Matter of Reich v National Atlas Comm. LLC
2007 NY Slip Op 34515(U)
February 26, 2007
Sup Ct, New York County
Docket Number: 112118/06
Judge: Lewis Bart Stone

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 59

In the Matter of the Application of
JENNIFER B. REICH,

Petitioner,

DECISION AND ORDER

For an Order Confirming and Entering Judgment on an Arbitration Award Under Article 75 of the CPLR,

INDEX NUMBER 112118/06

- against-

THE NATIONAL ATLAS COMMITTEE LLC a/k/a INTERNATIONAL ATLAS COMMITTEE LLC, a/k/a NICKO P. KANGELARIS d/b/a INTERNATIONAL ATLAS COMMITTEE a/k/a NICKO P. KANGELARIS d/b/a ATLAS GAMES,

Respondents

Hon. Lewis Bart Stone:

This proceeding was commenced by petitioner Jennifer B. Reich ("Reich") against the International Atlas Committee LLC a/k/a International Atlas Committee LL a/k/a Nicko P. Kangelaris d/b/a International Atlas Committee a/k/a Nicko P. Kangelaris d/b/a Atlas Games ("Respondent") pursuant to Civil Practice Law and Rules ("CPLR") Article 75, to confirm an arbitration award rendered in Reich's favor against Respondent on July 5, 2006 (the "Award"). On November 14, 2006 Respondent cross moved, pursuant to CPLR §7511 to vacate the Award, on the grounds that Respondent had no notice of the arbitration procedure.

The basis of the arbitration was a written employment agreement (the "Agreement") entered into between International Atlas Committee LLC (defined as the "Employer") and Reich, dated August 4, 2005, which Agreement, (Paragraph 15), provided for the arbitration of disputes. The Agreement contained an "integration" clause (Paragraph 17) superceding all prior written agreements and understandings,[1] and a "notice" clause (Paragraph 18), providing for notice to the Employer, *inter alia*, by certified mail, "at its then principal place of business." While the Agreement recited Reich's address it did not recite any address for the "Employer." Reich, who worked out of her home, was provided with a business card by Respondent reciting an office address at 1230 Avenue of the Americas, 7th Floor in New York City. Respondent's web site announced the same address as a mailing address, but provided no other address.

Reich commenced the arbitration by sending a certified mail notice to the 1230 Avenue of the Americas address and to Kangelaris' home. A return receipt for the certified mailing to the Avenue of the Americas address was signed. The certified mail to Kangelaris' home was returned as refused by the recipient. During the course of the arbitration, at which Respondent was not present, the American Arbitration

[1] This supercedes Kangelaris' letter of January 7, 2005 to the extent it was contrary to the Agreement.

Association ("AAA") and Reich's counsel sent various notices to both addresses by first class and certified mail, relating to the commencement of the proceeding, selection of arbitrators, payment of fees and the date of the hearing. Although most of the certified mailings to Respondent were refused by the addressee, at least one from AAA delivered May 10, 2006, was signed for on behalf of Respondent at the 1230 Avenue of the Americas address. Each certified mailing also was accompanied by a first class mailing.

Respondent Kangelaris claims he has no office, but has a mailing address at the 7th floor of 1230 Avenue of the Americas, which forwards all mailings to his father's home at Bayside (the other address to which all notices were sent) and that the Bayside address is on record with the New York Secretary of State for the service of process. He acknowledges that Peter Kangelaris, his father, is the Chief Operating Officer of the International Atlas Committee, LLC, the "Employer" under the Agreement, and that his father received the decision of the arbitrator at the Bayside address. Interestingly, nowhere in Respondent's papers is any affidavit of Peter Kangelaris denying receipt of any of the notices or an affidavit of the person maintaining the 7th floor address at 1230 Avenue of the Americas; the best Nicko P. Kangelaris can offer is the statements:

> If the IAC has received any notification of the

> arbitration hearing, we would have retained counsel for representation in connection with the Petitioner's arbitration claim.
>
> As the IAC did not receive Petitioner's notice of intention to arbitrate or notification of the arbitration hearing prior to receipt of the subject decisions of the arbitrator, the IAC did not have an opportunity to appear at the arbitration hearing and put forth a defense to the Petitioner's claims.

While these statements imply what act Respondent might have taken, they do not present competent evidence that the notices were not given.

Kangelaris' argument that IAC has no place of business is disingenuous at best. The articles of formation of a limited liability company which must be filed in the office of the New York Secretary of State's office to form a New York limited liability company must include a statement as to "the county within this state in which the office of the limited liability is to be located or if the limited liability company shall maintain more than one office in this state, the county in which the principal office of the limited liability company is to be located." New York Limited Liability Company Law ("LLCL") §203(e)(2). To effectively form such an entity so as to accord the entity limited liability, an "affidavit of publication" must be published in the county of the office or principal office.

Thus, LLCL effectively requires that there be an office, even though such an office need not be a place where business activities are conducted by such limited liability company," LLCL §102(s). To have an "office" does not necessarily mean that the company maintains office space.[2] Many LLC's are run out or an address which is the mailing or contract address, or address of an affiliate, attorney or accountant. To the extent there is no other office, such address is the "principal" office.

Kangelaris signed on behalf of the "Employer" an agreement to arbitrate and provided for notices to go to its principal office. Such office was either the address it held out to the world on its web site (at 1230 Avenue of the Americas) or the place where Peter Kangelaris, its Chief Operating Officer, received mail forwarded from 1230 Avenue of the Americas. Reich and the AAA sent notices to such addresses. It is clear from receipts and rejections that the notices were sent. In any event the notice clause of the Agreement expressly provides that notices are effective when sent and not when received. Reich has presented overwhelming evidence of having sent the notices. Respondent could have specified different conditions of notice, such as to require receipt as a condition of effectiveness, but did not. Accordingly,

[2] Kangelaris' affidavit asserts that the LLC "has not maintained any office space since its inception."

Respondent is bound by the Agreement as to whether notice was given, and cannot defend by claiming merely that the notice was not received.

As notice to arbitrate had been given in accordance with the Agreement, Respondent cannot neither hide from or avoid the obligation to arbitrate, nor can Respondent retry any of the issues before the arbitral panel whose interpretation of the contract and the facts are conclusive on this Court in the absence of a proper ground under CPLR Art. 75 for the challenge of the arbitration award itself.

Once a notice to arbitrate has been given, the Respondent could have argued to a Court that defects in the Agreement, conditions precedent, statutes of limitation or other matters made arbitration improper. However, such challenge may only be done by raising such issues in a timely motion to the Court to stay the arbitration under CPLR §7503(b). Respondents' failure to do so in a timely manner waives Respondents' right to assert these defenses after the arbitration was completed.

Reich's motion is granted, Respondents motion is denied.

Settle judgment.

DATED: FEBRUARY 26, 2007
NEW YORK, NEW YORK

Hon. Lewis Bart Stone
Justice of the Supreme Court