

<b>Matter of NRT NY Inc. v Posvar</b>
2007 NY Slip Op 30267(U)
March 9, 2007
Supreme Court, New York County
Docket Number: 0113796
Judge: Bernard J. Fried
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: **BERNARD J. FRIED**  
J.S.C.

PART 60

Index Number : 113796/2006  
NRT NY INC. D/B/A  
vs  
POSVAR, KAREN  
Sequence Number : 001  
CONFIRM AWARD

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_  
MOTION CAL. NO. \_\_\_\_\_

\_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

NYS SUPREME COURT  
REVIEWED  
MAR 8 2007  
PAPERS NUMBERED  
FILING DEPT.

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...  
Answering Affidavits — Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**FILED**  
MAR 19 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

This motion is decided in accordance with the accompanying memorandum.

SO ORDERED

**RECEIVED**  
MAR 13 2007  
IAS MOTION  
SUPPORT OFFICE

Dated: 3/9/07

Bernard J. Fried  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

*Handwritten signature*

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 60

-----X  
IN THE MATTER OF THE ARBITRATION OF  
CERTAIN CONTROVERSIES BETWEEN  
NRT NY INC., d/b/a THE CORCORAN GROUP  
REAL ESTATE

Petitioner,

Index No. 113796/2006

-against-

KARIN POSVAR and LAURIE TRONTZ

Respondents.

-----X  
**FRIED, J:**

The Corcoran Group Real Estate ("Corcoran") seeks an order, pursuant to CPLR §7510, confirming an arbitration award in connection with a dispute between respondent Laurie Trontz and respondent Karin Posvar. Respondent Trontz seeks an order pursuant to CPLR §7511 vacating such arbitration award.

At all times during the events involved in this arbitration proceeding, respondents were licensed real estate agents under contract with Corcoran. (*See* Petition, Ex. A & B). Through a mutual friend, respondents became the exclusive agents in connection with an apartment at 983 Park Avenue, New York, NY ("983 Park"). (Posvar Aff. ¶2). Respondents allegedly agreed that all business and commission derived from this co-exclusive listing at 983 Park would be shared equally. (Posvar Aff. ¶3). Subsequently, respondents showed Leon Constantiner the apartment at 983 Park in addition to several other apartments. (Posvar Aff. ¶4). Mr. Constantiner indicated to respondents that if they were able to find an apartment for

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him to purchase, he would list with respondents, as agents of Corcoran, his current penthouse apartment located at 480 Park Avenue, New York, NY (“480 Park”). (Posvar Aff. ¶4). In March of 2006, Mr. Constantiner ultimately decided to purchase another apartment at 480 Park and sell his penthouse apartment. (See Posvar Aff. ¶8-9; Trontz Aff. ¶8). This transaction generated a commission to Corcoran of \$199,125. (Petition ¶8). Respondent Trontz claimed that in accordance with her employment agreement, she was entitled to 60% of the total commission, or \$119,475. (Petition ¶8). Respondent Posvar contended that she was entitled to half of this amount, or 30% of the total commission, pursuant to her agreement with respondent Trontz. (See Petition ¶9). Respondent Trontz refused to split the commission, claiming that she worked exclusively for Mr. Constantiner in connection with his purchase. (Trontz Aff. ¶3).

Respondent Posvar sought arbitration pursuant to respondents’ employment agreements and Corcoran’s Policy Manual, by which the parties had agreed that, “should a disagreement arise between salespeople concerning listing or sales commissions which they are unable to settle, the matter will be referred to an Arbitration Committee...[whose decision] will be binding.” (Trontz Aff., Ex. 1, Sect. IX-D). On May 26, 2006, respondent Trontz and her attorneys were notified of respondent Posvar’s request for arbitration. (See Petition, Ex. C). On May 30, 2006, respondent Trontz and her attorneys were notified of the time and place of the arbitration hearing, provided with arbitration guidelines, and advised to have respondent Trontz present her claim at that time. ( See Petition, Ex. E & F). Respondent Trontz failed to appear at the arbitration hearing on June 13, 2006. (Petition ¶13). Upon review of the evidence and arguments, the arbitrators found that there was an oral

agreement to equally split all business and commission that originated with the exclusive listing at 983 Park, and awarded respondent Posvar \$59,737.50, which is 50% of the commission that respondent Trontz received in connection with the sale at 480 Park. (*See* Petition, Ex. H).

Corcoran now moves for an order confirming the arbitration award. Respondent Trontz opposes the motion to confirm and seeks in her opposition an order vacating such award. For the reasons set forth herein, none of respondent's arguments is tenable.

Respondent Trontz argues that her employment contract with Corcoran expired by its own terms on January 22, 2005, and as a result she was not bound to participate in arbitration as a means of resolving a dispute that arose in March of 2006. Indeed, respondent Trontz's contract was executed on January 22, 2004, and it contains a clause providing for a term of only one year. (Petition, Ex. B, ¶10). However, the same clause further provides that the contract "shall be renewed annually," and that upon termination, "Agent shall promptly return to Broker all information and material provided by Broker... and Broker shall have no further obligations to Agent except for the payment of post-termination commissions as set forth in the Policy Manual." (*Id.*). Accordingly, the Policy Manual provides that upon termination of the employment relationship, agent commissions are reduced to 50% of the total commission received by Corcoran. (Trontz Aff., Ex. 1, Sect. I-A, ¶4).

