

Austin v Tarpinian

2018 NY Slip Op 32154(U)

September 5, 2018

Supreme Court, New York County

Docket Number: 151316/2018

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : PART 32

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JOLLENE JILL AUSTIN,

Plaintiff,

Index No. 151316/2018
Motion Seq: 001

-against-

JOHN ALEXANDER TARPINIAN and
NEWPORT COAST SECURITIES,

DECISION & ORDER
ARLENE P. BLUTH, JSC

Defendants.

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The motion by defendant Tarpinian to dismiss is granted only to the extent that plaintiff's complaint is dismissed and Tarpinian is awarded costs.

Background

This action arises out of a FINRA arbitration involving plaintiff and Tarpinian. Plaintiff commenced an arbitration against Tarpinian in April 2016 in which she accused Tarpinian of sexual assault. Both plaintiff and Tarpinian worked for defendant Newport Coast Securities, a financial services firm. Tarpinian purportedly recruited plaintiff to be part of his team.

Tarpinian brought a proceeding to stay the arbitration in New York County Supreme Court in July 2016. Plaintiff opposed the petition and claimed that the dispute should remain in arbitration. Justice Singh agreed and denied Tarpinian's petition (NYSCEF Doc. No. 9).

The parties then participated in the arbitration and the panel concluded that “After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows: 1. Claimant’s claims are dismissed in their entirety. 2. Any and all claims for relief not specifically addressed herein, including punitive damages and attorneys’ fees, are denied” (NYSCEF Doc. No. 9).

Tarpinian moves to dismiss the claims against him on the ground that they are barred by the arbitration award. He contends that the allegations in plaintiff’s amended complaint were addressed in the arbitration and that plaintiff is not entitled to relitigate issues that were the subject of a final award. Tarpinian maintains that res judicata and collateral estoppel bar plaintiff’s claims.

In opposition, plaintiff emphasizes that Tarpinian claimed in the arbitration that FINRA lacked jurisdiction to hear plaintiff’s allegations. Plaintiff contends that Tarpinian repeated this claim throughout the arbitration, including in his opening and closing statements. Plaintiff posits that Tarpinian’s testimony at the arbitration hearing was preposterous and not believable.

On February 12, 2018, plaintiff sent a letter to FINRA requesting that it clarify whether the December 12, 2017 award was with or without prejudice in light of Tarpinian’s jurisdictional arguments. Plaintiff observes that Tarpinian objected on the ground that the request was too late; FINRA ultimately sustained that objection. Plaintiff argues that because it is unclear whether the arbitration award was rendered with or without prejudice, res judicata does not apply.

Discussion

“On a CPLR 3211 motion to dismiss, the court will accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether

the facts as alleged fit within any cognizable legal theory” (*Nonnon v City of New York*, 9 NY3d 825, 827, 842 NYS2d 756 [2007] [internal quotations and citation omitted]).

CPLR 3211(5) permits a party to move to dismiss on the ground that “the cause of action may not be maintained because of arbitration and award, collateral estoppel, discharge in bankruptcy, infancy or other disability of the moving party, payment, release, res judicata, statute of limitations, or statute of frauds.”

Here, the Court finds that plaintiff is barred from bringing the instant claims against Tarpinian. The amended complaint contains allegations that are strikingly similar to the issues decided in the arbitration award. Both concern the same accusations of sexual assault and harassment.

Plaintiff’s claim that there is uncertainty over whether the decision was issued with or without prejudice is unavailing. At first glance, the Court would be hard pressed to find that the award was issued on solely jurisdictional grounds. The award cites to the pleadings, testimony and evidence as the basis for the decision— that does not imply that the panel denied plaintiff’s complaint for lack of jurisdiction.

Moreover, the reason that there is any confusion about the panel’s holding is due to plaintiff’s failure to request clarification within 10 days of service of the award (*see* NYSCEF Doc. Nos. 27, 28). For some reason, plaintiff waited nearly two months to ask FINRA to clarify the basis for its decision (*see* NYSCEF Doc. No. 26). Plaintiff’s inaction cannot permit her to bring the same allegations against Tarpinian in a different forum.

The fact that Tarpinian objected to FINRA’s jurisdiction during the arbitration does not change this Court’s decision. Although Tarpinian raised doubts about FINRA’s ability to hear the case, he

fully participated in the hearing. In fact, plaintiff's opposition contains numerous complaints about how Tarpinian's testimony was not believable (*see* NYSCEF Doc. No. 31 at 6-8). This is not a case where Tarpinian refused to participate— despite his objections, Tarpinian offered detailed testimony about the merits of the case and the arbitration panel believed his account.

Summary

While the Court agrees with Tarpinian's position that the arbitration award was issued on the merits and that plaintiff is barred from bringing the instant claims against Tarpinian, that conclusion is not so obvious as to render the instant complaint frivolous. Therefore, the branch of Tarpinian's motion seeking sanctions is denied.

The Court also observes that the notice of motion is by defendant Tarpinian only and is signed by counsel for Tarpinian. There is no mention of defendant Newport Coast Securities so that entity remains in the case. A preliminary conference shall be held on December 18, 2018 at 2:15 p.m.

Accordingly, it is hereby

ORDERED that the motion of defendant John Tarpinian to dismiss the complaint is granted and the complaint is dismissed in its entirety as against Tarpinian with costs and disbursements as taxed by the Clerk of the Court and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that the action is severed and continued against the remaining defendant Newport Coast Securities. PC: 12-18-2018 at 2:15 p.m.

Dated: September 5, 2018
New York, New York



ARLENE P. BLUTH, JSC
HON. ARLENE P. BLUTH