

Matter of Halabi v Hasbani

2016 NY Slip Op 31428(U)

July 18, 2016

Supreme Court, Kings County

Docket Number: 503407/15

Judge: Larry D. Martin

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

At an I.A.S. Trial Term, Part 41 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State of New York, on the 18th day of July, 2016.

PRESENT:

Hon. LARRY D. MARTIN, J.S.C.

In the Matter of the Application of
VICTOR AL HALABI,
PETITIONER,

-VS-

JAMIL HASBANI,
RESPONDENT.

Motion Sequences #1 and #2

INDEX No. 503407/15

The following papers numbered 1 to 9 read on this motion Papers Numbered

Notice of Motion - Order to Show Cause and Affidavits (Affirmations) Annexed _____	_____ 1-2, 4-5
Answering Affidavit (Affirmation) _____	_____ 6-7
Reply Affidavit (Affirmation) _____	_____ 9
Memoranda of Law _____	_____ 3, 8

Upon the foregoing papers, petitioner Victor Al Halabi (“petitioner”) moves, by order to show cause by special proceeding, for an order: (1) pursuant to CPLR 7510 and 7514, confirming the Arbitration Award of the Rabbinical Court of Givas Hamorah (the “Rabbinical Court”) issued on July 7, 2014 (the “Award”), in favor of petitioner and against respondent Jamil Hasbani (“respondent”) and directing the Kings County Clerk to enter judgment in the sum of \$250,000, together with interest from the date of the award on July 1, 2014, in petitioner’s favor and against respondent; (2) pursuant to CPLR 7503(b), permanently staying all further arbitration proceedings, regarding the same subject matter as the Award, brought by respondent, or anyone acting on his behalf, before any arbitrator other than the Rabbinical Court of Givas Hamorah; and (3) granting petitioner an award of reasonable attorney’s fees, costs and disbursements due to respondent’s failure to comply with the provisions of the Award. Respondent cross-moves for an order, pursuant to CPLR 7511, to vacate the Award and to dismiss the petition herein.

* 2]
The instant proceeding arises from a dispute between petitioner and respondent related to the respondent's alleged failure to either return certain textiles that petitioner provided to respondent to be sold on consignment or pay petitioner for same (Verified Petition, ¶ 8).

Here, the Agreement to Submit to Arbitration (the "Agreement") is dated and signed by both parties on June 24, 2014. The Agreement provides that:

"...[t]he undersigned waive all waivable rights provided under CPLR Article 75, including but not limited to formal notice of the time and place [of] the arbitration proceeding and consent that the Arbitrators shall have jurisdiction to render an award based on the testimony and/or evidence presented, even without the presence of a party if the party does not attend a scheduled hearing. In the event the undersigned or any party seeks to reargue due to a claim of judicial error or new evidence etc., the undersigned agree that the Arbitrators shall have continuous jurisdiction over the matter, including the authority to render a clarification or supplemental award...

In the event one party does not obey by the award and the other party seeks court intervention or enforcement, the undersigned agree that the disobeying party shall pay reasonable attorney fees incurred by such proceeding..."

CPLR 7510 provides, in relevant part, that 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.

"Pursuant to CPLR 7511(b)(1) an arbitration award may be vacated on application of a party who participated in the arbitration only if the rights of that party were prejudiced by (1) corruption, fraud, or misconduct in procuring the award; (2) partiality of a supposedly neutral arbitrator; (3) the arbitrator exceeding his powers so that no final and definite award was made; or (4) failure to follow procedures provided by CPLR article 75" (*Wieder v. Schwartz*, 35 AD3d 752, 753 [2d Dept 2006]; see *Matter of Wicks Constr. v Green*, 295 AD2d 527, 528 [2d Dept 2002]).

CPLR 7506 (b) provides, in relevant part, that notification of an arbitration hearing is to be provided by the arbitrator in writing personally or by registered or certified mail not less than eight

[* 3]
days before the hearing.” CPLR 7506(f) further provides that any requirement of the section, with the exception of CPLR 7506(d), “may be waived by written consent of the parties and it is waived if the parties continue with the arbitration without objection.”

Based upon a review of the parties’ papers and the relevant law, the Court finds that petitioner has demonstrated that the Agreement executed by the parties herein, “waiving all waivable rights provided CPLR Article 75”, is binding upon both parties. Here, no proof has been submitted indicating that timely notice of the arbitration hearing was provided to respondent within eight days of it being held, pursuant to the provisions of CPLR 7506 (b). Indeed, respondent denies ever receiving a notice to appear for the arbitration hearing (Affidavit in Support of Cross-Motion and in Opposition to Petition, ¶ 12) However, the Court notes that the Agreement clearly states that by signing it, petitioner and respondent each “waive all waivable rights provided under CPLR Article 75.” Furthermore, the Court rejects respondent’s contention that he did not understand the English language or that he was unaware of what he was signing when he signed the Arbitration Agreement (see *Golden Stone Trading, Inc. v Wayne Electro Sys., Inc.*, 67 AD3d 731, 732 [2d Dept 2009]).

Accordingly, it is

ORDERED that the branch of petitioner’s motion to confirm the Arbitration Award of the Rabbinical Court of Givas Hamorah issued on July 7, 2014 in favor of petitioner and against respondent is granted; and it is further

ORDERED that all further arbitration proceedings related to the same subject matter as the Arbitration Award of the Rabbinical Court of Givas Hamorah issued on July 7, 2014 in favor of petitioner and against respondent, brought by respondent, or anyone acting on his behalf, before any other arbitrator other than the Rabbinical Court of Givas Hamorah are permanently stayed; and it is further

ORDERED that the branch of petitioner's motion for reasonable attorney's fees, costs and disbursements due to respondent's failure to comply with the provisions of the Arbitration Award of the Rabbinical Court of Givas Hamorah issued on July 7, 2014 is granted. The issue the amount of reasonable attorney's fees, costs and disbursements is hereby referred to the JHO/Special Referee Part. Therefore, the parties are directed to appear for a hearing on the issue of reasonable attorney's fees, costs and disbursements before a Special Referee in accordance with the provisions of Part 122 of the Rules of the Chief Administrator of the Courts (22 NYCRR Part 122). Upon the filing of the requisite forms and approval of the Administrative Judge, the date will be fixed by the Clerk of the Part; and it is further

ORDERED that respondent's cross-motion for an order vacating the Arbitration Award issued by the Rabbinical Court of Givas Hamorah on July 7, 2014 is denied.

The foregoing constitutes the decision, order and judgment of the court.

ENTER,

JUL 18 2016

For Clerks use only

MG _____

MD _____

Motion Seq. #



HON. LARRY D. MARTIN

J.S.C.