| **New York City Hous. Auth. v Local 32BJ Serv. Empls. Intl. Union CTW, CLC** |
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| 2017 NY Slip Op 31856(U) |
| August 28, 2017 |
| Supreme Court, New York County |
| Docket Number: 154311/2017 |
| Judge: Kathryn E. Freed |
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# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

**PRESENT:** HON. KATHRYN E. FREED, J.S.C. **PART** 2
*Justice*

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NEW YORK CITY HOUSING AUTHORITY,

Plaintiff,

- v -

LOCAL 32BJ SERVICE EMPLOYEES INTERNATIONAL UNION CTW, CLC, KRAUS MANAGEMENT, REALTY ADVISORY BOARD ON LABOR RELATIONS, INC., and OFFICE OF THE CONTRACT ARBITRATOR,

Defendant.

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**INDEX NO.** 154311/2017

**MOTION DATE**

**MOTION SEQ. NO.** 001

**DECISION, ORDER AND JUDGMENT**

The following e-filed documents, listed by NYSCEF document number 5, 9, 10, 15, 17, 19, 20, 21, 22, 23, 24

were read on this application to/for Stay Arbitration

**Upon the foregoing documents, it is**

ordered and adjudged that the petition is **granted**.

Petitioner New York City Housing Authority moves, pursuant to CPLR 7503(b), for a stay of the arbitration between it and respondents Local 32BJ Service Employees International Union CTW, CLC, Kraus Management, Realty Advisory Board on Labor Relations, Inc., and the Office of the Contract Arbitrator. After oral argument, and after a review of the parties' motion papers and the relevant statutes and case law, the petition is **granted**.

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## FACTUAL L AND PROCEDURAL BACKGROUND

Respondent Local 32BJ Service Employees International Union CTW, CLC ("32BJ") is a labor union which was the bargaining agent for property service workers formerly employed by Grenadier Realty Corporation ("Grenadier"). NYSCEF Doc. 1, at pars. 2-3.[1] Respondent Realty Advisory Board on Labor Relations, Inc. ("RAB") negotiated collective bargaining agreements on behalf of owners and operators of real property with unions which represented their employees. Id., at par. 4.

On June 1, 2007, petitioner New York City Housing Authority ("NYCHA") entered into a management/maintenance agreement with Grenadier for the maintenance of certain buildings owned and/or controlled by NYCHA in Manhattan and The Bronx ("the NYCHA/Grenadier Agreement"). Doc. 1, at par. 13; Doc. 4. Article 4.07 of the NYCHA/Grenadier Agreement provided, in pertinent part, as follows:

> In performing the Services, [Grenadier] has the status of an independent contractor. [Grenadier] may bind [NYCHA] only as set forth in this Agreement. Neither [Grenadier] nor its employees nor Subcontractors are to represent themselves to be, nor shall they be deemed to be, employees of [NYCHA].

[1] Unless otherwise noted, all references are to the documents filed with NYSCEF in this action.

> [Grenadier] is solely responsible for payment of all compensation owed to its own personnel and its Subcontractors.

Doc. 4, at par. 4.07.

In 2010 and 2011, Grenadier, purportedly acting on behalf of NYCHA, entered into CBAs with 32BJ governing certain buildings owned by NYCHA in Manhattan and The Bronx. Doc. 1, at par. 12; Ex. B to Pet. The purported CBAs provided, inter alia, that:

> In the event an Employer terminates an employee or employees because of a change in ownership, operation, or control of a building or buildings, and such employee(s) are not offered employment or are not employed by the succeeding Employer in the building or buildings at the then existing wages, hours and working conditions, the terminated employee(s) shall receive severance pay in the amount of six (6) months' pay, in addition to any other accrued payments due under this Agreement.

Doc. 3, at p. 31.

In 2013, NYCHA terminated the NYCHA/Grenadier Agreement and entered into a management/maintenance agreement with respondent Kraus Management ("Kraus").

On or about May 3, 2017, NYCHA was served with an arbitration request letter ("the notice") signed by 32BJ. Id., at par. 6; Doc. 2. The notice referred to a collective bargaining agreement ("CBA") allegedly entered into between NYCHA and 32BJ and containing an arbitration clause. Doc. 1, at par. 7; Doc. 2.

On May 11, 2017, NYCHA commenced the captioned proceeding by filing a petition seeking to stay arbitration pursuant to CPLR 7503(b) on the ground that it never entered into a CBA with 32BJ. Doc. 1. Rather, urges NYCHA, the CBA was between Grenadier and 32BJ. In support of the petition, NYCHA argues, inter alia, that Grenadier did not have the authority to bind it to the CBA.[2]

In opposition to the OSC, 32BJ argues that Grenadier had apparent authority to act on behalf of NYCHA in executing the CBA.[3] In support of its argument, 32BJ asserts that it is the custom and practice of managing agents in the real estate industry to enter into CBAs with unions on behalf of the owners they represent.

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[2] Although an order to show cause ("OSC") supporting the petition was also filed on May 11, 2017, the order to show cause was not signed by this Court. However, since this Court directed that the parties provide papers in connection with the application, and they have done so, this omission will be overlooked in the discretion of this Court. See CPLR 2001.

[3] 32BJ does not argue that Grenadier had actual authority to enter into the CBA.

On May 23, 2017, 32BJ filed its answer to the petition. Doc. 14. In its answer, 32BJ asserted, inter alia, a counterclaim seeking an order compelling NYCHA to arbitrate the disputes arising under the CBAs executed between Grenadier and 32BJ. Id, at pp. 4-6.

On June 19, 2017, NYCHA denied the allegations in 32BJ's counterclaim and asserted as defenses that the counterclaim failed to state a cause of action and that no valid arbitration agreement existed between NYCHA and 32BJ. Doc. 24.

## LEGAL CONCLUSIONS

In support of its application, NYCHA relies, inter alia, on the case of *Genesco Entertainment, Div. of Lymutt Industries, Inc. v Koch*, 593 F Supp 743 (SDNY 1984). In that case, the court held, inter alia, that:

> When acting in its corporate capacity, a municipality is held as accountable for its obligations as are individuals and corporations in the conduct of business. Unlike individuals and private corporations, however, a municipality's power to contract is statutorily restricted for the benefit of the public. Statutory restrictions on a municipal corporation's power to contract protect the public from the corrupt or ill-considered actions of municipal officials. To allow recovery under a contract which contravenes such restrictions gives vitality to an illegal act and grants the municipality power which it does not possess to waive or disregard requirements which have been properly determined to be in the interest of the whole. Hence, while a municipal corporation

> must honor its authorized commitments, it is not bound to contracts entered into by employees outside their authority. It is established law in New York that where there is a lack of authority on the part of agents of a municipal corporation to create a liability, except by compliance with well-established regulations, no liability can result unless the prescribed procedure is complied with and followed.

Id., at 747-748 (internal quotations and footnotes omitted).

The court further stated that:

> New York Courts do not generally follow the doctrine of apparent authority in cases involving municipal defendants. New York law places the burden of determining the scope of a municipal officer's authority upon those who deal with municipal government. Unlike a typical agency relationship, the authority of municipal officers is a matter of record to which the public has ready access. Moreover, placing the public on notice of the limitation of the authority of municipal employees furthers the purpose of the statutory restrictions to protect the public against irresponsible or corrupt actions of municipal employees.

Id., at 749.

In opposing the application, 32BJ relies, inter alia, on *Bd. of Educ. v Conn. Gen. Life Ins. Co.*, 309 F Supp 2d 416 (EDNY 2004), in which the court stated that the holding of *Genesco* – "that apparent authority cannot bind a municipality – is

limited to those circumstances where a municipal employee's authority is limited by statutes or regulations."

