

Matter of Lerner v Gibson, Dunn & Crutcher LLP

2014 NY Slip Op 32018(U)

July 28, 2014

Supreme Court, New York County

Docket Number: 152896/2012

Judge: Donna M. Mills

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

PRESENT : DONNA M. MILLS
Justice

PART 58

In the Matter of
STEPHANIE FREUND LERNER,

INDEX NO. 152896/12

Plaintiff(s),

MOTION DATE

-v-

MOTION SEQ. NO. 004

GIBSON, DUNN & CRUTCHER LLP, et al.,

Defendant(s).

MOTION CAL NO.

The following papers, numbered 1 to were read on this motion to Vacate Note of Issue.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits....

1

Answering Affidavits- Exhibits

2

Replying Affidavits

3, 4

CROSS-MOTION: YES NO

Upon the foregoing papers, it is ordered that this motion to vacate the stay currently placed on this case, and for an order granting defendant's previously filed motion to confirm an arbitration award is decided as follows:

The underlying action pertains to an award for unpaid legal fees and expenses against the defendant Gibson, Dunn & Crutcher's former client, plaintiff Stephanie Lerner. On August 21, 2012, a Justice of this Court resolved plaintiff's application to stay arbitration and defendant's cross-motion to compel arbitration with an order that the parties arbitrate their dispute under the terms of the relevant engagement letter.

Defendant prevailed in the arbitration, resulting in a Partial Final Award issued on

September 19, 2012, which contained the Arbitrator's findings of fact, conclusions of law, and a preliminary damages calculation and a Final Award issued on February 6, 2013, which contained a final damages amount.

On August 12, 2013, defendant moved this Court to confirm the arbitrator's awards into a final judgment, and to dismiss all of plaintiff's remaining claims. On September 11, 2013, plaintiff initiated an action in United States Bankruptcy Court for the Southern District of New York. A justice of this Court then stayed proceedings in favor of the Bankruptcy Action on September 27, 2013. On February 21, 2014, Judge Allan L. Gropper dismissed the Bankruptcy Action.

Plaintiff has opposed the motion before this Court to lift the stay solely on the ground that she has recently filed a second petition for Bankruptcy under Chapter 13 of the Bankruptcy Code. On June 9, 2014, however, Judge Gropper dismissed plaintiff's second Chapter 13 petition. As such, the previously entered stay in this action should be vacated.

Next, this Court turns to the defendant's previously filed motion to confirm the aforementioned arbitrator's award. "Courts are bound by an arbitrator's factual findings, interpretation of the contract and judgment concerning remedies" (*Matter of New York State Correctional Officers & Police Benevolent Assn. v State of New York*, 94 NY2d 321, 326 [1999]). A court reviewing an arbitration award may not "re-weigh or re-examine the evidence" (*Matter of McMahan & Co. [Dunn NewFund I]*, 230 AD2d 1, 5 [1997]), or otherwise "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" (*Matter of Associated Gen. Contrs., N.Y. State Ch. [Savin Bros.]*, 36

NY2d 957, 958-959 [1975]). The Court of Appeals has “stated time and again that an arbitrator’s award should not be vacated for errors of law and fact committed by the arbitrator and the courts should not assume the role of overseers to mold the award to conform to their sense of justice” (*Wien & Malkin LLP v Helmsley-Spear, Inc.*, 6 NY3d 471, 479-480 [2006]).

“An arbitration award can be vacated by a court pursuant to CPLR 7511 (b) (1) (iii) on only three narrow grounds: if it is clearly violative of a strong public policy, if it is totally or completely irrational, or if it manifestly exceeds a specific, enumerated limitation on the arbitrator’s power” (*Matter of Erin Constr. & Dev. Co., Inc. v Meltzer*, 58 AD3d 729, 729 [2009]).

On July 13, 2012, the arbitrator, Kenneth Kramer, held a hearing at which he heard argument and the testimony under oath of Mitchell Karlan, the defendant’s partner who was plaintiff’s principal contact, and received in evidence a series of documents. The arbitrator subsequently made a report that contained findings of fact and conclusions of law based on the evidence adduced at the hearing. The arbitrator issued two awards in favor of defendant: one on September 18, 2012, for \$194,828.38 (the “partial Final Award”), and the other on February 6, 2013, for an additional \$8,534.63 (the “Final Award”).

Upon review of the Arbitrator’s report this court finds no basis in law or fact to vacate it. Accordingly it is

ADJUDGED that the defendant’s motion to confirm the arbitrator’s award is granted, and the award rendered in favor of defendant and against plaintiff is confirmed; and it is further

ADJUDGED that defendant Gibson, Dunn & Crutcher LLP, having an address at 200 Park Avenue, New York, NY 10166-0193 do recover from plaintiff Stephanie Freund Lerner, having an address at 420 East 61st Street, 3B, New York, NY, 10065, the amount of \$203,363.01, plus interest at the statutory rate from the date of February 6, 2013, as computed by the Clerk together with costs and disbursements and that the complaint is dismissed with prejudice.

Dated: 7/28/14


J.S.C.

DONNA M. MILLS, J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION