

<b>Matter of Collazo v Suffolk County</b>
2014 NY Slip Op 30024(U)
January 2, 2014
Supreme Court, Suffolk County
Docket Number: 32637/2012
Judge: Jerry Garguilo
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SHORT FORM ORDER

INDEX NO. 32637/2012

SUPREME COURT - STATE OF NEW YORK  
I.A.S. TERM, PART 47 - SUFFOLK COUNTY

PRESENT:

**HON. JERRY GARGUILO**  
 Supreme Court Justice

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In the Matter of the Application of MARIA  
 COLLAZO Grievant,

Petitioner,

(Article 75 Proceeding to Vacate An Arbitration  
 Award)

-against-

SUFFOLK COUNTY,

Respondent.

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**ORIG. RETURN DATE:11/16/2012**

**FINAL SUBMISSION DATE: 11/20/2013**

**MOTION SEQ#001, 002 & 003**

**MOTION: MD**

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Before the Court is a petition brought by Maria Collazo ( hereinafter Petitioner) to vacate an Arbitration award. The proceeding was commenced by way of Notice of Petition. Petitioner seeks an order pursuant to CPLR § 7511(b) vacating and setting aside the opinion and award of Arbitrator Arthur Reigel, dated June 30 2012 (but not mailed until July 17, 2012) and seeking costs incurred in connection with her application. In support of the Petition, the Court is furnished with the Notice, a Verified Petition, with Exhibits A through D. The Respondent, Suffolk County (hereinafter Respondent), petitions the Court for an order granting its motion to dismiss the Verified Petition for failure to state a cause of action pursuant to CPLR §§ 404 and 3211(a)(7), failure to join necessary and indispensable parties under CPLR § 1001 and for dismissal based on documentary evidence pursuant to CPLR § 3211(a)(1).

214

In support of its petition to dismiss, Respondent provides the Court with its Notice, Counsel's Affirmation In Support and Exhibits A through C. Additionally, the Court has considered the Respondent's memorandum of law in support of its Petition to Dismiss, in support of its Petition to Suppress and its Reply Affirmation in further support of its Motion to Suppress. Petitioner submits and the Court has considered Petitioner's Reply memorandum in support of her Motion to Vacate with Exhibits and her attorney's Reply Affirmation to Respondent's Petition to Suppress.

Respondent also presents another petition brought by Order To Show Cause seeking an order pursuant to CPLR § 6301 staying these proceedings until its petition to suppress evidence pursuant to CPLR 4506 (3) and/or the fruits thereof is heard and determined. Respondent alleges that the Petitioner violated provisions of the Penal Law prohibiting eavesdropping. Alternatively, Respondent seeks an order setting the matter down for a fact finding and/or evidentiary hearing concerning the facts and circumstances under which the contested recordings were made, obtained and preserved.

The Court granted the stay and held an evidentiary hearing concerning the circumstances surrounding the Petitioner's recording of conversations had by third parties. The Petitioner and Respondent oppose each others' applications.

The Petitioner was an employee of the Suffolk County Department of Social Services maintaining the title of Examiner #3. She had been employed and assigned to the Suffolk County Department of Social Services for approximately ten (10) years without any disciplinary history. In March of 2008, the Petitioner was assigned to the home energy assistance program (hereinafter HEAP).

In the fall of 2008, the Petitioner's family endured a hardship. Her husband, a New York City corrections captain, suffered a stroke was hospitalized and determined to be disabled and unable to return to work.

In November of 2008, Petitioner applied for an emergency HEAP benefit for her household. Her original application for benefits was rejected. Same was resubmitted on May 14, 2009.

An investigation into the means and methods employed by Petitioner to obtain the HEAP benefit was assigned to an investigator.

Disciplinary charges were served upon the Petitioner on October 18, 2010. She was

COLLAZO, MARIA v. SUFFOLK COUNTY  
INDEX NO.: 32637/2012  
PAGE 3

thereafter suspended for thirty (30) days without pay prior to a hearing. Parenthetically the Court notes that the charging document contains twenty-one (21) specifications alleging misconduct.

The hearing commenced on June 1, 2011. Present at the hearing was a representative from Petitioner's union, Thomas Ryan, Esq., and Mr. Baptiste, an assistant county attorney, representing the County.

