

Shu Chin v 55 W. 17th St. Partners, LLC
2019 NY Slip Op 31428(U)
May 20, 2019
Supreme Court, New York County
Docket Number: 651160/2019
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

-----X
SHU CHIN,

Petitioner,

-against-

55 WEST 17th STREET PARTNERS, LLC,

Respondent.
-----X

CAROL R. EDMEAD, J.S.C.:

DECISION AND ORDER

Index No.: 651160/2019

Motion Sequence 001

MEMORANDUM DECISION

In this Article 75 Action, Shu Chin (Petitioner) moves to vacate an arbitration decision issued in favor of 55 West 17th Street Partners, LLC (Respondent). In its answer, Respondent moves for an order dismissing the petition and granting Respondent reimbursement for legal fees and disbursements. For the reasons set forth below, the Court denies the petition in its entirety.

BACKGROUND FACTS

This special proceeding arises out of a dispute regarding a contract for the sale of a condominium unit and storage unit. On October 15, 2015, Petitioner and Respondent, the Sponsor of a Plan of Condominium Ownership, entered into a Purchase Agreement where Petitioner agreed to buy Residential Unit 204 and one storage unit in Respondent's building (NYSCEF doc No. 1, ¶ 6). Petitioner tendered down payments for the apartment and storage unit, but then decided she needed an additional storage unit. Respondent substituted the first page of the Purchase Agreement to reflect this modification after Petitioner made an additional down payment but did not execute

a new contract incorporating the substitution (*id.* at ¶ 7-8). Petitioner later decided to not go through with the sale, and Respondent sent Petitioner a Notice of Default after she failed to appear for the scheduled closing (*id.*).

Pursuant to a mandatory arbitration clause in the Purchase Agreement, Petitioner then commenced an arbitration proceeding before National Arbitration and Mediation (NAM). Petitioner claimed she was entitled to a return of the three down payments and sought to rescind the agreement due to a dispute over the height of the two storage units. By decision issued November 8, 2018, the NAM arbitrator, Honorable John DiBlasi (the Arbitrator) found that the dispute over the height of the storage unit was not a material change that could serve as a basis for rescission of the Purchase Agreement, and that the agreement was properly executed and later amended (NYSCEF Doc No. 3 at 2-3). The arbitrator rendered judgment in favor of Respondent.

Petitioner now moves for the Court to vacate the Arbitrator's decision pursuant to CPLR 7511 on the grounds that the decision was irrational.¹ Petitioner also seeks a return of the down payments in the total amount of \$333,249.00 together with statutory interest. In its answer, Respondent argues that the petition should be dismissed as the arbitrator acted within the scope of his authority in determining that the agreement was fully executed and binding on the parties, and that Petitioner additionally signed the amendment involving the additional storage unit and thus could not argue that the agreement was unenforceable. Respondent, in its Answer to the Petition, counterclaims for legal fees and disbursements incurred in its defense pursuant to a provision in the Purchase Agreement.

¹ The Purchase Agreement is governed by the Federal Arbitration Act ("FAA") 9 USC § 1 et seq. However, as Petitioner concedes, the grounds for reversal due to irrationality are essentially the same under the FAA and CPLR 7511.

DISCUSSION

An arbitration decision or award may be vacated pursuant to CPLR 7511(b)(1)(iii) where an arbitrator exceeded his or her power, including where the award violates strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power (*See Matter of Isernio v Blue Star Jets, LLC*, 140 AD3d 480, 480 [1st Dept 2016]). Where, as under the Purchase Agreement at issue here, arbitration is compulsory, "judicial review under CPLR Article 75 is broad, requiring that the award be in accord with due process and supported by adequate evidence in the record The award must also be rational and satisfy the arbitrary and capricious standard of CPLR article 78" (*Motor Veh. Mfrs. Ass'n of U.S. v State of New York*, 75 NY2d 175 [1990]). While compulsory arbitration decisions require a stricter scrutiny than consensual ones, courts are still bound by the arbitrator's factual findings, interpretation of relevant documents, and judgment concerning remedies. A court cannot substitute its judgment for that of the arbitrator simply because it believes its interpretation is superior to that of an arbitrator who has made errors of judgment or fact (*Matter of New York State Correctional Officers and Police Benevolent Assn. v. State of New York*, 94 NY2d 321 [1999]).

