Matter of Social Serv. Empl. Union Local 371 v City of New York
2014 NY Slip Op 32132(U)
July 17, 2014
Sup Ct, New York County
Docket Number: 651849/2013
Judge: Joan A. Madden
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Application of

Index No. 651849/2013

SOCIAL SERVICE EMPLOYEES UNION LOCAL 371, on behalf of its member, MATTHEW OPUORU

Petitioner,

-against-

CITY OF NEW YORK and the CITY OF NEW YORK ADMINISTRATION FOR CHILDREN'S SERVICES

Respondents.

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JOAN A. MADDEN, J:

Petitioner, Social Service Employees Union Local 371 ("the Union") brings this Article 75 proceeding on behalf of its member, Matthew Opuoru ("petitioner") to vacate an arbitration award pursuant to CPLR 7511. Petitioner contends that Arbitrator James A. Brown rendered a decision on an issue not submitted to him and therefore did not have the authority to decide whether Respondent City of New York Administration for Children's Services ("ACS") had just cause to discharge the petitioner. Respondents, City of New York ("City") and ACS (collectively "respondents") cross-move to dismiss the petition for failure state a cause of action, as well as to confirm the award pursuant to CPLR 7510.

Background

In or around September 2002, a felony complaint was filed against petitioner alleging, that from approximately July 8, 2000, to May 14, 2001, petitioner had committed Grand Larceny in the Fourth Degree. It alleged that petitioner, who previously had held the position of Supervisor II at ACS utilized false names and social security numbers—information acquired

from ACS's own database—to fraudulently claim entitlement to $1,559.00 in a tax return from New York State Department of Taxation and Finance. On September 20, 2002, petitioner voluntarily surrendered on the charge of Grand Larceny. (Report of Investigative Activity (Ex. 2)) On September 25, 2002, Opuoru entered a guilty plea to the crime of Grand Larceny, and was sentenced to forty-five days in New York City Department of Correction Facility.

On or about March 6, 2003, petitioner was served with eleven disciplinary charges for violation of ACS Agency Executive Order 639, the Code of Conduct for ACS employees, alleging in pertinent part, theft of ACS clients personal information and its use in fraud. As a result of the charges, on May 5, 2003, petitioner's employment with ACS was terminated pursuant to the Grievance Procedure under the Collective Bargaining Agreement ("CBA").

Thereafter, the Union appealed this discharge to binding arbitration under the Rules of the New York City Office of Collective Bargaining. Petitioner's arbitration, Case No. A-9953-03, was heard by Arbitrator Rose Jacobs ("Arbitrator Jacobs"). On July 12, 2006, Arbitrator Jacobs held that there was not "ample evidence to sustain the penalty of discharge in the Criminal Matter" and that therefore petitioner should be reinstated to his position at another ACS facility of the "employer in the Borough of The Bronx with a restoration of his seniority rights and future employment benefits but without back pay for the duration of the discharge." (Holding in First Arbitration).

Upon respondents' failure to reinstate petitioner to employment in accordance with the arbitration award, the Union filed a petition to confirm the arbitration award under Index No. 111201/06. On July 10, 2007, the Honorable Lottie E. Wilkins , issued a Decision and Judgment confirming the arbitration award. Respondents then appealed the Judge Wilkins' decision to the

Appellate Division, First Department. On November 18, 2008, the First Department reversed and remanded the Supreme Court decision to "the arbitrator for reconsideration of the appropriate penalty." Social Service Employees Union Local 371 v. City of New York Administration For Children's Services, 56 A.D.3d 322, 322 (1st Dept. 2008). In its decision the First Department wrote that the arbitrator's award which called for the reinstatement of petitioner to his supervisory position at ACS, is "irrational, and defies common sense." Id. Finding that if petitioner were reinstated he "again would have access to the ACS database from which he extracted the information he used to perpetrate his crime." Id. The Court of Appeals denied petitioner's motion for leave to appeal.

Upon remand to arbitration, Arbitrator Jacobs issued an award on April 22, 2010, again reinstating petitioner to his position as Supervisor in the ACS, determining that the seventy-eight month suspension he had already served was an adequate punishment. On June 8, 2010, petitioner commenced a second Article 75 proceeding, pursuant to CPLR 7510, seeking a judgment confirming the second arbitration award. Respondents filed a cross-petition, dated July 8, 2010, seeking to vacate the award pursuant to CPLR 7511. The Supreme Court, New York County (Wooten, J.) in its holding Social Service Employees Union Local 371 v. City of New York Administration For Children's Services, dated September 27, 2011, granted respondents' cross-petition, holding, in relevant part, that in light of the First Department's prior determination that restoration of petitioner to his Supervisory role was irrational, Arbitrator Jacobs' ordering again that petitioner be reinstated was "irrational and must be vacated." Thereafter, petitioner appealed the Supreme Court's decision to the First Department once again. In its decision, dated November 8, 2012, the First Department affirmed the vacatur of the second arbitration award, in

addition to remanding "the matter to a different arbitrator for reconsideration of the appropriate penalty," writing that, "despite the clear directive from this Court not to do so, the arbitrator, on reconsideration after remand, restored grievant to his former position." Social Service Employees Union Local 371 v. City of New York Administration For Children's Services, 100 A.D.3d 422, 423 (1st Dept. 2012).