In partial support of its petition, Petitioner alleges that the Arbitrator, Arthur A. Riegel, Esq., engaged in *ex parte* conversations with Mr. Ryan, counsel for the Union. The claim is that the Arbitrator made disparaging remarks concerning Petitioner's attorney, spoke about limiting Petitioner's cross examination of a hostile witness and further informed Mr. Ryan (who was earlier removed from the case by Petitioner) that he was going to make the Union look good and essentially that Petitioner would have been better off using union counsel. Additionally it is claimed the Arbitrator spoke with a witness called by the Respondent. He told that witness he would attempt to finish her testimony to avoid her having to reappear.

This Court conducted a hearing limited to the issue of the quality of certain recorded conversations between Mr. Ryan and Mr. Riegel made without their knowledge or consent. The recordings were made by the Petitioner through the process of engaging an application on her phone. Petitioner engaged the application which rendered her phone a recording device. During recesses, Petitioner left her phone (engaged to record) in the hearing room. During her absences the device recorded conversations. The Court has been provided with a disc to play parts of the intercepted conversations as well as a transcript provided by a company known as Type It Up.

From an evidentiary stand point, the transcription is hearsay and no exception to the hearsay rule applies. As to the recording itself, there is no testimony as to preservation, cropping and/or completeness. Nonetheless, the Court is going to consider the allegations of the propriety of the Arbitrator's actions as alleged by the Petitioner.

The Court has reviewed the arbitrator's decision and recommendations. As concerns the twenty-one (21) charges, the Arbitrator sustained only Charge 1-specifications 1 and 2.

Both parties cite *Goldfinger v. Lisker*, 68 N.Y.2d 225, 508 N.Y.S.2d 159 to support their position concerning the issue of misconduct sufficient to warrant vacating an arbitration award. The Court of Appeals in *Goldfinger* noted:

Our State has long sanctioned arbitration as an effective alternative method of settling disputes (CPLR art 75; Civ Prac Act art 84...Those engaged in commercial affairs have routinely resorted to arbitration for an expeditious resolution of their disputes by persons with a practical knowledge of the subject area and as long as arbitrators act within their jurisdiction, their awards will not be set aside because they have erred in judgment either upon the facts or the law CPLR 7501 (*Matter of Silverman [Benmor Coats]*, 61 N.Y.2d 299; *Matter of Associated Teachers v Board of Educ.*, 33 N.Y.2d 229. Courts are reluctant to disturb the decisions of arbitrators lest the value of this method of resolving controversies be undermined. Precisely because arbitration awards are subject to such judicial deference, it is imperative that the integrity of the process, as opposed to the correctness of the individual decision, be zealously safeguarded.

Arbitration by its nature contemplates a less formal environment than the judicial forum... accordingly, arbitrators are not held to the standards prescribed for members of the judiciary. Nevertheless, arbitrators must take a formal oath, are expected to “faithfully and fairly” hear the controversy over which they have been chosen to preside and ought to conduct themselves in such a manner as to safeguard the integrity of the arbitration process.

The *ex parte* conversation in the *Goldfinger* case was “deliberate in nature and designed clearly to enable the Arbitrator to resolve in his own mind any doubt he may have had as to petitioner’s credibility or the validity of the claim itself.” In essence it went to the very merits of the claim.

Even assuming *arguendo* the accuracy of the comments propounded by the Petitioner between the Arbitrator and an attorney whose position was that of an observer on behalf of the Petitioner’s union; same does not qualify as impermissible to the degree defined by the *Goldfinger* court. This Court finding that the remarks, even if accepted, did not go to the merits of the claim. Therefore, the petition seeking to set aside the determination of the Arbitrator on the basis of improper conduct is denied.

*COLLAZO, MARIA v. SUFFOLK COUNTY*  
*INDEX NO.: 32637/2012*  
*PAGE 5*

The alleged improper conversations herein do not merit a determination setting it aside. In all other respects, the determination of the Arbitrator do not meet any of the standards set forth at Civil Practice Law and Rules § 7511(b) requiring the Court to set it aside. The decision herein makes it unnecessary for the Court to rule on any other issue.

The foregoing constitutes the decision and Order of this Court.

**Dated: January 2, 2014**

  
HON JERRY GARGUILO, JSC