

**Matter of W.B. Wood NY, LLC v S. Digiacomo & Son,
Inc.**

2014 NY Slip Op 32363(U)

September 3, 2014

Sup Ct, New York County

Docket Number: 651792/2014

Judge: Cynthia S. Kern

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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In the Matter of the Application of

W.B. WOOD NY, LLC,

Petitioner,

Index No. 651792/2014

-against-

DECISION/ORDER

S. DIGIACOMO & SON, INC.,

Respondent.

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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 Motion and Affidavits Annexed.....	<u>1</u>
Affirmation in Opposition	<u>2</u>
Replying Affidavits.....	<u> </u>
Exhibits.....	<u>3</u>

Petitioner commenced the instant proceeding seeking an Order pursuant to CPLR § 7510 confirming the June 3, 2014 arbitration award rendered in its favor (the “Award”) and entering judgment thereon. Respondent cross-moves for an Order pursuant to CPLR § 7511 vacating and setting aside the Award. For the reasons set forth below, the petition is granted and the cross-motion is denied.

The relevant facts are as follows. Petitioner provided materials and hardware to respondent in connection with a construction project on the 11th floor of the headquarters of Consolidated Edison, Inc. located at 4 Irving Place, New York, New York. Thereafter, respondent allegedly failed to provide payment for said materials and hardware. Thus, on or

about December 11, 2013, petitioner filed a demand for arbitration with the American Arbitration Association (the “AAA”) pursuant to the New York Prompt Payment Act. Respondent failed to submit any documents to the AAA and on or about June 6, 2014, the AAA issued an Award in favor of petitioner in the total amount of \$133,750.93.

Petitioner now brings the instant application to confirm the Award and enter judgment thereon. Respondent cross-moves to vacate the Award on the grounds that: (1) respondent did not receive notice of the arbitration proceeding; (2) the Award inaccurately concludes that it is based upon “the arbitration agreement entered into between the parties dated September 8, 2009”; and (3) petitioner failed to provide respondent with notice of a complaint as required by the Prompt Payment Act.

Pursuant to CPLR § 7510, “[t]he court shall confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in section 7511.” CPLR § 7511 provides, in relevant part, that:

I. The award shall be vacated on the application of a party who either participated in the arbitration or was served with a notice of intention to arbitrate if the court finds that the rights of that party were prejudiced by:

- (i) corruption, fraud or misconduct in procuring the award; or
- (ii) partiality of an arbitrator appointed as a neutral, except where the award was by confession; or
- (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 with the arbitration with notice of the defect and without objection.

CPLR § 7511 provides the exclusive grounds upon which a court may vacate or modify an award

and “[e]ven 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.” *Matter of New York State Correctional Officers & Police Benevolent Assn. v. State of New York*, 94 N.Y.2d 321, 326 (1999).

In the instant action, the petition to confirm the Award is granted and the cross-motion to vacate the Award is denied as respondent has failed to identify a proper ground warranting vacatur. As an initial matter, respondent’s contention that it never received notice of the arbitration proceeding is without merit as such contention is directly refuted by the AAA’s records, which lists Stephen DiGiacomo appearing on behalf of respondent for the preliminary telephone management hearing that was held on February 24, 2014. Moreover, petitioner presents the court with several emails exchanged between the parties wherein the arbitration proceedings are explicitly referenced. Similarly, respondent’s contention that petitioner failed to provide the requisite notice required by the Prompt Payment Act is also without merit as petitioner presents the court with a letter sent to respondent on or about November 12, 2013, which explicitly states that “[t]his letter shall serve as a formal Notice of Complaint under the New York Prompt Payment Act.” Respondent fails to submit any reply papers attesting that it never received such letter. Finally, to the extent respondent argues that the Award should be vacated as it improperly asserts that it is based upon an agreement of the parties to arbitrate, such argument is unavailing as such mistake is a harmless misdescription and is not a ground to vacate an otherwise proper Award. This is especially true here where the demand for arbitration makes clear that it was brought pursuant to the Prompt Payment Act and respondent does not contest that the arbitration is proper under the Prompt Payment Act.

Accordingly, the petition to confirm the Award is granted and the cross-motion is denied.

Settle Order and Judgment.

Dated: 9/3/14

Enter: PK
J.S.C.

CYNTHIA S. KERN
J.S.C.