

Weltman & Moskowitz, LLP v Statfeld

2010 NY Slip Op 33095(U)

October 28, 2010

Supreme Court, New York County

Docket Number: 106776/10

Judge: Cynthia S. Kern

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

PRESENT: CYNTHIA S. KERN
J.S.C.

PART 52

Index Number : 106776/2010
WELTMAN & MOSKOWITZ, LLP.

INDEX NO. 106776/10

vs
STATFELD, JANET

MOTION DATE _____

Sequence Number : 001

MOTION SEQ. NO. 01

CONFIRM AWARD

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on 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 in accordance with the attached decision.

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 1417)

Dated: 10/28/10

CK
CYNTHIA S. KERN J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/JUDG.

SETTLE ORDER /JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 52

-----X
WELTMAN & MOSKOWITZ, LLP,

Petitioner,

Index No. 106776/10

DECISION/JUDGMENT

-against-

JANET STATFELD,

Respondent.

-----X
In the Matter of the Petitioner
Janet Statfeld,

Petitioner,

Index No. 107301/10

DECISION/JUDGMENT

-against-

Weltman & Moskowitz, LLP,

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
141F).

HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion
for : _____

Papers	Numbered
Notice of Petition and Petition Annexed.....	1, 2
Cross-Motion and Affidavits Annexed	_____
Answering Affidavits.....	3, 4
Replying Affidavits on Motion.....	_____

Upon the foregoing cited papers, the Decision/Order on these petitions is as follows:

In this Article 75 proceeding, Weltman & Moskowitz, LLP seeks to confirm the arbitration award dated March 10, 2010 directing the entry of a judgment in favor of Weltman & Moskowitz and against Janet Statfeld. Janet Statfeld moves for an order pursuant to CPLR § 7511(e) vacating the arbitration award. For the reasons set forth below, Weltman & Moskowitz's petition is granted and the arbitration award is confirmed. Janet Statfeld's petition is denied.

The relevant facts are as follows. In May 2005, Janet Statfeld hired Weltman & Moskowitz to provide legal services in a matter regarding her former husband's bankruptcy filing. After the representation, there was a dispute regarding the amount of fees owed to Weltman & Moskowitz. On March 3, 2009, Ms. Statfeld filed a Client Request for Fee Arbitration in which she stated that she wished to first attempt to resolve the dispute through mediation. On March 10, 2010 an arbitration was held before the Joint Committee on Fee Disputes and Conciliation and Weltman & Moskowitz was awarded \$25,080.99.

Under CPLR § 7511(b), there are four grounds for vacating an arbitration award: (i) corruption, fraud or misconduct in procuring the award; (ii) partiality of an arbitrator appointed as a neutral, except where the award was by confession; (iii) 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; or (iv) failure to follow the procedure of this article, unless the party applying to vacate the award continued the arbitration with notice of the defect and without objection. "An arbitration award may not be vacated unless it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrators' power. An award made by an arbitration panel will not be vacated for errors of law

or fact committed by the arbitrators unless the award exhibits a manifest disregard of the law.” *WBP Cent. Associates, LLC v. Deco Const. Corp.*, 44 A.D.3d 781 (2nd Dept 2007). “Courts are bound by an arbitrator’s factual findings...[a] court cannot examine the merits of an arbitration award and substitute its judgment for that of the arbitrator simply because it believes its interpretation would be the better one. Indeed, even in circumstances where an arbitrator makes errors of law or fact, courts will not assume the role of overseers to conform the award to their sense of justice.” *New York State Correctional Officers and Police Benev. Ass’n v. State*, 94 N.Y.2d 321, 326 (1999).

Ms. Statfeld has failed to show that any of the grounds for vacating an arbitration award exist in the instant case. Her only argument as to why the arbitration proceeding should be vacated is that there was confusion regarding whether the proceeding on March 10, 2010 would be a mediation or an arbitration and the arbitrators’ decision to deny petitioner an adjournment when she learned that an arbitration rather than a mediation would be taking place constitutes arbitrary and capricious conduct that denied petitioner a full and fair opportunity to present her case to the committee. However, the decision to grant or deny an adjournment is within the discretion of the arbitrator pursuant to CPLR § 7506(b). The exercise of that discretion will only be disturbed when it constitutes misconduct on the part of the arbitrator. *Matter of Bevona*, 204 A.D.2d 136, 139 (1st Dept 1994). The courts have considered the denial of an adjournment to be misconduct when it forecloses the presentation of evidence and results in the effective exclusion of an entire issue. *Id.* However, while Ms. Statfeld alleges that her presentation to the arbitrators was impaired by going forward on March 10, she has neither alleged nor shown that she was effectively prevented from presenting any issue in her case. Furthermore, Ms. Statfeld