A review of the motion papers reveals that the authority of Grenadier - the ostensible agent of NYCHA, a municipal agency, was limited by the New York City Administrative Code. "'Sections 12-304 (a-c) of the [New York City Collective Bargaining Law] ["the NYCCBL"] state that it will be applicable to, as here pertinent, '[a]ll municipal agencies and to the public employees and public employee organizations thereof'; 'any agency or public employer . . . which ha[s] been made subject to this chapter by state law'; and any other public employer which 'elects' to be covered by the NYCCBL." *Matter of Plumbers Local Union No. 1 v Gold*, 2010 N.Y. Misc. LEXIS 1470 (Sup Ct New York County 2010). Thus, by its terms, the NYCCBL requires public employees of municipal agencies such as NYCHA to submit to collective bargaining. The NYCCBL does not provide that employees of a private agent of NYCHA, such as those working for Grenadier, can avail themselves of collective bargaining. Thus, Grenadier clearly did not have the authority to bind NYCHA to a collective bargaining agreement with 32BJ.

Public policy militates in favor of the foregoing result. *See generally Evans v City of Johnstown,* 96 Misc2d 755, 767 (Sup Ct Fulton County 1978), citing

*Cassella v Schenectady*, 281 A.D. 428, 432 (3d Dept 1953). If this Court were to find that Grenadier had apparent authority to bind NYCHA to the CBA with 32BJ, then it would be allowing Grenadier's private employees to engage in collective bargaining, a right clearly intended for municipal employees. Indeed, section 12-302 of the NYCCBL, entitled "Statement of policy", provides, inter alia, that:

> It is hereby declared to be the policy of the city to favor and encourage the right of municipal employees to organize and be represented, written collective bargaining agreements on matters within the scope of collective bargaining . . .

Moreover, "[t]hose seeking to deal with a municipal corporation through its officials [ ] must take great care to learn the nature and extent of their power and authority . . ." *McDonald v Mayor*, 68 N .Y. 23, 26 (1867). Here, there is no indication that either Grenadier or NYCHA misled 32BJ into signing the CBA. Had 32BJ inquired of either NYCHA or Grenadier, it would have learned that section 4.07 of the NYCHA/Grenadier Agreement, which limited Grenadier's specific duties, did not include a clause allowing the latter to enter into a CBA on behalf of NYCHA.

The additional authority relied on by 32BJ does not change the result reached above. In *Property Advisory Group, Inc. v Bevona*, 718 F. Supp. 209 (SDNY 1989),

a representative of a building owner's managing agent executed an application for commercial building membership in the RAB, allegedly on behalf of the owner. However, the management agreement prohibited the managing agent from entering into union contracts or CBAs on the owner's behalf. In finding that the managing agent had apparent authority to enter into a CBA on the owner's behalf, the court found, inter alia, that such was the custom and practice in the *commercial* real estate industry. However, there is no legal or factual basis for 32BJ's argument that a custom and practice existed whereby NYCHA, a public entity, permitted its private managing agents to enter into CBAs on its behalf entitling the private employees of those managing entities to collective bargaining with 32BJ. *See Sixth Ave. W. Assocs. v Local 32B-32J, Serv. Employees,* 1995 U.S. Dist. LEXIS 10382 (SDNY 1995).

Since Grenadier did not have apparent authority to enter into an arbitration agreement with 32BJ on behalf of NYCHA, no valid arbitration agreement existed between NYCHA and 32BJ and thus NYCHA's petition to stay arbitration is granted.

Therefore, in light of the foregoing, it is hereby:

ORDERED and ADJUDGED that the petition by the New York City Housing Authority to stay arbitration pursuant to CPLR 7503 is granted and respondents are permanently stayed from proceeding to arbitration in this matter; and it is further

ORDERED and ADJUDGED that respondents are permanently stayed from arbitrating with petitioner, the New York City Housing Authority, the issue of any benefits allegedly owed to employees of Grenadier Realty corporation; and it is further

ORDERED that this constitutes the decision, judgment and order of the court.

HON. KATHRYN FREED
JUSTICE OF SUPREME COURT

8/28/2017
DATE

HON. KATHRYN E. FREED, J.S.C.

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