

Matter of Matrisciano v Metropolitan Transp. Auth.
2015 NY Slip Op 31507(U)
August 7, 2015
Supreme Court, New York County
Docket Number: 651155/2014
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 59

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In the Matter of the Application of
MICHAEL MATRISCIANO,

Petitioner,

Index No.: 651155/2014

- against -

Mot. Seq. No. 001

METROPOLITAN TRANSPORTATION
AUTHORITY and METROPOLITAN
TRANSPORTATION AUTHORITY POLICE
BENEVOLENT ASSOCIATION,

Respondents.

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DEBRA A. JAMES, J.:

Petitioner Michael Matrisciano moves, pursuant to CPLR 7511, for an order vacating an arbitration award, in which the arbitrator concluded on January 17, 2014 that petitioner committed a serious violation. As a result of the arbitration award, petitioner was then terminated from his employment with respondent Metropolitan Transportation Authority (MTA) as a police officer. The MTA cross-moves, pursuant to CPLR 7511, to dismiss the petition and confirm the award.

BACKGROUND AND FACTUAL ALLEGATIONS

A detailed recitation of the facts can be found in Matrisciano v Metropolitan Transportation Authority, 2014 WL 7653397, 2014 NY Misc LEXIS 5799 (2014 NY Slip Op 33435[U] [Sup Ct, NY County 2014]) (dismissing plenary action for breach of duty of fair representation claims as bare legal conclusions or

factual allegations contradicted by the record and breach of collective bargaining claim as not cognizable for vagueness), and familiarity with this record is presumed. The facts pertinent to this decision are as follows:

Prior to his termination in January 2014, plaintiff was employed with the MTA as a police officer. In 2011, the MTA sent plaintiff two notices of intent to discipline, as a result of plaintiff's alleged misconduct. In lieu of contesting the charges, plaintiff signed a waiver of trial agreement (Waiver Agreement). Prior to signing the Waiver Agreement, plaintiff was represented by the Metropolitan Transportation Authority Police Benevolent Association (MTA PBA), of which plaintiff is a member.

In August 2012, as a result of a another incident of plaintiff's alleged misconduct, plaintiff was served with another notice of intent to discipline. Pursuant to the Waiver Agreement, plaintiff was required to arbitrate the issue of whether or not the new allegation of misconduct was a serious violation. If the arbitrator concluded that the violation was serious, then, pursuant to the Waiver Agreement, the Chief of the Department could impose a suitable penalty.

Petitioner brought an Article 78 petition, in an attempt to nullify the Waiver Agreement. On appeal, the Appellate Division, First Department, upheld the nisi prius court decision that denied the petition. It concluded that petitioner failed to

exhaust his administrative remedies by commencing the Article 78 prior to arbitration, and that he "failed to establish that he was actually terminated before arbitration, in violation of the waiver agreement." Matter of Matrisciano v Coan, 123 AD3d 497, 498 (1st Dept 2014).

An arbitration hearing then proceeded on December 17, 2013. In the arbitration award (Award) dated January 17, 2014, the arbitrator concluded that petitioner had engaged in a serious violation. She found that petitioner submitted information to his automobile insurance company that he knew was false. The arbitrator concluded that petitioner's "misconduct impacts core qualities required for a police officer, including honesty, integrity, sound judgment and trust."

After the arbitrator issued her Award, the MTA terminated petitioner the same day. Shortly thereafter, petitioner initiated both this Article 75 proceeding and the plenary action. In the plenary action, the petitioner argued, among other things, that the Waiver Agreement was unconscionable and that the MTA PBA breached its duty of fair representation to him in connection with the Waiver Agreement and the arbitration.

Pursuant to CPLR 3211 (a) (7), the MTA moved to dismiss the complaint. On December 24, 2014, this court (Stallman, J.) granted the MTA's motion. The court found that the Waiver Agreement was enforceable. It also concluded that petitioner

could not support a claim for breach of duty of fair representation, as his claims involved issues with tactical strategy of his representative, and not ones stemming from bad faith or discrimination.

In this proceeding, petitioner's arguments parallel the ones made in the plenary action. The actions have almost identical language. Petitioner alleges that the Waiver Agreement was unconscionable and that the MTA PBA should not have encouraged him to sign it. He believes that he was not adequately represented by the MTA PBA during the arbitration. For instance, as claimed in the plenary action, he argues now that the MTA PBA did not follow his wishes with respect to the hearing. He asserts that the MTA PBA did not present evidence of similarly situated police officers, and also failed to competently cross-examine witnesses.

