbitrator's ability to be impartial and the parties' belief that the arbitrator will be able to render a fair decision." He insists that he relied on the chairperson of the arbitration panel's representation that she had no judgments or liens against her in ultimately ranking her among the other arbitrators available to be selected to hear the case.

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[1] In the FINRA arbitration, petitioner sought damages in excess of $5 million, alleging respondent's breach of implied and express promises relating to its employment of petitioner.

[2] On March 20, 2025, the arbitrators rendered a decision denying petitioner's relief sought in its entirety, and awarding respondent compensatory damages in the amount of $1,358,704.00 relating to the promissory notes; costs in the amount of $120,769.00; and $686,906.00 in attorney fees, as well as, awarding forum fees against petitioner in the amount of $56,025.00.

[3] Petitioner avers that FINRA used its own algorithm to select three arbitrators to hear the case from the rankings.

As relevant here, petitioner sets forth that contrary to such representation, the chairperson did in fact have thirty (30) liens and/or judgments against her, including from the IRS, the NYC Department of Finance, and NYS Department of Taxation and Finance. Petitioner also notes that this failure to disclosure denied the parties an opportunity to fully assess and decide whether to select her as an arbitrator, or to even maintain her on the panel. To the extent the nondisclosure misled the parties and tainted the entire selection process, petitioner argues that he has been prejudiced by the arbitration award which awarded respondent $686,906.00 in attorney fees and costs in the amount of $120,769.00 against petitioner, in direct contradiction to the terms of the promissory notes. As such, petitioner urges the court to vacate the FINRA award and remand the matter for a new hearing at FINRA because the hearing "panel exceeded its powers, manifestly disregarded the law, and prejudiced the rights of petitioner" (NYSCEF Doc. No. 1, *petition to vacate arbitration award*).

Respondent opposes the application and cross-petitions the court for an order confirming the FINRA award, attached herein as Exhibit C (NYSCEF Doc. No. 28), and also granting reasonable attorney's fees and cost incurred in opposing the petition to vacate (NYSCEF Doc. 22, *notice of cross-petition to confirm arbitration award*). Respondent contends that the liens and judgments petitioner submits in support of his application lack authenticity insofar as same is verified only by petitioner's counsel. It insists that said counsel's verification fails to authenticate the source of the list or any information about how it was obtained. Respondent also asserts that petitioner's list of liens and judgments is misleading because a proper public records search reveals that the chairperson does not presently have any outstanding liens or judgments against her. To the extent petitioner has failed to demonstrate that the chairperson's alleged failure to disclose liens and judgments against her led to an improper or biased decision from the arbitration panel, respondent avers that the FINRA award should be confirmed.

Next, respondent posits that the application to vacate the award should be denied because liens and judgments against the chairperson could have been discovered by petitioner prior to the hearing. Respondent insists that petitioner has not presented any evidence showing that the chairperson was biased against him based on the now satisfied liens and judgments against her; thus, vacatur of the award is not warranted because the purported failure to disclose is immaterial. It further insists that in addition to petitioner's failure to provide evidence of prejudice or impropriety in the arbitration process, the arbitration award was a unanimous decision among three neutral arbitrators, and the arbitration award is valid with a mere majority of the arbitrators. Respondent urges the court to confirm that arbitration award insofar as grounds for its vacatur do not exist. Lastly, respondent maintains that the court should grant its attorney's fees and costs because recovery of same is permitted under the terms of the promissory notes petitioner executed (NYSCEF Doc. No. 42, *opposition to motion to vacate and cross-petition to confirm award*).

In reply, petitioner contends that the multiple judgments and liens (one of which had been held by the respondent herein) were of significant amounts and indicative of financial instability, and that the parties could have considered whether the amounts affect the chairperson's probable bias toward individuals, like himself, who are alleged to owe significant sums to third parties. By concealing the liens and judgments, even if currently satisfied, petitioner avers that the chairperson deprived the parties of the opportunity to challenge her appointment on fully

informed grounds in violation of FINRA protocol, the court system, and the FAA's mandate to provide a fair, neutral forum free from prejudice and perceived partiality. Petitioner argues that such nondisclosure impugns her disinterestedness and, as the chair of the panel, whose responsibilities included managing the proceeding, ruling on procedural issues, and guiding deliberations, undermines the integrity of the entire panel. As such, petitioner urges the court to vacate the arbitration award at issue and direct that a new hearing be held (NYSCEF Doc. No. 43, *reply*).