Awards are not be vacated even where the error claimed is the incorrect application of a rule of substantive law, unless it is so "irrational as to require vacatur" (*Matter of Smith [Firemen's Ins. Co]*, 55 NY2d 224, 232 [1982]). To be upheld, an award in a compulsory arbitration proceeding need only have evidentiary support and cannot be arbitrary and capricious (*See Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 214, 223 [1996]). Even though the decision must have evidentiary support, "[a]ssessment of the evidence presented at an

arbitration proceeding is the arbitrator's function rather than that of the court" (*Fitzgerald v Fahnestock & Co., Inc.*, 48 AD3d 246, 247 [1st Dept 2008], quoting *Peckerman v D & D Assocs.*, 165 AD2d 289, 296 [1st Dep't 1991]). "An arbitral award cannot be attacked on the ground that an arbitrator refused to consider, or failed to appreciate, particular evidence or arguments" (*Genger v. Genger*, 87 AD3d 871, 874 n. 2 [1st Dept 2011]).

Here, Petitioner argues that the arbitrator rendered a decision that was completely irrational because it blatantly ignored the execution requirement of the Purchase Agreement. Petitioner contends that by deciding the agreement was enforceable, the arbitrator effectively made a new contract for the parties. However, the original Purchase Agreement was fully executed, and Petitioner has produced no evidence suggesting that her decision to purchase an additional storage unit necessitated the execution of a completely new agreement instead of merely an amendment. The arbitrator also notes in his findings that the amended first page of the agreement was initialed by Petitioner. As the arbitrator deemed the agreement to be fully executed and enforceable, the only question before the arbitrator was the matter of whether the agreement could be rescinded due to a material and adverse change.

Upon a full review of the record, the arbitrator determined that the dispute over the dimensions of the storage unit was not a material breach. This was a firmly rational conclusion, as clearly the primary purpose of the agreement was the purchase of the apartment unit itself, not the storage units, and Petitioner put forth no evidence of a dispute over material elements of the apartment that would warrant rescission. The arbitrator also noted that the New York Attorney General's Office reviewed the offering plan and did not find the storage unit dimension change to be a material change that would require Respondent to allow Petitioner to rescind (NYSCEF


doc No. 3 at 4). The arbitrator also noted that the record of correspondence between the parties indicated that Petitioner took no immediate action after learning about the change and waited to default on the agreement rather than attempting to resolve the situation with Respondent. While it is possible that another fact finder may have reached a different conclusion about the enforceability of the agreement, the Court is obligated to give considerable deference to the arbitrator's decision, because "an arbitrator's paramount responsibility is to reach an equitable result, and the courts will not assume the role of overseers to mold the award to conform to their sense of justice" (*Matter of Sprinzen [Nomberg]*, 46 NY2d 623, 629 [1979]). As Petitioner has failed to meet its heavy burden of establishing irrationality of the decision pursuant to CPLR 7511, the decision is confirmed in its entirety.

Regarding Respondent's application for attorney's fees, the Arbitrator did not grant Respondent attorney's fees (NYSCEF doc No. 3). Here, Respondent bases its application for fees on the terms of the Purchase Agreement. Disputes under the Purchasing Agreement were, as discussed above, to be resolved in arbitration. Thus, it is outside this court's authority to grant Respondent attorney's fees under the Purchase Agreement.

CONCLUSION

Based on the foregoing, it is hereby
ORDERED that the Petition is denied in its entirety; and it is further
ORDERED that the Petition is dismissed; and it is further
ORDERED that the Clerk shall enter judgment accordingly; and it is further
ORDERED that counsel for Respondent shall serve a copy of this order, along with
notice of entry, on counsel for Petitioner within 10 days of entry.

Dated: May 20, 2019


Hon. Carol R. Edmead, J.S.C.
HON. CAROL R. EDMEAD
J.S.C.