

Sheikh v Mercedes-Benz USA, LLC

2008 NY Slip Op 31261(U)

April 17, 2008

Supreme Court, Nassau County

Docket Number: 6075-07/a

Judge: Michele M. Woodard

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

-----X

ABID SHEIKH,

Petitioner,

-against-

MERCEDES-BENZ USA, LLC,

Respondent.

-----X

**MICHELE M. WOODARD
J.S.C.
TRIAL/IAS Part 16
Index No.: 16075/07
Motion Seq. No.: 01**

**AMENDED DECISION
AND ORDER**

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The Petitioner seeks an order vacating the Decision issued on June 6, 2007, after an Arbitration hearing was held between the parties on May 25, 2007. The Respondent opposes the Petition. By decision dated April 4, 2008, the application was set down for Oral Argument to be conducted on Monday, April 28, 2008 at 2:30 p.m. before the undersigned. After further review, the court determines that oral argument is not necessary and the April 4, 2008 decision is amended to delete the oral argument.

Petitioner seeks a vacatur of the arbitration decision pursuant to CPLR § 7511(b)(iii), (iv) and on the grounds that the arbitrator's decisions were irrational, arbitrary, capricious, and not supported by the evidence produced at the hearing, as well as a rehearing before a different arbitrator pursuant to CPLR § 7511(d).

Petitioner maintains that pursuant to New York's New Car Lemon Law, General Business

Law § 198-a (d)(1), he was entitled to the “repair presumption,” which arises when the same defect in a vehicle has been subject to repair “four or more times” but “continues to exist,” or when the vehicle has been out of service for 30 days or more. Petitioner argues that the presumption was triggered because he made four attempts to repair the vehicle. Thus, during the arbitration hearing, the petitioner produced testimony from his automotive expert, an investigation report from the Department of Motor Vehicles (DMV), and an internal memo produced by the respondent, confirming the vehicle defects and reflecting a substantial impairment to the value of the vehicle.

In turn, the petitioner maintains that the respondent failed to put forward any evidence to rebut this presumption, aside from statements denying the defects in the vehicle. Nevertheless, petitioner argues that the Arbitrator erroneously decided the matter in the respondent’s favor, without any support in the evidence, finding that “the problem did not substantially impair the value of the vehicle to the consumer.” Further, petitioner maintains that the Arbitrator also erred in improperly shifting to the petitioner, the respondent’s burden to prove that the defects did not substantially impair the vehicle’s value.

In opposition, respondent argues that the petitioner’s application should be dismissed as untimely as it was commenced on September 10, 2007, more than 90 days from receipt of the decision on June 6, 2007. In the alternative, respondent argues that the application should be denied because petitioner did not provide the court with a stenographic record of the hearing and his narrative of the evidence is inconsistent with the arbitrator’s summary of the evidence.

Respondent also claims that because the petitioner refused to allow respondent’s expert to test-drive the vehicle, and does not claim to have repaired the defects prior to the hearing, the defects must be fabricated. Respondent maintains that the Arbitrator had a rational basis for his

decision based upon observance of the vehicle's proper performance during the test drive, the absence of tire wear, and the petitioner's refusal to allow a full presentation.

As a preliminary matter, the court finds that the petitioner's application to vacate and modify the arbitration award was timely commenced "within ninety days after its delivery to him," pursuant to CPLR § 7511(a), given that the last day to commence the action fell on the weekend. See generally *Case v Monroe Community College*, 89 NY2d 438, 441 (1997) (finding that ninety-day period for college employee to appeal arbitration award began to run when union was served with grievance).

Next, pursuant to CPLR § 7511(b)(iii), an arbitration award may be vacated if the court finds that the rights of a party participating in the arbitration were prejudiced if "an Arbitrator, or agency or person making the award exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made." An award can also be vacated if a party was prejudiced by the arbitrator's "failure to follow the procedure of this article, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection." CPLR § 7511(b)(iv),

In general, "the burden of invalidating an arbitration award rests with the party attacking it. *Boggin v Wilson*, 14 AD3d 523 (2d Dept 2005). Absent a transcript of the arbitration proceedings, submissions in the form of an affidavit by a party's attorney, or from third parties who attended the arbitration, are "insufficient to challenge the factual finding of the arbitrator as they do not provide a record of the evidence before the arbitrator for this court to review." *General Motors Corp. v Warner*, 5 Misc 3d 968, 970 (Sup Ct, Albany County 2004). Further, such submissions cannot be relied on to form the record when they are "contradicted by the arbitration form and respondent's

submissions.” *General Motors Corp.*, 5 Misc 3d at 971.

In addition, the standard of review for compulsory arbitration requires that “the award be in accord with due process and supported by adequate evidence in the record . . . and must also be rational and satisfy the arbitrary and capricious standards of CPLR article 78.” *Motor Veh. Mfrs. Assn. of U.S. v State of New York*, 75 NY2d 175, 186 (1990). Further, “vacatur may only be granted upon the grounds that “the rights of that party were prejudiced by corruption, fraud or misconduct in procuring the award, partiality of an arbitrator, that the arbitrator exceeded his power or failed to make a final and definite award, or a procedural failure that was not waived.” *Mohiuddin v Khan*, 197 AD2d 578, (2d Dept 1993).

Based on the foregoing, the court finds that the petitioner does not allege sufficient grounds to grant vacatur or modify the arbitration award. First, because the petitioner failed to submit a transcript of the proceedings, the court does not have an adequate record of the evidence before the arbitrator to review and cannot solely rely on petitioner’s submissions detailing the proceedings when such accounts are contested by the respondent. Thus, the petitioner is precluded from challenging the factual findings of the arbitrator. See generally, *General Motors Corp.*, 5 Misc 3d at 970-971.

Next, the petitioner does not claim that his rights were prejudiced by corruption, fraud or misconduct but rather challenges the arbitrator’s decision based upon an improper application of the “repair presumption.” Generally, “the purchaser of a new motor vehicle is entitled to a “repair presumption” and therefore can seek relief under the New Car Lemon Law when the consumer can demonstrate that the vehicle has been subject to repair four or more times within a prescribed time

period and the same substantial defect continues to exist.” *DaimlerChrysler Corp. v Spitzer*, 7 NY3d 653, 657 (2006). As stated above, a manufacturer can rebut this presumption by showing that either the defect does not substantially impair the vehicle’s value or the condition resulted from abuse, neglect or unauthorized modifications or alterations of the motor vehicle. *Id.* at 657, see General Business Law § 198-a (c)(3)(i), (ii).

In the instant case, upon a review of the arbitrator’s written award, it appears that the arbitrator made notations of the evidence and the arguments put forth by the parties including the repair presumption at issue and applicable defenses. Thus, absent proof that the petitioner was denied his due process rights to be heard and to put forth evidence, the Court concludes that the arbitrator, at his discretion, accorded adequate weight to the evidence before him in making his decision as required by statute. Therefore, the court finds no facts to suggest that the procedures followed by arbitrator deviated from statutory standards such that it would be deemed arbitrary or capricious.


As such, it is hereby

ORDERED, that the petitioner’s petition to vacate and/or modify the arbitration award is **denied**.

This constitutes the **DECISION** and **ORDER** of this Court.

DATED: April 17, 2008
Mineola, N.Y.

ENTER:


ENTERED
HON. MICHELE M. WOODARD
J.S.C. APR 22 2008
NASSAU COUNTY
COUNTY CLERK'S OFFICE