

Updegrove v Betancourt
2016 NY Slip Op 31187(U)
June 22, 2016
Supreme Court, New York County
Docket Number: 652304/2016
Judge: Anil C. Singh
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 45

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STUART UPDEGROVE

Petitioner,
-against-

DECISION AND
ORDER

CAMILO BETANCOURT and LUZ MARIA
BETANCOURT,

Index No.:
652304/2016

Respondents.

Mot. Seq. 001

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HON. ANIL C. SINGH, J.:

This is an action by Stuart Updegrave (the “petitioner”), to confirm an arbitration award pursuant to CPLR § 7510. Respondents, Camilo Betancourt and Luz Maria Betancourt (together, “respondents”), have received notice, but do not oppose the action.

Petitioner is a registered broker dealer at National Securities Corporation (“NSC”). The respondents maintained brokerage accounts with NSC from 2010 to 2012. Petitioner was respondents’ registered representative while they maintained their account at NSC. Thereafter, a dispute arose regarding respondents account and respondents commenced an arbitration before the Financial Institution Regulatory Authority (“FINRA”), Camilo Betancourt and Luz Maria Betancourt v. National Securities Corporation, FINRA Case No. 14-02572 (the “arbitration”).

While petitioner was not a party to the arbitration, pursuant to FINRA's rules, he was nevertheless required to report the claim on his Central Registration Depository ("CRD") record. The claims asserted in the arbitration were voluntarily dismissed. Petitioner then requested a FINRA to expunge the arbitration from his CRD record.

On January 28, 2016, a FINRA Arbitration Panel considered petitioner's evidence and provided respondents with notice and opportunity to be heard. On March 9, 2016, the panel delivered an award finding respondents' claim, allegation or information to be false and that expungement of the arbitration from petitioner's record was appropriate. However, the FINRA Panel's recommendation was made with the understanding that petitioner must obtain confirmation of the arbitration award from a court of competent jurisdiction pursuant to FINRA Rule 2080.

Pursuant to CPLR § 7510, petitioner now seeks confirmation from this court of the arbitration award.

DISCUSSION

CPLR § 7510

CPLR § 7510 states: "The 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." N.Y. C.P.L.R. § 7510. The First Department, in interpreting CPLR § 7510, gives "the word 'shall' its ordinary

meaning” and the Court is “directed unequivocally by CPLR 7510 to confirm an arbitration award if a timely application is made whenever the award is not vacated or modified under CPLR 7511.” Bernstein Family Ltd. P'ship v. Sovereign Partners, L.P., 66 A.D.3d 1, 5 (1st Dept 2009). As long as the respondent is not seeking to vacate or modify the award, the court does not run into the problem of inserting itself into dispute resolution when only confirmation of an arbitration award has been sought. See id at 7.

Here, petitioner, in seeking the confirmation of the FINRA award, has satisfied all of the procedural requirements. Petitioner has made a timely application within one year of receipt of the award. (Petition, ¶ 15) Furthermore, respondents have not made a motion to modify the award under § 7511. Conclusively, “[r]espondents were notified of the expungement hearing and given an opportunity to appear, but chose not to do so and did not oppose Mr. Updegrove’s request for expungement.” (Petition, ¶ 9) Respondents have had ample time and notice, but have made no motion to modify or to vacate.

FINRA’s Rule and Venue

FINRA Rule 2080(a) provides that a petitioner, who seeks to expunge information from his CRD record, “must obtain an order from a court of competent jurisdiction directing such expungement or confirming an arbitration award containing expungement relief.” Additionally, FINRA Rule 2080(b) requires a

petitioner seeking expungement under 2080(a) to name FINRA as an additional party and serve FINRA with all appropriate documents, unless FINRA waives this obligation upon request of petitioner. FINRA granted Petitioner's request for a waiver of the obligation to name and serve FINRA. (Exhibit C)

Venue is proper as there is no specification giving sole jurisdiction to a different tribunal and the original arbitration's venue was New York County. See e.g., Big-W Const. Corp. v. Horowitz, 24 Misc. 2d 145, 148 (Sup. Ct. 1959), aff'd, 14 A.D.2d 817 (2d Dept 1961) ("In the absence of a specification in a contract or submission to arbitration giving sole jurisdiction to a particular tribunal 'the supreme court for the county in which one of the parties resides or is doing business, or in which the arbitration was held, shall have jurisdiction"). Therefore, this Court has jurisdiction to direct expungement of the arbitration from petitioner's CRD records.

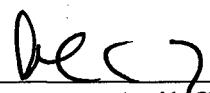
Accordingly it is,

ADJUDGED that the petition is granted and the award rendered in favor of petitioner and against respondent is confirmed; and it is further

ADJUDGED that this Court directs entry of judgment of the arbitration award; and it is further

ADJUDGED that there be an expungement of any mention of the arbitration from petitioner's CRD records.

Date: June 22, 2016
New York, New York



Anil C. Singh