50-09 2nd St LLC v Ianvil Assoc., Inc.
2005 NY Slip Op 30632(U)
April 8, 2005
Supreme Court, New York County
Docket Number: 114174/04
Judge: Marcy Friedman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - - PART 57

50-09 2nd STREET LLC,

Petitioner,

DECISION/ORDER

-against-

Index No. 114174/04

IANVIL ASSOCIATES, INC.,

Respondent.

Present: Hon. MARCY FRIEDMAN
Justice, Supreme Court

In this special proceeding brought pursuant to CPLR 7511, petitioner 50-09 2nd Street LLC ("50-09") seeks to vacate an arbitration award issued following an arbitration of a dispute between the parties arising out of a contract of sale of real property. Respondent Ianvil Associates, Inc. ("Ianvil") cross-petitions to confirm the award.

In March 2000, petitioner and respondent entered into a contract for the sale of real property located in Long Island City, New York. Petitioner paid $300,000 into escrow, which included a down payment of $200,000 and an additional $100,000 in connection with the agreement of sale. After a dispute arose concerning alleged encumbrances on the property, petitioner filed a demand for arbitration pursuant to the contract. In its demand for arbitration, petitioner sought to have respondent eliminate the encumbrances and sell the property to petitioner or convey the property to petitioner with an abatement of the purchase price. Alternatively, petitioner sought return of the $300,000 in escrow, as well as additional costs and expenses. By decision dated September 20, 2002, the arbitrators awarded $50,000 to petitioner "in full settlement of all claims and counterclaims submitted to this Arbitration." (Award of Arbitrators, Ex. E to Petition.) An amended award, correcting a typographical error, was issued

on October 16, 2002. (Disposition of Application for Clarification of Award, Ex. F to Petition.) The award was confirmed by decision and order of this court (M. Shulman, J.) dated March 1, 2003 (Index No. 606055/01).

In September 2002, petitioner requested a closing on the property, and when respondent denied the request, petitioner demanded another arbitration, seeking specific performance of the contract of sale. Following a hearing, the arbitrators awarded to petitioner two-thirds of the amount held in escrow, and denied petitioner's claim for specific performance. The award, dated July 7, 2004 ("the second award"), stated again that is was "in full settlement of all claims and counterclaims submitted to this arbitration." (Award of Arbitrators, Ex. K to Petition.)

Petitioner claims that the second award should be vacated on the basis that the arbitrators exceeded their authority. More specifically, petitioner argues that "[t]here is no basis to award 50-09 the $200,000 Downpayment and to re-award 50-09 the $50,000 awarded by the first panel unless the arbitrators rejected Ianvil's contention that 50-09 breached the Contract of Sale." (Petition, ¶ 23.) Therefore, according to the petition, "there is no basis to deny 'specific performance' and the Award is internally inconsistent and irrational." (Id.)

It is well settled that a party who participates in an arbitration may vacate an award solely on the grounds set forth in CPLR 7511(b). (Rochester City School Dist. v. Rochester Teachers Assn., 41 NY2d 578 [1977].) Thus, "[t]he only basis upon which an award can be vacated at the behest of a party who participated in the arbitration * * * is that the rights of that party were prejudiced by corruption, fraud or misconduct in procuring the award, partiality of an arbitrator, that the arbitrator exceeded his power or failed to make a final and definite award, or a procedural failure that was not waived." (Matter of Silverman [Benmor Coats], 61 NY2d 299,

307 [1984] .) As explained in Matter of Silverman:

> [A]bsent provision in the arbitration clause itself, an arbitrator is not bound by principles of substantive law or by rules of evidence [citation omitted]. He may do justice as he sees it, applying his own sense of law and equity to the facts as he finds them to be and making an award reflecting the spirit rather than the letter of the agreement, even though the award exceeds the remedy requested by the parties [citations omitted]. His award will not be vacated even though 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.

(61 NY2d at 308 [internal citations omitted]. Accord Hackett v Millbank, Tweed, Hadley & McCloy, 86 NY2d 146 [1995].)

Further, "[a]n arbitration award made after all parties have participated * * * will not be overturned merely because the arbitrator committed an error of fact or of law." (Matter of MVAIC v Aetna Cas. & Sur. Co., 89 NY2d 214, 223 [1996].) "Even where the arbitrator makes a mistake of fact or law, or disregards the plain words of the parties' agreement, the award is not subject to vacatur 'unless the court concludes that it is totally irrational or violative of a strong public policy' and thus in excess of the arbitrator's powers." (Hackett, 86 NY2d at 155 [internal citations omitted].)

Here, petitioner makes no showing that the arbitrators' award was irrational. Contrary to petitioner's assertion, it is not clear on this record that the arbitrators determined that there was no breach of contract by either party or that the contract was still in effect. Nor does the fact that the award does not include an explanation of the basis for the decision support petitioner's contention that the award was irrational. It is well settled that "arbitrators are not obliged to give reasons for their rulings or awards." (Matter of Aimcee Wholesale Corp. [Tomar Prods., Inc.], 21 NY2d 621, 626 [1968].) Significantly, moreover, the contract at issue provides that petitioner's

sole remedy "[i]n the event of a default hereunder by Seller, or if the Closing fails to occur by reason of Seller's inability * * * to perform its obligations under this Agreement" is to terminate the contract. (Sale-Purchase Agreement, ¶ 17; Ex D to Cross-Petition. See also Sale-Purchase Agreement, ¶ 6[b][ii].) In view of this provision of the contract, it is unclear whether the remedy of specific performance was even available to petitioner. (See S.E.S. Importers, Inc. v Pappalardo, 53 NY2d 455 [1981][right to specific performance can be waived by explicit provision of contract].)

To the extent that petitioner also argues that the award was made "in manifest disregard of the law," a standard for review of an arbitration award under the Federal Arbitration Act ("FAA")(see Halligan v Piper Jaffray, Inc., 148 F3d 197 [2d Cir 1998], cert denied 526 US 1034 [1999]; Wien & Malkin v Helmsley-Spear, Inc., 12 AD3d 65 [1st Dept 2004]), that argument is misplaced. Petitioner's conclusory assertion that the contract for the sale of the building in Long Island City constituted a transaction that "affects commerce" is insufficient to demonstrate that the FAA applies here.

In any event, even if the FAA applied, petitioner fails to show that the award is in "manifest disregard of the law." "[M]anifest disregard 'clearly means more than error or misunderstanding with respect to the law' * * * [and] 'to modify or vacate an award on this ground, a court must find both that (1) the arbitrators knew of a governing legal principle yet refused to apply it or ignored it altogether, and (2) the law ignored by the arbitrators was well defined, explicit and clearly applicable to the case'." (Halligan, 148 F3d at 202 [citation omitted]; Wien & Malkin, 12 AD3d at 70.) As stated above, no such clear legal error is apparent in this case.

Accordingly, the petition is denied and the cross-petition is granted to the extent that is

ORDERED that the arbitration award dated July 7, 2004 is confirmed; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in accordance with the terms of the award.

This constitutes the decision and judgment of the Court.

Dated: New York, New York
April 8, 2005

MARCY FRIEDMAN, J.S.C.