

**Citrin Cooperman & Co., LLP v Skyline Risk Mgt.,
Inc.**

2019 NY Slip Op 30200(U)

January 7, 2019

Supreme Court, New York County

Docket Number: 650241/2018

Judge: Doris Ling-Cohan

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DORIS LING-COHAN PART IAS MOTION 36

Justice

X

CITRIN COOPERMAN & COMPANY, LLP

Petitioner,

- v -

SKYLINE RISK MANAGEMENT, INC.,

Respondent.

INDEX NO. 650241/2018

MOTION DATE _____

MOTION SEQ. NO. 001

DECISION/ORDER/JUDGMENT

X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 37, 38, 39, 40

were read on this motion to/for

CONFIRM/DISAPPROVE AWARD/REPORT

Upon the foregoing documents, it is

ORDERED that petitioner Citrin Cooperman & Company LLP's ("Citrin") petition to confirm an arbitration award is granted and the cross-petition by respondent Skyline Risk Management, Inc. ("Skyline") to vacate the subject award and to dismiss the petition is denied, for the reasons stated below.¹

Background

By written agreement dated July 11, 2016 (the "Agreement"), Citrin agreed to provide technology consulting services to Skyline (Exhibit A, Notice of Petition). The Agreement indicated that the parties would arbitrate disputes arising from the Agreement with the American Arbitration Association ("AAA") and that any such arbitration award would be final and binding on the parties. The Agreement also provided that Skyline would "pay[,] in addition to balance due[,] all costs of collection and reasonable attorneys' fees incurred by Citrin on account of [any] such collection" (Exhibit B of Exhibit A, Notice of Petition).

¹ The court notes that it attempted to settle this matter prior to the disposition of the within petition and cross-petition.

A dispute arose amongst the parties and, after a demand for arbitration was filed, a hearing was conducted on December 4, 2017, before arbitrator Barbara A. Mentz (“Arbitrator Mentz”). By Decision and Award dated December 21, 2017, Arbitrator Mentz determined that Citrin was entitled to the sum of \$17,500.00, plus pre-award interest of \$1,717.39, from November 19, 2016, at the rate of 9%, to the date of the award, and \$13,500.00, in attorneys’ fees. The total amount of the award is \$32,717.39.

The Petition

Petitioner Citrin commenced the within proceeding pursuant to CPLR 7510 to confirm such award and to enter judgment. Upon review of the within submissions, as less than one (1) year has expired from the date of delivery of the award by Arbitrator Mentz to the parties, to the filing of the within petition, and, as the Decision and Award has not been vacated or modified under CPLR 7511, confirmation of the arbitration award is warranted and judgment shall be entered thereon, as provided below.

Petitioner is also entitled to additional legal fees for the preparation of this Petition and the legal fees related to the court proceedings pertaining thereto, as the Agreement provides for such recovery (*see* CPLR 7513 [attorneys’ fees are recoverable in arbitration if they are expressly allowed in the relevant arbitration agreement]; *In the Matter of New York Merchants Protective Co., Inc., v RW Adart Poly, LLC*. 108 AD3d 554, 557 [2nd Dept 2013] [if court proceedings are included in the arbitration agreement, then reasonable attorneys’ fees incurred from filing a petition to confirm the award should be awarded]). It is noted that respondent Skyline has not disputed the amount, nor reasonableness, of the attorneys’ fees sought by petitioner herein and, instead seeks to vacate the award in its entirety, which is denied below. As such, attorneys’ fees are awarded to petitioner in the amount of \$11,998.10, as provided in the submissions, including the July 19, 2018 Affirmation by Lawrence Fechner, In Further Support of the Petition to Confirm the Arbitration Award. Any claim for additional attorneys’ fees incurred by Citrin related to the filing and litigation of the within petition, after July 19, 2018, are severed as indicated below.

The Cross-Petition

Respondent's cross-petition seeking to vacate the subject award and to dismiss the petition on the basis that it was prejudiced by the appointment of Mentz to arbitrate this matter is denied, as there has been an insufficient showing by respondent of impropriety or partiality by arbitrator Mentz and that respondent was in fact prejudiced, to warrant vacatur of the subject award (*see* CPLR 7511[b][1][ii]; *Artists & Craftsmen Builders*, 232 AD2d 265 [1st Dept 1996]).

