

D'Aloia v Tradition Asiel Sec., Inc.

2007 NY Slip Op 30743(U)

April 12, 2007

Supreme Court, New York County

Docket Number: 0116677/2006

Judge: Louis B. York

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

LOUIS B. YORK
J.S.C.

PRESENT: _____
Justice

PART 2

Index Number : 116677/2006

D'ALOIA, MICHAEL

INDEX NO. _____

vs

TRADITION ASIEL SECURITIES

MOTION DATE _____

Sequence Number : 001

MOTION SEQ. NO. _____

VACATE OR MODIFY AWARD

MOTION CAL. NO. _____

the following papers _____ is motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM DECISION.**

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 4/12/07

Luy
LOUIS B. YORK J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: IAS PART 2

-----X
MICHAEL D'ALOIA,

Index No. **116677/06**

Petitioner,

-against-

TRADITION ASIEL SECURITIES, INC.,

Respondent.

-----X
LOUIS B. YORK, J.:

Petitioner Michael D'Aloia petitions, pursuant to CPLR 7502 and 7511, for an order vacating the arbitration award entered in the New York Stock Exchange (NYSE) arbitration captioned Michael D'Aloia v Tradition Asiel Securities, Inc., NYSE Docket #2004-015441 (Award), which denied petitioner's claim; entering judgment in petitioner's favor in the amount of \$3,855,385, or 2,832,678; or, alternatively, remanding the matter back for another arbitration before another panel. Respondent Tradition Asiel Securities, Inc. cross-moves, pursuant to CPLR 7510, for an order confirming the Award.

Petitioner was employed as a co-manager of defendant's Equity Trading Group Unit, for a three-year term beginning in February 2001. He was paid a yearly salary, and in addition, he was entitled to a performance bonus of 35 cents for each dollar of Employee Collected Revenue, which term is defined below. Some months after leaving respondent's employ, petitioner commenced the underlying arbitration proceeding, claiming that he had not been paid the commissions to which he had been entitled. The arbitration was governed by the Federal Arbitration Act, and the parties agree that the legal issue before the court is

whether the panel manifestly ignored established law.

Petitioner's argument, here, is that he made discovery demands for documents that would allow a calculation of the commissions to which he was entitled; respondent produced two sets of documents (which appear as exhibits II and I to the petition), but presented testimony that neither set could be used to calculate any commissions due to petitioner; the arbitration panel appears to have agreed with respondent's view of the documents that it had produced, but did not require respondent to produce other documents that would have allowed petitioner to calculate what was due to him. Petitioner concludes that that failure was fundamentally unfair, and that it ignored a NYSE rule governing the production of documents.

Although petitioner's argument has an elegant simplicity, it begs the question of whether any document or information exists, that would show petitioner to be entitled to a commission. Petitioner's argument to the arbitrators was that those of respondent's customers who were not assigned to other brokers, for purposes of earning a commission, were automatically assigned to him for that purpose. See Levin Aff., Exh. F. However, petitioner acknowledged that his employment agreement (Agreement) contained no such provision. Id., Exh. G. Indeed, the Agreement provides that petitioner is entitled to a bonus for each dollar of Employee Collected Revenue, which, insofar as is relevant here, is defined as:

the total of ... (ii) all commission, floor brokerage and other revenues from equity securities transactions ..., effected through the Unit for customers of the Company not introduced by the employee ..., to the extent such transactions have been assigned or allocated to the Employee by the Managers.

Petitioner, who was barred by a non-compete agreement with his former employer from introducing any customers of his own, does not contend here, or claim that he contended to the arbitrators, that he was, in fact, assigned, or allocated, any equity security transactions by respondent's managers. While petitioner sought to infer such assignments from the various documents that respondent produced, the panel credited the testimony of respondent's witnesses, that those documents were irrelevant to any issue of compensation. Accordingly, there appears to be no basis for petitioner's claim, in the Agreement. Nor does petitioner contend that respondent promised him anything, outside the terms of the Agreement.

Petitioner's only other argument in support of his motion is that the United States Securities Exchange Commission rules governing the maintenance of certain records required respondent to maintain records which it failed to provide in response to petitioner's discovery requests. 17 CFR § 240.17a-3 (a) (19) (i) requires brokerage houses to maintain records

[a]s to each associated person listing each purchase and sale of a security attributable, for compensation purposes, to that associated person. The record shall include the amount of compensation if monetary and a description of the compensation if non-monetary.

Again, inasmuch as petitioner was a manager, and not a floor trader, there may well not have been any purchases or sales of securities that were attributable to him for compensation purposes. In any event, petitioner declined respondent's offer to open its computer records to an information specialist of petitioner's choosing.

Accordingly, it is hereby

ORDERED that the petition is denied; and it further

ORDERED and ADJUDGED that the cross motion is granted, and the award in New York Stock Exchange Docket #2004-015441 is confirmed.

Dated: 11/10/07

Enter:

LY
Louis B. York, J.S.C.

LOUIS B. YORK
J.S.C.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 1447)