

**Matter of Greentree at Murray Hill Condominium v
Golub**

2010 NY Slip Op 32917(U)

September 29, 2010

Sup Ct, NY County

Docket Number: 105309/10

Judge: Jane S. Solomon

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

PRESENT: JANE S. SOLOMON Justice

PART 55

Index Number : 105309/2010
GREENTREE AT MURRAY HILL
 vs.
GOLUB, BENJAMIN
 SEQUENCE NUMBER : 001
 CONFIRM AWARD

INDEX NO. _____
 MOTION DATE _____
 MOTION SEQ. NO. _____
 MOTION CAL. NO. _____

n this motion to/for _____

PAPERS NUMBERED

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

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *is decided*
pursuant to accompanying
dearborn & shen.

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: 9/30/10

JANE S. SOLOMON
 J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
 Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 55

-----X
In the Matter of the Arbitration between:

GREENTREE AT MURRAY HILL CONDOMINIUM,

Petitioner,

Index No. 105309/10

-against-

BENJAMIN J. GOLUB,

Respondent.

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 1-1B).

Solomon, J.:

Motion sequence numbers 001 and 002 are consolidated for disposition.

In motion sequence number 001, pursuant to CPLR 7510, petitioner Greentree at Murray Hill Condominium (the Condominium) seeks to confirm an arbitration award in its favor in the amount of \$62,717.62. In motion sequence number 002, pursuant to CPLR 7502 and 7511, respondent Benjamin J. Golub (Golub) seeks to dismiss the petition and vacate in part or modify the award and the Condominium cross-moves for a summary determination confirming the award, dismissing the verified answer, and for sanctions pursuant to 22 NYCRR 130-1.1 (c).

Background

This proceeding arises out of litigation between the parties which originated in 2005 with a lawsuit Golub commenced against the Condominium's Board of Managers for water damage to his unit (the Damages Action). During the Damages Action, rather than paying common charges Golub deposited the money into a separate bank account. In response, the Condominium's Board

of Managers commenced an action in the Civil Court of the City of New York, to collect the common charges (the Common Charges Action).

On July 19, 2006, the Condominium was awarded summary judgment for \$21,746.08 on the ground that Golub had no right to withhold the common charge, and the claim for attorneys' fees was severed for an assessment hearing. Toptani Affirmation, Exhibit 2. On September 12, 2006, after that hearing, on default, the Condominium was awarded \$9,672.50 in fees and \$140 in disbursements. *Id.*, Exhibit 3. Golub appealed both orders to the Appellate Term, and both were later affirmed. *Id.*, Exhibit 15.

On October 9, 2006, the Condominium placed a lien on the bank account holding the common charges. Golub then moved in the Damages Actions for a preliminary injunction and a restraining order, which request was denied. *Id.*, Exhibit 10.

In December 2006, the Condominium commenced an enforcement action (the Homestead Action). In May 2007, Golub paid the Condominium \$30,157.56 in satisfaction of the accrued common charges. The Homestead Action was thereafter resolved via a Stipulation of Discontinuance Without Prejudice. On October 30, 2007, a Settlement Agreement was entered into in the Damages Action. Excepted from this agreement were any claims by the Condominium for legal fees and interest with respect to the Common Charges Action, the appeal of the Common Charges Action, or the Homestead Action. Golub Affidavit, Exhibit C, ¶ 5. If those claims could not be amicably resolved, the parties agreed to mediate before the American Arbitration Association (AAA), and if still unresolved, to arbitrate. *Id.*

On May 14, 2008, the Condominium submitted a mediation request to the AAA, but no mediator was appointed by the parties, or the AAA. On August 19, 2008, the Condominium

made a demand for arbitration. Golub then commenced another action in this court and sought, inter alia, to (1) enjoin arbitration until after mediation occurred and (2) enjoin any claims for legal fees incurred in the Homestead Action. The Court ruled that the Homestead Action attorneys' fees had not been judicially determined and were arbitrable, but stayed arbitration to the extent that the parties had 45 days to commence mediation. Golub was ordered to submit an undertaking. Toptani Affirmation, Exhibit 22. Golub also was directed to pay the judgment awarded for attorneys' fees in the Common Charges Action within seven days of entry of this order; Golub paid the judgment without interest. The First Department affirmed this decision. Toptani Affirmation, Exhibit 4.

