

**Shea v Windsor St. Capital, L.P.**

2018 NY Slip Op 32681(U)

October 18, 2018

Supreme Court, New York County

Docket Number: 654371/2018

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 6

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Patrick Shea and Mary Shea,

Petitioners,

Index No.  
654371/2018

DECISION AND  
ORDER

Mot. Seq. 3

- against -

Windsor Street Capital, L.P., f/k/a Meyers  
Associates, L.P.,

Respondent.

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HON. EILEEN A. RAKOWER, J.S.C.

This is a special proceeding commenced pursuant to CPLR §7510 to confirm an arbitration award. The arbitration award was rendered in Wisconsin, Milwaukee on or about August 13, 2018, by a panel of three arbitrators in the FINRA Dispute Resolution forum (the "Award") in the arbitration captioned *Patrick Shea and Mary Shea v. Windsor Street Capital, LP, and Bruce Meyers*, FINRA Case No. 17-00360 (the "Arbitration"). Windsor Street Capital, L.P., f/k/a Meyers Associates, L.P. ("Windsor") is a New York limited partnership, licensed to do business in New York with its principal place of business located at 45 Broadway, 2nd Floor, New York, New York, 10006.

Background

On or about February 9, 2017, Petitioners commenced the Arbitration by filing with FINRA Dispute Resolution a Statement of Claim against respondents, Windsor Street Capital, L.P. ("Windsor") and Bruce Meyers ("Meyers"). Petitioners asserted the following claims: fraudulent trades in violation of FINRA Rules, state blue sky laws, and Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934; violation of FINRA Rules 2010, IM-2310-2, and 2020; and

failure to supervise broker conduct. These claims related to Windsor's alleged failure to supervise the broker, who excessively and unlawfully traded certain securities in their accounts.

On or about June 20, 2017, Windsor agreed to participate in the Arbitration by filing with FINRA Dispute Resolution a Statement of Answer in response to Petitioners' Statement of Claim.

On July 17, 2018, the Panel of three FINRA arbitrators conducted an in-person hearing to decide Petitioners' claims (the "Hearing"). Petitioners attended the Hearing. Respondents did not. At the hearing, Petitioners advised the Panel that they had reached a settlement with Meyers.

On or about August 11, 2018, the FINRA arbitration Panel rendered a decision in the Arbitration. The Award states:

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. Windsor is liable for and shall pay to Claimants the sum of \$1,380,804.00 in compensatory damages.
2. Windsor is liable for and shall pay to Claimants interest on the above-stated sum at the rate of 5% per annum, from and including the date of service of this Award, through and including the date this Award is paid in full.
3. Windsor is liable for and shall pay to Claimants the sum of \$3,000,000.00 in punitive damages pursuant to Wis. Stats. § 895.043 and *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52 (1995).
4. Windsor is liable for and shall pay to Claimants the sum of \$552,321.60 in attorneys' fees pursuant to Wis. Stats. § 551.509.

5. Windsor is liable for and shall pay to Claimants the sum of \$44,450.00 in accrued sanctions pursuant to the Panel's Orders issued during the course of this matter. The accrual of additional daily charges specified in the Panel's Orders is terminated.

6. Windsor is liable for and shall pay to Claimants the sum of \$425.00 as reimbursement for the non-refundable portion of Claimants' filing fee.

On or about June 4, 2018, FINRA Department of Enforcement expelled Respondent from the financial industry for failing to satisfy an arbitration award. *Dept. of Enforcement v. Windsor Street Capital, LP*, Docket No. 2018058118001

#### Applicable Standard

"It is well settled that judicial review of arbitration awards is extremely limited." *Wien & Malkin LLP v. Helmsley-Spear, Inc.*, 6 N.Y.3d 471, 479 (2006). "An arbitration award must be upheld when the arbitrator 'offers even a barely colorable justification for the outcome reached.'" *Wien*, 6 N.Y.3d at 470-480 (internal citations omitted). 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." CPLR §7511 provides four grounds on which an application to confirm an arbitration award may be denied: fraud; partiality by the arbitrator; the arbitrator exceeding his or her authority; and a failure to follow the procedures of CPLR Article 75.

#### Discussion

Petitioners' Verified Petition, dated September 10, 2018, is timely because the application was made within one year after the delivery of the Award, dated August 13, 2018. Furthermore, Respondent does not oppose Petitioners' application to confirm the Award, and therefore there are no facts alleged that fall within the four grounds set forth in CPLR 7511. Accordingly, the Petition to confirm the Award is granted without opposition.

Wherefore, it is hereby

ORDERED that the Petition to confirm the Award, dated April 13, 2018, entered upon the conclusion of an arbitration before FINRA between the Petitioners and Respondent, captioned *Patrick Shea and Mary Shea v. Windsor Street Capital, LP, et al.*, FINRA Case No. 17-00360, is granted without opposition; and it is further

ORDERED and ADJUDGED that petitioners Patrick Shea and Mary Shea have judgment and recover against respondent Windsor Street Capital, L.P., the following sums: (1) the sum of \$1,380,804.00 in compensatory damages plus interest at the rate of 5% per annum, from and including the date of service of the Award, through and including the date the Award is paid in full; (3) \$3,000,000.00 in punitive damages pursuant to Wis. Stats. § 895.043 and *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52 (1995); (4) the sum of \$552,321.60 in attorneys' fees pursuant to Wis. Stats. § 551.509; (5) the sum of \$44,450.00 in accrued sanctions pursuant to the Panel's Orders issued during the course of the matter (The accrual of additional daily charges specified in the Panel's Orders is terminated.); and (6) the sum of \$425.00 as reimbursement for the non-refundable portion of Petitioners' filing fee, together with costs and disbursements in the amount of \$ \_\_\_\_\_ as taxed by the Clerk, for the total amount of \$ \_\_\_\_\_, and that the petitioner have execution therefor.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: October 18, 2018



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Eileen A. Rakower, J.S.C.