

Matter of Richmond v Haiim
2016 NY Slip Op 33119(U)
October 14, 2016
Supreme Court, Kings County
Docket Number: 502432/2016
Judge: Paul Wooten
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY**

**PRESENT: HON. PAUL WOOTEN
*Justice***

PART 97

**In the Matter of the Arbitration of
CHAIM RICHMOND,**

INDEX NO. 502432/2016

Petitioner,

**For an Order Pursuant to CPLR
Article 75 to Confirm an Arbitration
Award**

- against-

YESHIVAT OHR HAIIM,

Respondent.

FILED
KINGS COUNTY CLERK
2016 OCT 18 PM 9:56

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits (Memo) _____

Replying Affidavits (Reply Memo) _____

Sequence numbers 1 and 2 are consolidated for purposes of disposition.

This action was commenced by Chaim Richmond (petitioner) on February 23, 2016 by Notice of Petition for an Order pursuant to CPLR §§ 7510 and 7514 confirming an arbitration award dated May 18, 2015 in favor of the petitioner and directing the County Clerk of Kings County to enter judgment against Yeshivat Ohr Haiim (respondent) in the amount of \$26,944.00 with 9% interest from March 18, 2015 and costs and disbursements (motion sequence 1). Respondent is in opposition to this relief and cross-moves for an order pursuant to CPLR §§ 7511(b)(iv) and 7506(c) vacating the March 18, 2015 Ruling of the Rabbinical Court of Kolel

Tratikov (Beth Din) (motion sequence 2).

In support of his petition, petitioner submits an attorney affirmation, the arbitration agreement between the parties, and the arbitration award. In support of its cross-motion, respondent attaches an attorney affirmation and an affidavit from Rabbi Mordechai Kashani (Rabbi Kashani), who appeared at the arbitration before the Beth Din on behalf of the respondent.

BACKGROUND

The petitioner was a former first grade teacher at the respondent school, which consists of grades pre-K through eighth grade. He was terminated from his position at the school. According to Rabbi Kashani, he was the one to make the decision to terminate the petitioner from his employment. On January 25, 2015, the parties entered into an agreement to arbitrate any issues or disagreements between them before a panel of three Rabbis from the Rabbinical Court of Kolel Tratikov. Specifically, the parties agreed as follows:

We the undersigned litigants, agree that we have taken it upon ourselves to settle our claims regarding the disagreements between us before the Rabbinical Judges . . . and they shall rule on the disagreement between us, whether as to the law, or the interpretation that is closest to the law as the Rabbinical Judges see fit, and the decision of the rule will be even on a majority opinion, even if one will say "I do not know," and we accept it upon ourselves and undertake to follow the ruling that will come out therefrom; and even if there will be an error whether in discretion or in a secondary matter (if they will not recant; and if they do recant and write another ruling, we undertake to follow the last ruling), without any omission or appeal whatsoever (see Notice of Petition, exhibit A).

In a Ruling dated March 18, 2015, the Rabbinical Panel at the Beth Din found that respondent owed to petitioner \$31, 444.00. However, as respondent had already paid \$5,000.00, the remainder of the sum in the amount of \$26, 944.00 should be paid to the

petitioner (*see Notice of Petition*, exhibit B).¹ Specifically, the Rabbinical Panel noted that the Ruling comes out “after we heard the parties’ claims and arguments, and the hearing of all they offered before us” (*id.*).

In support of his application, petitioner contends that there is a strong public policy of favoring arbitration and that courts have consistently refrained from interfering with the arbitration process and its outcome. Since the parties agreed to submit their dispute to a Beth Din and the Beth Din made a ruling after consideration of the parties’ arguments, this Court should confirm the award and order a judgment against the respondent in accordance with said ruling. In opposition and in support of its cross-motion, respondent contends that the award should be vacated because the arbitrators failed to follow proper arbitration procedures set forth in CPLR 7506(c), which states that the parties are entitled to be heard and to present evidence and cross-examine witnesses. Specifically, in an affidavit, Rabbi Kashani alleges that he was denied the right to present any testimony at the hearing or give any explanation as to why petitioner was actually terminated for cause.

DISCUSSION

CPLR 7511(b) provides in relevant part as follows:

(b) Grounds for vacating. 1. 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: ... (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.

