

<b>Camilli v Meyers Assoc., L.P.</b>
2015 NY Slip Op 30539(U)
April 13, 2015
Supreme Court, New York County
Docket Number: 650341/15
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: DEBRA A. JAMES  
*Justice*

PART 59

JERRY CAMILLI,  
Petitioner,

Index No.: 650341/15

Motion Date: 04/13/15

- v -

Motion Seq. No.: 01

MEYERS ASSOCIATES, L.P.

Motion Cal. No.: \_\_\_\_\_

Respondent.

The following papers, numbered 1 to 5 were read on this motion for an order of attachment.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits \_\_\_\_\_

PAPERS NUMBERED

1

Notice of Cross Motion/Answering Affidavits - Exhibits \_\_\_\_\_

3, 4

Replying Affidavits - Exhibits \_\_\_\_\_

5

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that the motion of petitioner for an attachment in aid of arbitration shall be denied.

CPLR 7502 ( c) provides, in pertinent part, that the court may "entertain an application for an order of attachment...in connection with an arbitration...but only upon the ground that the award to which the applicant may be entitled may be rendered ineffectual without such provisional relief."

To demonstrate that any eventual arbitration award in favor of petitioner may be rendered ineffectual unless the court grants an attachment, petitioner relies upon respondent's Annual Audit

Check One:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

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

Report for the period ending December 31, 2013 (Report), which on March 4, 2014, was filed with the United States Security and Exchange Commission (SEC). The Report lists WeiserMazars LLP as the independent public accountant whose opinion is contained in the Report. Petitioner argues that such Report "discloses millions more in liabilities than they [respondent] can possible (sic) afford - making it a matter of time before they are forced out of business."

In fact, the Report states, in pertinent part:

#### Regulatory Net Capital Requirements

The Partnership is subject to the net capital requirements of rule 15c3-1 of the SEC which requires a broker-dealer to have at all times sufficient liquid assets to cover current indebtedness. In accordance with the rule, the Partnership is required to maintain defined minimum net capital of the greater of \$100,000 or 1/5 of aggregate indebtedness. At no time may the ratio of aggregate indebtedness or net capital, as defined, exceed 15 to 1. At December 31, 2013, the Partnership has net capital of \$847,970, which is \$734,049 in excess of its minimum net capital required of \$113,921. The Partnership has aggregate indebtedness of \$1,708,822. The Partnership's ratio of aggregate indebtedness to net capital is 2.02 to 1 at December 31, 2013.

Petitioner states no quarrel with the recitation of the SEC net capital requirements rule in the Report. Nor does petitioner come forward with any evidence that contradicts respondent's statement in the Report of its compliance with such net capital requirements. Such facts at bar are in marked contrast to the

facts of Habitations Limited, Inc v BKL Realty Sales Corp, 160 AD2d 423, 424 (1<sup>st</sup> Dept 1990) where the court found that the individual respondent, who was a nondomiciliary of New York, had historically failed to pay his creditors, stripped the assets of the corporate respondent so that it was merely a shell, stated his intentions to remove his assets from New York State and to not satisfy any arbitration award, and that the real property fixed assets of the respondents were heavily mortgaged.

Therefore, as the Report of respondent's independent public accountants demonstrates that respondent is not undercapitalized under the requirements of the SEC rules, and petitioner fails to come forward with competent evidence that demonstrates otherwise, this court cannot find that any eventual arbitration award may be rendered ineffectual. In the Matter of Marc Kadish v First Midwest Securities, Inc, 115 AD3d 445 (1<sup>st</sup> Dept 2014).

Accordingly, it is

ORDERED that the motion of petitioner for an order of attachment in aid of arbitration pursuant to CPLR 7502( c) is denied; and it is further

ORDERED that petition is dismissed, with costs and disbursements to respondent as taxed by the Clerk of the Court,

and the Clerk is directed to enter judgment accordingly in favor of respondent.

This is the decision and order of the court.

Dated: April 13, 2015

ENTER:

~~Debra A. James~~  
**DEBRA A. JAMES** J.S.C.