

**Law Firm of Wayne F. Crowe, Jr. PC. v Smith**

2019 NY Slip Op 33018(U)

October 8, 2019

Supreme Court, New York County

Docket Number: 652126/2019

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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Upon the Application of

THE LAW FIRM OF WAYNE F. CROWE, JR. PC.,

Index No.  
652126/2019

Petitioner,

For an Order Vacating an Arbitration Award  
Pursuant to CPLR Article 75

**DECISION  
and ORDER**

- against -

Mot. Seq. 1

ZAKILYA SMITH,

Respondent.

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

Petitioner The Law Firm of Wayne F. Crowe, Jr. PC., (“Petitioner”) has commenced a special proceeding pursuant to CPLR § 7511, to vacate a fee dispute arbitration award by Arbitrator Arnon Siegel, Esq. (“Arbitrator Siegel”), at the Committee On Fee Disputes and Conciliation dated January 16, 2019, *In the Matter of Fee Dispute Arbitration between Zakilya Smith and the Law Office of Wayne F. Crowe, Jr., PC*, Case No. 202519; 2018-064 (the “Award”). Respondent Zakilya Smith (“Respondent”) cross moves for an Order confirming the Award.

Background/Factual Allegations

Petitioner asserts that it is a law firm, primarily practicing matrimonial and family law. On July 29, 2016, Respondent retained Petitioner’s services to represent her in a divorce proceeding against Respondent’s spouse. Petitioner asserts that “[p]ursuant to the Retainer Agreement, the Respondent paid an initial retainer in the sum of three thousand and five hundred dollars (\$3,500.00), against which Respondent was to be billed by Petitioner at the rate of three hundred dollars (\$300.00) per hour.” (Petition at 2). Petitioner asserts that between July 29, 2016 and October 3, 2017, it provided legal services and created itemized billing statements which were forwarded to Respondent. Petitioner charged \$10,000.00 for the services rendered during Petitioner’s representation of Respondent. Respondent asserts that

she made “numerous verbal and written requests for invoices and billing statements” and was not provided an invoice until February 9, 2017. Respondent contends that on April 8, 2018, she wrote a formalized correspondence outlining her grievances with Petitioner.

On June 18, 2018, Respondent filed a Client Request for Fee Arbitration. On January 3, 2019, Arbitration took place before Arbitrator Siegel at the New York City Office of the Committee On Fee Disputes and Conciliation. On January 16, 2019, Arbitrator Siegel issued a Notice of Arbitration Award which ruled in favor of Respondent. In the Award, Arbitrator Siegel stated that “I find by preponderance of the evidence that the attorney is entitled to \$2,000 and must refund \$8,000 to the client. This award is binding by agreement of the parties.” (Respondent’s Memo of Law at 3).

Petitioner commenced this action on April 10, 2019 by filing a petition as a special proceeding to vacate the Award. Respondent filed a cross-motion on May 24, 2019, seeking an Order pursuant to CPLR § 7510 to confirm the Award.

#### Parties’ Contentions

Petitioner argues that the Award “failed to state a basis or specify in a concise statement the bases for the determination.” (Petition at 4). Petitioner asserts that the Award exceeds the power of the arbitrator pursuant to Program Rule No. 21 and CPLR § 7511.

In Respondent’s cross-motion to confirm the Award, Respondent contends that Petitioner did not satisfy its “heavy burden” in demonstrating the Award was not founded on a rational basis. Respondent argues that Arbitrator Siegel bases the request for legal fees on the invoices and Arbitrator Siegel provides “coherent reasons to justify his conclusions.” (Respondent’s Memo of Law at 6). Respondent asserts that the Award does not violate public policy. Moreover, Respondent argues that Arbitrator Siegel’s “justification of the outcome ... clearly stated as ‘based upon a preponderance of the evidence’.”

#### Legal 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, “[t]he 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 that an arbitration award shall be vacated upon the motion of a party to the arbitration “if the court finds that the rights of that party were prejudiced by” certain enumerated grounds, including, “corruption, fraud or misconduct in procuring the award;” or “partiality of an arbitrator appointed as a neutral” and “an arbitrator, or agency or person making the award exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made.” CPLR § 7511[b][1][iii]. It is well settled that a party seeking to vacate an arbitration award bears the “heavy burden” of demonstrating that the award “violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on an arbitrator’s power under CPLR §7511(b)(1).” *Scollar v. Cece*, 2006 NY Slip Op 2814 [1st Dep’t 2006].

“Assessment 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 A.D.3d 246, 247 [1st Dep’t 2008] (quoting *Peckerman v. D & D Assoc.*, 165 A.D.2d 289, 296 [1st Dep’t 1991]). “Absent provision to the contrary in the arbitration agreement, arbitrators are not bound by principles of substantive law or rules of evidence.” *Lentine v. Fundaro*, 29 N.Y.2d 382, 385 [1972]. Nor can an arbitration award “be overturned merely because the arbitrator committed an error of fact or law.” *Matter of Motor Veh. Accident Indem. Corp.*, 89 N.Y.2d at 223.

### Discussion

Here, Petitioner fails to meet its heavy burden of demonstrating that the Award violates a strong public policy, is totally irrational or is in violation of any of the grounds enumerated under CPLR § 7511(b). Petitioner fails to articulate how Arbitrator Siegel exceeded his power in issuing the Award. The record shows that Arbitrator Siegel reviewed the invoices and issued the Award based on the “preponderance of the evidence” presented at Arbitration. Petitioner therefore fails to meet its burden of demonstrating the Award should be disturbed by the Court. Petitioner’s motion to vacate the Award is therefore denied. Respondent’s cross-motion to confirm the Award is granted.

Wherefore, it is hereby,

ORDERED that Petitioner The Law Firm of Wayne F. Crowe, Jr. PC.’s petition to vacate the arbitration award is denied and Respondent Zakilya Smith’s cross petition to confirm the arbitration award is granted.

This constitutes the decision and order of the Court. All other relief requested is denied.

DATED: OCTOBER 8, 2019



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EILEEN A. RAKOWER, J.S.C.