Notably, “[c]ourts are reluctant to disturb the decisions of arbitrators lest the value of [arbitration as a] method of resolving controversies be undermined” (*Goldfinger v. Lisker*, 68 NY2d 225, 231 [1986]). Thus, it is well settled that a party seeking to vacate an arbitration award bears a particularly heavy burden (*World Trade Diamond Corp. v Siegmann*, 158 AD2d 300, 301 [1990]). However, while certain “undisclosed dealings between a party and an arbitrator which impart a lack of impartiality and fairness” may subject an award to vacatur, not every “undisclosed relationship, no matter how peripheral, superficial or insignificant compels [such a] result” (*In the Matter of Cross Properties, Inc. v Gimbel Brothers, Inc.*, 15 AD2d 913 [1st Dept 1962]). As concluded by the Court of Appeals, some types of undisclosed facts may not be of “sufficient magnitude to justify vacating [an] award” (*J.P. Stevens & Co., Inc. v. Rytex Corp.*, 34 NY2d 123, 129 [1974]).

Here, respondent failed to satisfy the requisite heavy burden, to warrant vacatur of the award at issue. Specifically, Arbitrator Mentz's apparent failure to disclose, until the day before the originally scheduled arbitration hearing between the within parties, a prior, minimal contact with petitioner's counsel (who was appearing on behalf of Citrin, approximately 5 ½ years prior to the subject arbitration), consisting of a single conference call of approximately 15 minutes in length, for the mere purpose of issuing a case scheduling order in another arbitration matter, not related to the issue which was the subject of the arbitration, does not rise to the level of “clear and convincing evidence that any impropriety or misconduct of the arbitrator prejudiced its rights or the integrity of the arbitration process or award”, to warrant vacatur of the subject award (*U.S. Electronics, Inc. v Sirius Satellite Radio*, 73 AD3d 497, 498 [1st Dept 2010]).

Further, Citrin's counsel maintains and arbitrator Mentz confirmed that he had no other

conversations, nor contact with Metz, since the prior matter settled (without Arbitrator Metz's involvement) and he never appeared before Arbitrator Metz, in any other matter. Further, Arbitrator Metz indicated that the earlier brief contact with plaintiff's counsel, would in no way affect her impartiality, or ability to be fair and unbiased and serve as an arbitrator in this matter. Both parties were given one week from Arbitrator Metz' disclosure to object to her appointment as arbitrator, which respondent Skyline did. The AAA received both party's positions, and, confirmed Metz as the arbitrator, determining that her previous contact would not prejudice the parties, nor the arbitration process herein. The Court notes that in a judicial proceeding, such a basis, that an attorney merely previously appeared before a particular judge, would never be grounds to disqualify that judge from hearing a subsequent case with the attorney.

Under the within circumstances, respondent failed to meet its heavy burden to support that there was an appearance of bias or partiality, to warrant vacatur of the subject award.

Order/Judgment

Based upon the above, it is

ORDERED that the petition is granted and the award rendered in favor of petitioner and against respondent dated December 21, 2017 is hereby confirmed; and it is further

ADJUDGED that petitioner Citrin Cooperman & Company, LLP shall recover from respondent Skyline Risk Management, Inc., the amount of \$32,717.39, plus interest at the statutory rate of 9% per annum from the date of the arbitrator's award, December 21, 2017, as computed by the Clerk in the amount of \$ _____, together with costs and disbursements in the amount of \$ _____ as taxed by the Clerk, and attorneys' fees in the amount of \$11,998.10 (through July 19, 2018), for the total amount of \$ _____, and that the petitioner shall have execution therefore; it is further

ORDERED that any claim by petitioner for additional attorneys' fees related to the filing and litigation of the within petition incurred after July 19, 2018 is severed and hereby referred to a Special Referee, in accordance with CPLR 4317(b), to hear and determine the reasonable amount

of attorneys' fees to be awarded petitioner, which shall include the fees relating to such reference²; and it is further

ORDERED that *within 60 days of entry of this order*, petitioner shall serve a copy of this order with notice of entry upon all parties and upon the Special Referee Clerk (Room 119M), to arrange a calendar date for the reference to a Special Referee; and it is further

ORDERED that the cross-petition is denied; and it is further

ORDERED that within 45 days of entry of this order, petitioner shall serve a copy upon all parties, with notice of entry.

1/7/2019

DATE

DORIS LING-COHAN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE

J:\Judge_Ling-Cohan\Arbitration-ADR\Confirm Arbitration\Citron Cooperman v Risk Mgmt 650241.2018.docx

² Within 14 days of the scheduled hearing before the Special Referee, petitioner shall supply to respondent an affirmation by counsel in support of the additional attorneys' fees sought and a detailed list of the fees incurred.