

**SRW Equities LLC v Nussen**

2019 NY Slip Op 32637(U)

August 30, 2019

Supreme Court, Kings County

Docket Number: 509904/19

Judge: Leon Ruchelsman

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL PART 8

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Application of SRW EQUITIES LLC, 63<sup>RD</sup> STREET  
REALTY II LLC & SAMUEL WEISNER,  
Petitioners,

For an Order Pursuant to Article 75  
of the CPLR Confirming an Arbitration Award

Decision and order

*MS # 192*

-against-

MICHAEL NUSSEN & JADE USA INC.,  
Respondents,

Index No. 509904/19

August 30, 2019

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PRESENT: HON. LEON RUCHELSMAN

The petitioner has moved pursuant to CPLR §7510 seeking to confirm an arbitration award. The respondents oppose the motion and have cross-moved seeking to dismiss the petition pursuant to CPLR §3211. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

The petitioners and the respondents were business partners and the petitioner was also the respondent's landlord. In early 2019 a dispute arose between the parties concerning alleged unpaid rent as well as a dispute concerning profits and the parties agreed to arbitrate. An arbitration award was rendered and now the petitioners have moved seeking to confirm the arbitration award. The respondents oppose that request arguing, essentially, that the arbitration award was not meant to be a

final determination and that it is premature to confirm the award at this time.

#### Conclusions of Law

"It is firmly established that the public policy of New York State favors and encourages arbitration and alternative dispute resolutions" (Westinghouse Elec. Corp. v. New York City Tr. Auth., 82 NY2d 47, 603 NYS2d 404 [1993], citing, Nationwide Gen. Ins. Co. v. Investors Ins. Co. of Am., 37 NY2d 91 [1975]). CPLR Article 75 establishes mechanisms for court confirmation, vacatur, modification, and enforcement of arbitration awards. The Article states that a "court shall confirm an award upon application of a party ... unless the award is vacated or modified upon a ground specified in section 7511" (CPLR 7510). Where no such grounds exist, a "judgment shall be entered upon the confirmation of an award" (CPLR 7514[a]).

As particularly relevant here, it is well established that an agreement to proceed before a Beth Din is treated as an agreement to arbitrate (see, Spilman v. Spilman, 273 AD2d 316, 710 NYS2d 86 [2d Dept., 2000], Weisenberg v. Sass, 209 AD2d 424, 619 NYS2d 597 [2d Dept., 1994]). Therefore, arbitration agreements giving a religious tribunal power to resolve disputes over disposition of partnership assets either by judgment or by settlement according to Jewish law gives a tribunal broad

authority in settling such disputes (Meisels v. Uhr, 79 NY2d 526, 583 NYS2d 951 [1992]).

In this case the Memorandum of Agreement signed by the parties on January 31, 2019, the agreement to arbitrate states the parties submit to arbitration to resolve "rent money owed & loans due and other disputes" (see, Memorandum of Agreement). Further, the Memorandum states that the parties agree to "refer all disputes and matters in difference whatsoever between them" (*id.*). On April 17, 2019 the arbitration panel rendered an award of \$454,429.90 in favor of the petitioner who now seeks to confirm that award. The award specifically stated that sum was the amount the respondents owed the petitioners "until today" (see, Arbitration Award, ¶ 7). The arbitration award further noted that "regarding method of payment, accumulating rent, eviction and other issues not discussed in the arbitration agreement the parties shall return to Beis Din if they wish to adjudicate those matters" (*id.*, at ¶ 8). The respondents argue the award issued was not final because there were several open issues not addressed by the panel including "inventory on hand, profit and loss statements, and offsets" (see, Memorandum in Reply of Cross-Motion, page 6). The respondent Nussen's affirmation similarly argues the arbitration was not yet completed. However, the respondents really seem to be arguing,

not that the arbitration panel issued a premature ruling but that the arbitration panel did not consider evidence they submitted in efforts to reduce the amount they owed. Thus, the respondents argue that emails were sent to the arbitration panel with various issues including inventory and profit and loss statements and that information was not reflected in the arbitration decision. There can be no dispute the arbitration panel received all the information. Indeed, the arbitration panel acknowledged receipt of all respondent's questions and materials. There is further no evidence the arbitration panel did not consider the information. The respondent further argues there were followup emails after the decision was rendered supporting the contention the panel had not yet completed gathering all evidence. However, on May 1, 2019 the arbitration panel sent an email to the petitioner notifying him that respondent sought "another session" and that "he is entitled to bring new claims" (see, Email dated May 1, 2019 at 9:29 PM included within Respondent's Motion to Dismiss, Exhibit E). Thus, clearly, the arbitration panel had concluded its work as expressed in the arbitration decision and any further proceedings were considered new claims.

Lastly, the arbitration decision acknowledges that certain issues remained undecided since they were not sought pursuant to the arbitration agreement, rendering the remainder of the

arbitration decision a final ruling on all matters before the parties. Therefore, based on the foregoing, the motion seeking to dismiss the petition is denied and the motion seeking to confirm the arbitration award is granted.

So ordered.

ENTER:



DATED: August 30, 2019  
Brooklyn N.Y.

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Hon. Leon Ruchelsman  
JSC

2019 SEP -4 AM 8:07  
KINGS COUNTY CLERK  
FILED