“Judicial review of an arbitrator’s award is extremely limited” (*Matter of County of Nassau v Patalano*, 128 AD3d 694, 694 [2d Dept 2015], quoting *Matter of Vintage Flooring & Tile, Inc. v DCM of NY, LLC*, 123 AD3d 731, 732 [2d Dept 2014]). “Consistent with the public

¹ The Court is aware that the mathematical calculation by the Beth Din is incorrect, however, it is bound by what is put in the Arbitration Award.

policy in favor of arbitration, the grounds specified in CPLR 7511 for vacating an arbitration award are few in number and narrowly applied" (*Matter of Local 295–295C, IUOE v Phoenix Envtl. Servs. Corp.*, 21 AD3d 901, 901 [2d Dept 2005]). "A party seeking to overturn an arbitration award on one or more grounds stated in CPLR 7511(b)(1) bears a 'heavy burden,' and must establish a ground for vacatur by clear and convincing evidence" (*Matter of County of Nassau*, 128 AD3d at 694, quoting *Matter of Quality Bldg. Constr., LLC v Jagiello Constr. Corp.*, 125 AD3d 973, 973 [2d Dept 2015]; see *Matter of Local 295–295C, IUOE*, 21 AD3d at 901).

"An arbitration award may be vacated if the court finds that the rights of a party were prejudiced by (1) corruption, fraud, or misconduct in procuring the award; (2) partiality of an arbitrator; (3) an arbitrator who exceeded his or her power; or (4) the failure to follow the procedures of CPLR article 75" (*Matter of County of Nassau*, 128 AD3d at 694-695; see CPLR 7511[b]). "An arbitration award may not be vacated unless it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power" (*Matter of Civil Service Employees Association*, __AD3d__, 2016 NY Slip Op 06211 *1 [2d Dept 2016], quoting *Matter of Board of Educ. of Arlington Cent. School Dist. v Arlington Teachers Assn.*, 78 NY2d 33, 37 [1991]; see CPLR 7511[b][1]).

"An 'arbitrator's award should not be vacated for errors of law and fact committed by the arbitrator and the courts should not assume the role of overseers to mold the award to conform to their sense of justice'" (*Matter of Susan D. Settenbrino, P.C. v Barroga-Hayes*, 89 AD3d 1094, 1095 [2d Dept 2011]; quoting *Wien & Malkin LLP v Helmsley–Spear, Inc.*, 6 NY3d 471, 479–480 [2006]). "An arbitrator is not bound by principles of substantive law or rules of evidence, and may do justice and apply his or her own sense of law and equity to the facts as he or she finds them to be" (*Matter of Erin Constr. & Dev. Co., Inc. v Meltzer*, 58 AD3d 729, 730 [2d Dept 2009]).

The respondent fails to demonstrate by clear and convincing evidence that it was denied and deprived of the opportunity to present its case or that the Beth Din improperly prevented Rabbi Kashani from testifying as to the facts surrounding petitioner's termination from the respondent school (see *Denaro v Cruz*, 115 AD3d 742 [2d Dept 2014]). Notwithstanding Rabbi Kashani's statements to the contrary, there is no proof or factual evidence submitted to the Court to support respondent's assertions in this regard (see *Broderick v Suffolk County Bar Assn.*, 157 AD2d 780 [2d Dept 1990]). Specifically, the Court notes that there are no stenographic minutes of the hearing before the Beth Din (see *Government Empls. Ins. Co. v Schussheim*, 122 AD3d 849 [2d Dept 2014]), and respondent cannot rely on Rabbi Kashani's conclusory assertions in his affidavit to support vacatur of an arbitration ruling, which both parties agreed to follow without appeal (see Notice of Petition, exhibit A). Additionally, the Court notes that even assuming *arguendo* that the Beth Din failed to follow proper procedure and allow respondent to present testimony, respondent waived this defense since it continued with the arbitration without objection (see CPLR 7506[f]).

CONCLUSION

Accordingly, it is hereby

ORDERED that respondent's cross-motion to vacate the March 18, 2015 Arbitration Ruling is denied (motion sequence 2); and it is further,


ORDERED that petitioner's motion to pursuant to CPLR 7510 confirming the Arbitration Award in favor of petitioner is granted (motion sequence 1); and it is further,

ORDERED that petitioner is granted judgment as against YESHIVAT OHR HAIIM in the amount of \$26,944.00, together with interest at the rate of 9% from March 18, 2015 until the entry of judgment, as calculated by the Clerk of the Court, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further,

ORDERED that counsel for petitioner is directed to serve a copy of this Order with Notice of Entry upon the respondent YESHIVAT OHR HAIM and upon the Clerk of the Court who is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

Dated: 10/14/16


PAUL WOOTEN J.S.C.

For Clerk's Use Only

MG X

MD X

Motion Seq. # 1, 2

2016 OCT 18 PM 9:56

FILED
CLERK'S OFFICE
CLERK

