

Matter of Steinberg v Novitt & Sahr

2007 NY Slip Op 31727(U)

May 8, 2007

Supreme Court, Queens County

Docket Number: 0025540/2004

Judge: Augustus C. Agate

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MEMORANDUM

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE AUGUSTUS C. AGATE IAS PART 24
Justice

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In the Matter of the Application of
Robert Steinberg,

Index No.: 25540/04

Petitioner,
For an order pursuant to CPLR
Article 75 vacating the arbitration
Award in Matter of Arbitration Between
Novitt & Sahr and Robert Steinberg,
Case #1420011146

Motion Dated:
February 27, 2007

Cal. No.: 34

-against-

Novitt & Sahr,

Defendants.
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This is an application by petitioner to vacate an arbitration award. Respondent cross moves to confirm the arbitration award and for an award of legal fees.

Petitioner seeks an order vacating an arbitration award dated September 26, 2006 which was rendered in an attorney fee dispute following the dissolution of the law firm Novitt, Sahr & Steinberg in January 2000, when Petitioner Robert Steinberg left the firm. The firm thereafter operated under the name Novitt & Sahr, the respondent herein. During the life of the partnership, petitioner handled most of the firm's contingency cases. Following the breakup of the firm, the parties entered into an agreement regarding, inter alia, the apportionment of fees.

Under the agreement, petitioner was to take all of the contingent fee cases and a certain percentage of the fees would be paid to respondent. The agreement provided that "all percentages relate to the Steinberg fee in the case and not to the total settlement award." In May 2000, petitioner joined the law firm of Malone, Tauber & Sohn as an employee and turned over many of the contingent fee cases that he had worked on while he was a partner at respondent law firm. Petitioner agreed to pay Malone, Tauber & Sohn 40% of the gross fees obtained in those cases. Petitioner also sent several contingent fee cases to the firm of Weinstein, Chayt & Chase and agreed to pay it 60-80% of the gross fees earned in those cases. As a result of these agreements, petitioner advised the respondent that the percentages of the fee it was entitled to under their agreement would be reduced. Respondent objected on the ground that it was entitled to a gross fee. Petitioner maintained that any fee that was owed to respondent was based upon the net fee he actually received.

The parties subsequently proceeded to arbitration before the Judicial Arbitration and Mediation Services. The arbitration hearing was held over four days during March 2004. The arbitrator found that the "meaning of the phrase 'Steinberg fee' is not capable of being ascertained by looking at the agreement or the surrounding facts and circumstances." The arbitrator thus concluded that the portion of the agreement dealing with how the

contingent fees would be apportioned between the parties was "void and unenforceable."

In support of his application, petitioner asserts that the term "Steinberg fee" must be interpreted as the fee petitioner actually received on cases he took with him from the dissolved partnership. According to petitioner, the arbitrator erred when she found that the term "Steinberg fee" was ambiguous. Thus, petitioner maintains that the arbitrator rewrote the parties' agreement, which warrants the vacatur of the arbitration award herein.

In opposition to the application, respondent asserts that the arbitrator never rewrote the agreement between the parties. Respondent states that the arbitrator merely concluded that the parties here had different intentions and, thus correctly found that there was no meeting of the minds and, therefore, no valid agreement as to the distribution of the fees.

An arbitration award may be vacated on the application of a party who participated in the arbitration proceeding if that party's rights were prejudiced by (i) the corruption, fraud or misconduct in procuring the award; (ii) the partiality of a neutral arbitrator; (iii) the arbitrator exceeding his power so that a final or definite award was not made; or (iv) the arbitrator failing to follow the procedures set forth in CPLR Article 75. (CPLR 7511[b][1]; Wieder v Schwartz, 35 AD3d 752,

753 [2006].) In addition to the grounds listed in CPLR 7511(b), a court may vacate an arbitration award when it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on an arbitrator's power under CPLR 7511(b). (Matter of TC Contr., Inc. v 72-02 Northern Blvd. Realty Corp., ___ AD3d ___, ___ NYS2d ___, 2007 NY Slip Op 03315 [Apr. 17, 2007]; Henneberry v ING Capital Advisors, LLC, 37 AD3d 353 [2007].)

There is, however, a strong public policy in favor of the binding authority of an arbitration award. (Hackett v Millbank, Tweed, Hadley & McCloy, 86 NY2d 146, 154 [1996].) The purpose of arbitration is to allow final, binding resolution of the parties' claims without resorting to the courts. Thus, the scope of review of an arbitration decision is extremely limited, and great deference is given to an arbitration award. (Matter of Broadcast Music, Inc., 13 Misc 3d 1228(A) [2006].) A court shall not engage in "judicial second guessing" of the arbitrator's determination of those issues of fact or law presented. (Hackett v Millbank, Tweed, Hadley & McCloy, 86 NY2d at 155.) An arbitrator is not bound by principles of substantive law and may do justice as he sees fit. (Hughes Contr. Indus., Ltd. v A & N Restoration, Inc., ___ AD3d ___, ___ NYS2d ___, 2007 NY Slip Op 03364 [Apr. 19, 2007].) Indeed, an arbitration award will not be vacated even though the court concludes that the arbitrator's

interpretation of the agreement misconstrues its plain meaning or misapplies substantive rules of law. (Matter of Silverman v Benmor Coats], 61 NY2d 299, 308 [1984]; Matter of Wicks Constr., Inc., 295 AD2d 527, 528 [2002].)

In the matter at hand, the court finds that petitioner has failed to demonstrate that the arbitration award was irrational. The arbitrator held a four day hearing and clearly analyzed the agreement. The arbitrator explained how she arrived at her conclusion that the agreement was vague and ambiguous. While the arbitrator found the parties to be credible, she noted that their understanding and intent of how the fees would be divided under the agreement are diametrically opposed. Further, the arbitrator also analyzed case law cited by petitioner. Under the circumstances presented, the application is denied.

The branch of the cross motion for legal fees is denied. It is well settled that attorney's fees are considered an incident of litigation and, unless authorized by statute, court rule, or written agreement of the parties, are not recoverable. (see Hooper Assoc., Ltd. v AGS Computers, Inc., 74 NY2d 487, 491 [1989]; Matter of A.G. Ship Maintenance Corp. v Lezak, 69 NY2d 1, 5 [1986]; Maliner-Colvin v 85-10 34th Ave. Apt. Corp., 284 AD2d 434, 434 [2001].) There is no statute or agreement herein providing for the recovery of the respondent's attorney's fees.

Accordingly, this application by petitioner to vacate the

arbitration award is denied, and the petition is dismissed.

The branch of the cross motion to confirm the arbitration award is granted.

The branch of the cross motion for an award of attorney fees is denied.

Settle Judgment.

Date: May 8, 2007

AUGUSTUS C. AGATE, J.S.C.