

Maratea v Shimura

2007 NY Slip Op 32546(U)

August 9, 2007

Supreme Court, New York County

Docket Number: 0105501/2007

Judge: Lewis Bart Stone

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

PRESENT: **HON. LEWIS BART STONE**

PART _____

Index Number : 105501/2007

MARATEA, CLAUDEL

vs

SHIMURA, YASUKO

Sequence Number : 001

VACATE OR MODIFY AWARD

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

FILED

AUG 17 2007
PAPERS NUMBER 2007

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

NEW YORK
COUNTY CLERK'S OFFICE

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

*is decided in accordance with
attached Decision & Order*

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

Dated: 10 Aug 2007

10 Aug 2007

Lewis Bart Stone

J.S.C.

Check one: FINAL DISPOSITION

HON. LEWIS BART STONE
 NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 50S

-----X
CLAUDE L. MARATEA, :

YASUKO SHIMURA,

FILED
AUG 17 2007
NEW YORK
COUNTY OF NEW YORK
CLERK'S OFFICE
Petitioner, : DECISION AND ORDER
: INDEX NUMBER
: 105501/07
Respondent. : X

-----X
Hon. Lewis Bart Stone, J

This proceeding was commenced by Petitioner Claude L. Maratea ("Maratea") against Yasuko Shimura ("Shimura") pursuant to Civil Practice Law and Rules §7511(b)(i)(iii), to vacate an arbitration award (the "Award") given by an arbitration panel awarded to Shimura in a matrimonial fee dispute. Shimura opposes the petition.

Maratea was retained by Shimura to represent her in her divorce action against her husband. On October 31, 2005, in Supreme Court, Nassau County, Shimura and her husband entered a Stipulation of Settlement ending their marriage and resolving all ancillary financial disputes. Subsequently, the Nassau Supreme Court awarded counsel fees to Shimura in the amount of \$5,000 to be paid by Shimura and \$35,000 to be paid by her husband. Shimura had already paid counsel fees of \$32,500 to Maratea.

The retainer agreement between Shimura and Maratea signed on January 30, 2004, provided for the arbitration of any fee dispute. On October 16, 2006, Shimura began an arbitration proceeding pursuant to the retainer agreement, seeking reimbursement of \$27,500 from Maratea (the difference between the \$32,500 she had paid and Justice Balkin's order). On March 1, 2006, the arbitration was held before three arbitrators at which both parties appeared and were heard. On March 22, 2007, the panel issued the Award requiring \$22,500 to be refunded to Shimura. Maratea seeks to set aside this Award on the grounds that the "arbitrators exceeded their powers and that the award is so imperfectly executed that a definite award upon the subject matter submitted was not made" pursuant to CPLR §7511.

Maratea claims that the arbitration panel "never considered the merits of in the fee dispute" and that they "failed to explain how they came to this decision," and that they "never considered key issues as to the complexity of the litigation involved the nature and extent of the services rendered, the results achieved the necessity of the services, the financial circumstances involved, and of particular importance, [Shimura's]¹ obstruction of tactics during the period of discovery." Maratea also seeks to set aside the Award because the panel was "obligated to give a reasonable

¹ The plaintiff in the matrimonial action was Mr. Shimura.

explanation for their conclusion,” and their failure to consider issues which he thought to be important, such as the fact that he obtained a large monetary award for Shimura when other lawyers “advised me to quit ‘and make a deal’ for less.”


The Award recited in detail the arbitrators’ consideration of the fees ordered by the trial judge, fees previously paid by both litigants as well as other matters pertinent to the case. Based on their evaluation of the documentary evidence and testimony, the arbitrators concluded that Maratea had been overpaid and that he should refund \$22,500 to Shimura.

Maratea has failed to support his contentions under CPLR §7511. There is no showing that the arbitrators did not consider all matters submitted to them or that they did not consider the “complexity” of the issues. Whether the arbitrators were right or wrong is not for the courts and this Court may not substitute their judgment for that of the arbitrators. JJK Construction, Inc., v. Rosenberg, 141 AD2d 507 (2nd Dept. 1988). It is also well settled that an arbitrator need not have to make findings nor specify the formula used in calculating the award. Matter of Colletti (Mesh) 23 AD2d 245 (1st Dept. 1965).

The petition to vacate the Award is denied.

This constitutes the Decision and Order of the Court.

DATED: AUGUST 9, 2007
NEW YORK, NEW YORK



Hon. Lewis Bart Stone
Justice of the Supreme Court

FILED
AUG 17 2007
NEW YORK
COUNTY CLERK'S OFFICE