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

Joan B. Lobis
Justice

PART 6

Index Number : 112902/2009

FRIEDMAN, SAMUEL

VS.

VUKSANOVIC, PETAR

SEQUENCE NUMBER : # 001

CONFIRM ARBITRATION AWARD

INDEX NO. 112902-09

MOTION DATE 12/15/09

MOTION SEQ. NO. #001

MOTION CAL. NO. _____

were read on this motion to/for _____

	PAPERS NUMBERED
Notice of ~~Motion~~ Petition/ Order to Show Cause — Affidavits — Exhibits ...	1 - 6
Answering Affidavits — Exhibits x motion 7	8-13; 14-19
Replying Affidavits	

Cross-Motion: ☑ Yes ☐ No

Upon the foregoing papers, it is ordered that this ~~motion~~ petition decided in accordance with accompanying decision, order, and judgment.

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: 1/4/10

J.S.C.

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

Check one: ✓ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6

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SAMUEL FRIEDMAN

Petitioner,

Index No. 112902/09

- against -

Decision, Order and Judgment

PETAR VUKSANOVIC,

Respondent.

----------X

JOAN B. LOBIS, J.S.C.:

Petitioner Samuel Friedman, Esq., proceeding pro se, seeks a judgment, pursuant to C.P.L.R. § 7510, confirming an arbitration award (the "Award") and directing that judgment be entered thereon. Respondent Petar Vuksanovic cross-moves for an order, pursuant to C.P.L.R. § 7511, vacating the Award based upon his allegation that his rights were prejudiced by misconduct in procuring the Award.

Respondent retained petitioner to serve as his attorney in two commercial litigation matters related to a family business. A dispute regarding attorneys' fees arose between petitioner and respondent. Petitioner moved, and was granted permission, to withdraw as respondent's attorney in the commercial litigation matters. Shortly thereafter, pursuant to 22 N.Y.C.R.R. § 137, respondent filed a Client Request for Fee Arbitration with the New York County Lawyers' Association. The matter was assigned case number 2007-200. On November 14, 2007, petitioner was notified that respondent's complaint had been referred to the Joint Committee on Fee Disputes and Conciliation. On or about November 29, 2007, petitioner responded to the request for fee arbitration. Ultimately, the arbitration took place on September 11, 2008, before a panel of three

arbitrators, but respondent did not appear on that date. It is the decision of the September 11, 2008 panel which is the subject of these motions.

The first arbitration was scheduled for February 12, 2008. Respondent requested an adjournment to obtain counsel and an interpreter. The request was granted and the arbitration was adjourned until April 30, 2008. On that date, after approximately one hour, respondent had a dispute with one of the arbitrators. The panel was disbanded and the arbitration was rescheduled for August 14, 2008. Respondent failed to appear on August 14, and the matter was adjourned to September 11, 2008. Respondent again failed to appear, but the arbitration went forward and petitioner presented evidence. Having reviewed the bills and time records, and the type and extent of work performed, and after having deducted the time charged for petitioner's application to withdraw as counsel, the arbitrators determined that respondent owed petitioner $68,000, plus interest from December 1, 2007. Petitioner maintains that the program administrator of the Joint Committee mailed the notice of the arbitration award dated September 12, 2008, together with the Award dated September 11, 2008, to petitioner and respondent on September 12, 2008, by certified mail, return receipt requested. Further, petitioner states that on or about October 21, 2008, he mailed a copy of the notice of arbitration award and Award to respondent, together with a letter requesting respondent to remit payment. Petitioner sets forth that, to date, respondent has failed to satisfy any part of the Award. Petitioner brings this petition within one year of the delivery of the Award.

Respondent's attorney argues that the award should be vacated because respondent's rights were prejudiced by corruption, fraud or misconduct in procuring the Award. C.P.L.R. §

7511(b)(1)(i). Counsel for respondent also argues that respondent did not appear before the arbitrators who signed the Award. Finally, he asserts that respondent has a meritorious defense and dispute with regard to petitioner's billing for the period in question.