An arbitration hearing was held on February 18, 2010 with respect to the Condominium's claims for legal fees. Golub was allowed to present counterclaims pertaining to a repair claim. After a full evidentiary hearing, an award was rendered requiring Golub to pay attorneys' fees of \$55,729.50, disbursements of \$1,029.81, interest on unpaid attorneys' fees in the amount of \$8,568.41, and interest on the judgments in the amount of \$3,513.80. The arbitrator also awarded the Condominium reimbursement of \$1,375.00, representing the portion of arbitration fees payable to AAA, but the award to the Condominium was reduced by \$7,500, the amount that she ruled was owed to Golub on his counterclaims, for a total award of \$62,716.62. Toptani Affirmation, Exhibit 1.

This proceeding followed.

Discussion

CPLR 7511 (b) sets forth the grounds upon which a court may vacate an arbitrator's

award. CPLR 7511 (b) (1) (iii) provides that an award may be vacated where an arbitrator acts in excess of her authority. Here, Golub argues that the arbitrator exceeded her authority by awarding the Condominium “fees on fees,” “fees on fees on fees,” and interest on “fees on fees,” which were not expressly provided for in the agreement to arbitrate.

The Settlement Agreement specifically provides that any claims by the Condominium for legal fees and interest with respect to the Common Charges Action, the appeal of the Common Charges Action, and the Homestead Action were subject to arbitration if they could not be amicably resolved. More importantly, the By-Laws of the Condominium provide that,

[i]n the event of default by any Unit Owner in paying to the Board of Managers the Common Charges as determined by the Board of Managers, such Unit Owner shall be obligated to pay interest on such Common Charges at the highest, legal rate, from the due date thereof until collected, together with all expenses, including attorneys' fees, incurred by the Board of Managers in any proceeding brought to collect such unpaid Common Charges or otherwise.

Toptani Affirmation, Exhibit 7, § 6.

It is the arbitrator's role to interpret and apply agreements in issue. *Matter of Henneberry v ING Capital Advisers, LLC*, 10 NY3d 278, 284 (2008). A court must give deference to the arbitrator's decision. *Id.* This issue, of “fees on fees,” was hotly disputed before the arbitrator, and defended by the Condominium as occasioned by Golub's steadfast refusal to honor court orders and litigate aggressively while failing to prevail at every turn.

“[A]n excess of power occurs only where the arbitrator's award violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power.” *Matter of New York City Transit Auth. v Transport Workers' Union of America, Local 100, AFL-CIO*, 6 NY3d 332, 336 (2005). There is no indication that the arbitrator exceeded her power in any of these ways.

Further, "[a]n arbitrator's paramount responsibility is to reach an equitable result, and the courts will not assume the role of overseers to mold the award to conform to their sense of justice." *Matter of Sprinzen (Nomberg)*, 46 NY2d 623, 629 (1979) (internal citations omitted).

Therefore, based on the foregoing, Golub's motion to vacate or modify the arbitration award is denied, and the award is confirmed. CPLR 7511 (e).

The Condominium's cross motion for a summary determination confirming the arbitration award and dismissing the verified answer is denied as moot. The portion of the cross motion seeking is denied. Golub's submissions here do not warrant the same. See 22 NYCRR 130-1.1 (c).

Accordingly, it is

ADJUDGED that the petition is granted and the arbitration award rendered in favor of petitioner Greentree at Murray Hill Condominium against respondent Benjamin J. Golub is confirmed; and it is further

ORDERED that respondent's motion to vacate in part or modify the arbitration award and dismiss the petition is denied; and it is further

ORDERED that petitioner's cross motion for a summary determination confirming the arbitration award and dismissing the verified answer is denied as moot; and it is further

ORDERED that petitioner's cross motion for sanctions is denied; and it is further

ORDERED that petitioner Greentree at Murray Hill Condominium, having an address at 248 East 31st Street, New York, New York 10016, do recover from respondent Benjamin J. Golub, having an address at 248 East 31st Street, Unit 9A, New York, New York 10016, the

amount of \$62,716.62, with interest from the date of the award, less any payments on account made by respondent, together with costs and disbursements as taxed, and the clerk is directed to enter judgment accordingly.

Dated: September 29, 2010

ENTER:


~~JANE Q. SOLOMON~~
J.S.C.

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).