In accordance with the First Department's decision, on November 12, 2012, a different arbitrator, James A. Brown ("Arbitrator Brown"), began hearing the issue of the penalty to be imposed on petitioner. Based upon the parties' stipulation Arbitrator Brown was bound by any findings of fact previously made by Arbitrator Jacobs. By award dated May 7, 2013, Arbitrator Brown concluded that ACS "had just cause to terminate petitioner's employment; accordingly, no remedy is awarded to the Grievant [petitioner]" (hereinafter "Third Arbitration Award").

Petitioner now moves pursuant to CPLR 7511 to vacate the Third Arbitration Award on the grounds that Arbitrator Brown exceeded his authority, and that the award is irrational. Respondents cross-move to dismiss the petition on the grounds that it fails to state a claim, and to confirm the Third Arbitration Award.

Petitioner argues that the issue that Arbitrator Jacobs previously found that ACS did not have just cause to discharge the petitioner, and that the First Department's decisions did not affect these finding which were not submitted to Arbitrator Brown for consideration upon remand. Instead, petitioner maintains that the sole issue before Arbitrator Brown was what the proper remedy was based on the findings of Arbitrator Jacobs. Thus, petitioner argues that Arbitrator Brown's consideration and decision upon the issue of just cause and the remedy he provided exceeded his power, and must result in the vacatur of the Third Arbitration Award.

In opposition, respondents argue that Arbitrator Brown utilized Arbitrator Jacobs' previous findings of fact, including that Arbitrator Jacobs' findings that petitioner filed a fraudulent income tax return, used fake social security numbers, and accessed and used ACS's client data to falsify his tax return, and that these findings permitted Arbitrator Brown to rationally conclude that ACS had just cause to terminate petitioner. Respondents further argue, that Arbitrator Browns' finding of a nexus between petitioner's criminal activity and his employment was "sufficient to sustain his termination" particularly in light of petitioner's guilty plea to Grand Larceny.

Discussion

An arbitration award will be vacated pursuant to CPLR 7511(b) if the party seeking vacatur can demonstrate that "the rights of that party were prejudiced by corruption, fraud or misconduct in procuring the award, partially of an arbitrator, that the arbitrator exceeded his power or failed to make a final and definite award, or a procedural failure that was not waived." Silverman v. Benmor Coats, Inc., 61 N.Y.2d 299, 307 (1984); see also CPLR §7511(b)(I-iv). Of relevance here, when arguing that an award must be vacated on the ground that the arbitrator exceeded his power pursuant to CPLR 7511(b)(1)(iii), the party seeking vacatur must demonstrate that the award "violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power[.]" Matter of Henneberry v. ING Capital Advisors, LLC, 10 N.Y.3d 278, 284 (2008); see also Matter of Kowaleski (New York State Dept. of Correctional Servs.), 16 N.Y.3d 85, 91 (holding that Arbitrator exceeded his power by failing to consider a parties retaliation defense as required by Civil Service Law § 75-b), Matter of Massena Cent. School Dist. (Massena Confederated School Employees' Assn.,

NYSUT, AFL-CIO), 64 A.D.3d 859, 861 (3d dept. 2009) (holding that Arbitrator's judgment on a topic that was beyond the CBA caused the award to be vacated under CPLR §7511(b)(1)(iii)). In addition, "courts are obligated to give deference to the decision of the arbitrator" and generally may not disturb the arbitrator's decision—even where the arbitrator has made an error of law or fact. In re Falzone (New York Cent. Mut. Fire Ins. Co.), 15 N.Y.3d 530, 534 (2010) (holding that arbitrator's error in failing to apply collateral estoppel, in accordance with a well-established rule, was unreviewable).

Here, petitioner has failed to demonstrate that Arbitrator Brown's determination of the existence of just cause to terminate the petitioner exceeded a "specifically enumerated limitation." Matter of Henneberry v. ING Capital Advisors, LLC, 10 N.Y.3d 278, 284 (2008). In fact, contrary to petitioner's argument, the two prior awards were vacated when the remedy fell short of petitioner's termination. The First Department twice held that the arbitration award of reinstatement should be vacated because reinstatement of the petitioner was "irrational, and defies common sense." The second time the matter was reviewed by the courts, the arbitrator's decision to reinstate petitioner was again found to be irrational.

Furthermore, contrary to petitioner's argument, it cannot be said that by remanding of the dispute with instructions to find the appropriate remedy the First Department prohibited the arbitrator from finding termination an appropriate remedy. In fact, as noted above, the First Department prior holdings are consistent with Arbitrator Brown's finding.

In addition, petitioner's argument that Arbitrator Brown's consideration of just cause was "completely unrelated to the sole issue before him, e.g., what should be the remedy in the case" is unfounded. In fact, Arbitrator Jacobs' findings, on which the petitioner relies, are to the contrary

as they state that the determination of just cause is an "earnest concern" and is required in order to determine whether or not the penalty is "reasonably related to the seriousness of the offense." Therefore, a determination with regard to just cause is not unrelated to the remedy to be imposed.

Moreover, there is no basis for finding that Arbitrator Brown's determination that ACS had just cause to terminate petitioner was irrational. In re Falzone (New York Cent. Mut. Fire Ins. Co.), 15 N.Y.3d 530, 534 (2010).

In view of the above, it is

ORDERED and ADJUDGED that the motion to vacate is denied, and it is further

ORDERED and ADJUDGED that the cross motion to confirm the award is granted.

DATED: July 7, 2014

J.S.C.

HON. JOAN A. MADDEN
J.S.C.