On such basis, petitioner alleges that the Award should be vacated. He alleges that the Award is violative of public policy, as it stems from the Waiver Agreement, and that the Award also arises from a breach of the MTA PBA's duty of fair representation to him. Petitioner further argues that the arbitrator exceeded her authority by considering his past conduct in rendering her Award.

The MTA argues that ineffective counsel is not a ground upon which to vacate an arbitration award.

DISCUSSION

CPLR 7511 (b) (1) provides four grounds for vacating an arbitration award:

"(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."

Matter of Peckerman v D & D Assoc., 165 AD2d 289, 294-295 (1st Dept 1991). The person challenging the award shoulders the "heavy burden" of vacating the award. Lehman Bros., Inc. v Cox, 10 NY3d 743, 744 (2008).

Petitioner alleges that his counsel was ineffective and that the Award should be vacated as a result. He lists numerous ways he believes that counsel did not properly advocate for him, including failing to cross examine witnesses and failing to implement his litigation strategy.

The doctrine of collateral estoppel is an equitable one which is based on the notion that:

it is not fair to permit a party to relitigate an issue that has already been decided against it. . . Its essential ingredients are: [f]irst, the identical issue necessarily must have been decided in the prior action and be decisive of the present action, and second, the party to be precluded from relitigating the issue must have had a full and fair opportunity to contest the prior determination [internal quotation marks and

citations omitted].

Matter of Juan C. v Cortines, 89 NY2d 659, 667 (1997).

Here, the issues decided in the plenary action regarding the Waiver Agreement and the MTA PBA's alleged breach of duty of fair representation were decided against petitioner. In addition, he had a full and fair opportunity to litigate these claims in the plenary action. Petitioner is therefore precluded, by the doctrine of collateral estoppel, from asserting those claims in this action.

In any event, as set forth above, an award may be vacated only on the basis of misconduct, bias, excess of power or procedural defects. Ineffective counsel is not a basis to vacate an arbitrator's award. See e.g., Matter of Obot (New York State Dept. of Correctional Servs.), 89 NY2d 883, 886 (1996) (a proceeding to vacate an arbitration award is not proper forum for fair representation claim). As such, the award will not be vacated on such premise.

Although not well articulated, petitioner seems to allege that the arbitrator exceeded her power by relying on his past history when arriving at her conclusion. Pursuant to CPLR 7511 (b) (1) (iii), an award may be vacated by the court only if the award is "violative of 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 (2d Dept 2009). The person moving to vacate the award has a heavy burden of proving by clear and convincing evidence, that the award is irrational. Muriel Siebert & Co. v Ponmany, 190 AD2d 544, 544 (1st Dept 1993). The arbitrator is entitled to apply her own "sense of law and equity to the facts" Matter of Erin Constr. & Dev. Co., Inc. v Meltzer, 58 AD3d at 730. As such, petitioner cannot demonstrate that it was irrational for the arbitrator to conclude that petitioner engaged in a serious violation by submitting false information to his insurance carrier.

Petitioner has not substantively raised any other grounds to justify the vacatur of the Award. Therefore, petitioner's request to vacate the Award shall be denied in its entirety, and the MTA's cross motion to dismiss the petition shall be granted.

In accordance with CPLR 7511 (e), the January 17, 2014 Award shall be confirmed.¹ See e.g., Matter of Board of Educ. of Unadilla Val. Cent. Sch. Dist. (McGowan), 97 AD3d 1078, 1080 (3d Dept 2012) ("Petitioner then commenced this proceeding seeking to vacate that determination – an arbitration award – pursuant to CPLR 7511 (b) Supreme Court denied the application to vacate and confirmed the award").

Accordingly, it is hereby

¹ CPLR 7511 (e) "upon the denial of a motion to vacate or modify, [the court] shall confirm the award."

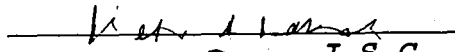
ADJUDGED that the petition is denied, and it is further

ADJUDGED that the cross motion of the respondent

Metropolitan Transportation Authority is granted in its entirety
and the arbitration award dated January 17, 2014 is confirmed.

Dated: August 7, 2015

ENTER:


DEBRA A. JAMES J.S.C.