"[A] court may vacate an arbitration award only if it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power." (*Matter of Falzone [New York Cent. Mut. Fire Ins. Co.]*, 15 NY3d 530, 534 [2010]; see CPLR 7511[b]). CPLR § 7511(b) provides, a party may seek to vacate the arbitrator's award on the grounds that "the rights of that party were prejudiced by: (i) corruption, fraud or misconduct in procuring the award; or (ii) partiality of an arbitrator appointed as a neutral, except where the award was by confession; or (iii) an arbitrator, or agency or person making the award exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter was not made; or (iv) failure to follow the procedure of this article [Article 75], unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection."

Pursuant to 9 USC § 10(a)(1), an arbitration award may be vacated "where there was evident partiality or corruption in the arbitrators, or either of them." Maximum prehearing disclosure is required and it is therefore "incumbent upon an arbitrator to disclose any relationship which raises even a suggestion of possible bias" (*Matter of Weinrott [Carp]*, 32 NY2d 190, 201 [1973]), although a party may waive its challenge to an arbitrator's purported bias (see *Douglas Elliman, LLC v Parker Madison Partners, Inc.*, 45 AD3d 252, 252 [2007]) such as by not objecting when it learns of the alleged lack of partiality.

Here, the application to vacate the FINRA arbitration award is granted. The Court of Appeals has expressed a policy of maximum pre-hearing disclosure in arbitration proceedings and therefore, the chairperson should have fully disclosed any relationship or information which could even raise a suggestion of possible bias (*Matter of SOMA Partners, LLC v Northwest Biotherapeutics*, Inc., 41 AD3d 257, 258 [1st Dept 2007]). Given the fact that she had liens and judgments against her, and one in particular where the lien/judgment was in favor of the respondent herein, the chairperson could not dispense with disclosure, notwithstanding respondent's argument that the subject liens and/or judgments were satisfied. Such nondisclosure concealed pertinent information that tainted the integrity of the arbitration process and created, at the very least, an appearance of impropriety. "While [the] responsibility to ascertain potentially disqualifying facts does rest upon the parties, the major burden of disclosure properly falls upon the arbitrator" (*Matter of J. P. Stevens & Co. [Rytex Corp.]*, 34 NY2d 123, 129, [1974]). "After all, the arbitrator is in a far better position than the parties to determine and reveal those facts that might give rise to an inference of bias" (*id*). Respondent fails to convince the court that failure to provide full disclosure on the part of the chairperson was excused or harmless because the liens and judgment against her were discoverable information prior to commencement of the arbitration proceeding. Insofar as it has been ably held that "[p]recisely because arbitration awards are subject to such judicial deference, it is imperative that the

integrity of the process, as opposed to the correctness of the individual decision, be zealously safeguarded" (*Goldfinger v Lisker*, 68 NY2d 225, 230 [1st Dept 1986]), respondent's contention that the arbitration award should not be vacated because it only needed a majority vote in its favor to prevail is unconvincing. The undisclosed information reasonably supports an inference of bias that tainted the entire hearing and constitutes sufficient grounds for vacatur (see *Morgan Guar. Trust Co. v Solow Bldg. Co.*, 279 AD2d 431, 431 [1st Dept 2001]). Therefore, the arbitration award must be vacated and a new arbitration conducted.

ORDERED that application to vacate the FINRA arbitration award March 20, 2025, with case number 23-00824, is granted, and said award is hereby vacated; and it is further

ORDERED that a new arbitration shall be conducted; and it is further

ORDERED that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for petitioner shall serve a copy of this decision and order, with notice of entry, upon respondent, as well as upon the Clerk of the Court in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases.

This constitutes the decision and order of the Court.

March 4, 2026

HON. VERNA L. SAUNDERS, JSC

CHECK ONE:	[ ]	**CASE DISPOSED**		[X]	**NON-FINAL DISPOSITION**		
	[X]	**GRANTED**	[ ] **DENIED**	[ ]	**GRANTED IN PART**	[ ]	**OTHER**
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**