Respondent, in his affidavit, argues that petitioner's bill was highly inflated. Based upon excessive billing, he decided to file the arbitration. But, during the explanation of how the proceeding would work, respondent asserts that he did not understand the arbitrator because he was talking too fast. He also questioned the arbitrator's impartiality because he believed the arbitrator was "constantly making eye contact" with petitioner. Respondent requested an adjournment to get a translator and an attorney, and he says that in response, the arbitrator told him to leave the room. Thereafter, respondent reports that he left the room, went to "a secretary", and informed her that he wanted to cancel the arbitration. Respondent reports that the secretary told him that she would cancel the arbitration. Respondent argues that he did not receive a copy of the Award dated September 11, 2008; that he did not receive the October 21, 2008 letter from petitioner; that he was never served with the instant petition personally; and, that the first time he received a copy of the arbitration decision was when he received a copy of the notice of petition from petitioner in the mail.

Part 137.6(g) of the Rules of the Chief Administrator sets forth:

> [t]he client may not withdraw from the process after the arbitral body has received the attorney fee response. If the client seeks to withdraw at any time thereafter, the arbitration will proceed as scheduled whether or not the client appears, and a decision will be made on the basis of the evidence presented.

The notices of arbitration hearing annexed to petitioner's opposition to the cross motion indicate that

the matter was adjourned several times. Respondent admits that he received a notice of the arbitration hearing in early 2008, and he does not assert that he did not receive the other three notices regarding the adjourned hearing dates. It is apparent that respondent was given several chances to present his proof before an arbitration panel. The arbitrator accused by respondent of impartiality was removed from the proceedings when the panel was disbanded on April 30, 2008; that arbitrator did not sit on either of the two subsequent panels convened on August 14, when respondent did not appear and the hearing was adjourned, or September 11. The arbitration properly proceeded on September 11 without respondent, and the arbitral panel made a determination on the basis of the evidence presented. See 22 N.Y.C.R.R. § 137.6(g). Respondent's claim that he was not given an adjournment in order to obtain a translator and an attorney is belied by the facts. Further, respondent had no good faith basis to believe that he could cancel the arbitration that he himself had requested, especially considering that he continued to receive notices of the rescheduled arbitration hearing dates after his purported cancellation of the process but apparently failed to take any steps to verify that the arbitration had indeed been "cancelled" as he asserts.

Respondent further argues that he was not personally served with the instant petition. Petitioner annexes to the petition a process server's affidavit of personal service of the notice of petition, petition, and request for judicial intervention on respondent on September 19, 2009. A process server's sworn affidavit of service constitutes prima facie evidence of proper service. Johnson v. Deas, 32 A.D.3d 253, 254 (1st Dep't 2006) (citation omitted). To rebut the prima facie showing, respondent must submit a "sworn, nonconclusory denial of service or swear to specific facts to rebut the statements in the process server's affidavit." Id. (citations omitted). Respondent's

bald, conclusory statement that he was never served with the petition personally is insufficient to rebut the affidavit of service.

The court finds no basis to vacate the award. The petition is granted and the cross-motion is denied. Accordingly, it is

ORDERED that the petition to confirm the arbitration award is granted and the award rendered in favor of petitioner and against respondent is confirmed; and it is further

ORDERED and ADJUDGED that petitioner Samuel Friedman, having an address at 225 Broadway, Suite 1804, New York, New York, 10007, shall have judgment and recover against respondent Petar Vuksanovic, having an address at 3151 Broadway, Apartment 2D, New York, New York, 10027, in the amount of $68,000, plus interest at the statutory rate from December 1, 2007, as computed by the Clerk, and that the petitioner have execution therefor.

This constitutes the decision, order, and judgment of the court.

Dated: January 4, 2010

JOAN B. LOBIS, J.S.C.

UNFILED JUDGMENT

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