Respondent Trontz's own actions indicate that she expected her employment contract to remain in effect. First, respondent Trontz continued to work for Corcoran in representing buyers and sellers at all times relevant to this dispute, and at no time did she return any company-provided materials to Corcoran. Second, respondent Trontz has made persistent

claims to 60% of the commission received by Corcoran on the sale at 480 Park. Had her employment contract actually expired on January 22, 2005, respondent Trontz would be entitled to at most 50% of the total commission received by Corcoran on this sale, in accordance with the Policy Manual. Thus, respondent Trontz's own actions bar her from claiming that her employment contract has expired.

New York law supports the conclusion that respondent Trontz's employment contract remains in effect, thereby binding her to participate in arbitration as a means of dispute resolution. The Court of Appeals has long held that where one enters into an employment contract for a term of one year and continues in the employment after the end of that term, there is an inference that the parties intended to renew for another year. ( *Cinefot Int'l v. Hudson Photographic Indus.*, 13 N.Y.2d 249, 252 [1963]; *Adams v. Fitzpatrick*, 125 N.Y. 124, 130 [1890]). This inference of automatic renewal is a presumption that may be rebutted by evidence showing that the parties intended otherwise, but there has been no evidence submitted that supports such a conclusion. On the contrary, respondent Trontz's continued representation of buyers and sellers as an agent of Corcoran indicates the parties' intent to prolong the employment relationship. As a result, respondent Trontz is bound by her employment contract and subject to its arbitration clause.

Respondent Trontz also argues that the arbitration proceeding was biased, contending that Corcoran was interested in the outcome of the arbitration proceeding and therefore unable to act as neutral arbiter. Respondent Trontz points to CPLR §7511(b)(ii), which states that the "partiality of an arbitrator appointed as a neutral" is grounds for vacating an arbitration award. However, there has been no showing that the arbitrators had any interest

in the outcome of this dispute. In fact, Corcoran provided both respondents with a list of their peers who had volunteered to serve as arbitrators, and respondents were given the opportunity to exclude any agents that they did not want to serve on the panel. (See Reply Affirm., Ex. AA). There is no evidence that the three arbitrators ultimately chosen for the arbitration panel were anything other than impartial. It is improper to presume that an arbitrator chosen by a party is that party's agent. (See *Arvelo v. Macchiarola*, 75 A.D.2d 333, 336 [1<sup>st</sup> Dept. 1980], citing *Lipschutz v. Gutwirth*, 304 N.Y. 58, 64 [1952])). Respondent Trontz has failed to demonstrate that the arbitration proceeding was biased.

Finally, respondent Trontz contends that even if there was an agreement to split all business and commission originating from respondents' co-exclusive listing at 983 Park, it was an oral agreement and therefore unenforceable pursuant to Corcoran's Policy Manual, which requires such commission-splitting agreements to be in writing. (Trontz Aff., Ex. 1, Sect. IX-C). Respondent Trontz maintains that in light of this requirement, the arbitration award was arbitrary and capricious. However, the Court of Appeals has held that "even in circumstances where an arbitrator makes errors of law or fact, courts will not assume the role of overseers to conform the award to their sense of justice." ( *N.Y. State Corr. Officers & Police Benevolent Ass'n v. New York*, 94 N.Y.2d 321, 326 [1999], citing *Sprinzen v. Nomberg*, 46 N.Y.2d 623, 629-631 [1979]). Unless an award is completely irrational, arbitrators are free to determine the facts of a dispute before them without their award being subject to judicial revision. (See *Lentine v. Fundaro*, 29 N.Y.2d 382, 383 [1972]). Respondent Trontz has made no showing that the arbitrators acted with complete

irrationality; she has merely presented an inconsistency between the Corcoran policy manual and the arbitrators' ultimate decision. Such an inconsistency does not amount to irrationality.

It is fundamental that a court should act with restraint in order to preserve the parties' decision to agree to submit to arbitration as an alternate means of resolution. Indeed, respondents "placed upon the arbitrator, not the courts, the responsibility of passing upon the merits of their controversy with the expectation that a just, yet practical, result would be reached." (*Sprinzen, supra*, at 632). This choice must be respected, for "[t]he utility of the arbitration process itself is derived from its autonomy, and courts must honor the choice of the parties to have their controversy decided within this framework." (*Id.*).

For the reasons set forth above, it is:

ORDERED that the petitioner's request for an order confirming the arbitration award is GRANTED with costs and disbursements to petitioner as taxed by the Clerk of the Court; and it is further

ORDERED that the respondent's request in opposition for an order vacating the arbitration award is DENIED.

DATED: 3/9/07

  
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J.S.C.

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**J.S.G.**

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