

**Blue Sphere Corp. v York Renewable Energy
Partners, LLC**

2021 NY Slip Op 31565(U)

May 6, 2021

Supreme Court, New York County

Docket Number: 653650/2020

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

BLUE SPHERE CORPORATION,

Petitioner,

v.

YORK RENEWABLE ENERGY PARTNERS,
LLC,

Respondent.

Index No. 653650/2020

Hon. Debra James

Motion Seq. # 2, 3

~~PROPOSED~~ ORDER
CONFIRMING THE PARTIAL
FINAL ARBITRATION AWARD
AND THE SECOND PARTIAL
FINAL ARBITRATION AWARD

WHEREAS York Renewable Energy Partners, LLC (“YREP”), having moved this Court on November 18, 2020 for an order confirming pursuant to CPLR § 7510 and CPLR § 7514 the Partial Final Arbitration Award (the “Partial Final Award Motion”) issued in the American Arbitration Association (“AAA”) arbitration entitled *York Renewable Energy Partners, LLC, Claimant v. Blue Sphere Corporation, Respondent, and Concord Energy Partners, LLC and Rhode Island Energy Partners, LLC, Nominal Respondents*, AAA Case 01-20-0014-7967 and AAA Case 01-20-0014-5713 (the “Arbitration”); and Blue Sphere Corporation (“Blue Sphere”) having not filed any opposition to the Partial Final Award Motion;

WHEREAS, YREP, having moved this Court on November 30, 2020 for an order confirming pursuant to CPLR § 7510 and CPLR § 7514 the Second Partial Final Arbitration Award issued in the Arbitration (“Second Partial Final Award Motion”); and Blue Sphere having not filed any opposition to the Second Partial Final Award Motion;

WHEREAS, the Partial Final Arbitration Award was duly rendered and delivered to petitioner and respondent less than one (1) year prior to the Partial Final Award Motion, and the Partial Final Arbitration Award has not been vacated or modified under CPLR § 7511;

WHEREAS, the Second Partial Final Arbitration Award was duly rendered and delivered to petitioner and respondent less than one (1) year prior to the Second Partial Final Award Motion, and the Second Partial Final Arbitration Award has not been vacated or modified under CPLR § 7511;

WHEREAS, after YREP submitted the Partial Final Award and Second Partial Final Award Motions, the AAA closed the Arbitration on December 18, 2020, and the matter concluded;

NOW, upon considering YREP's Partial Final Award Motion, Affirmation of Veronica E. Callahan, Memorandum of Law, and the exhibits thereto including the Partial Final Arbitration Award;

AND, upon considering YREP's Second Partial Final Award Motion, Affirmation of Veronica E. Callahan, Memorandum of Law, and the exhibits thereto including the Second Partial Final Arbitration Award;

NOW, upon the application of Arnold & Porter Kaye Scholer LLP, counsel for YREP, it is hereby

ORDERED, ADJUDGED AND DECREED, that the Partial Final Arbitration Award signed and affirmed by Arbitrator Steven Skulnik on November 16, 2020 is hereby confirmed pursuant to CPLR § 7510 and the Clerk of the Court is directed to enter

Judgment pursuant to CPLR § 7514 on the Partial Final Arbitration Award declaring and awarding that:

1. Blue Sphere has failed to provide a valid, binding irrevocable offer under the Buy-Out Provisions, which are set forth in §§ 9.06(d)-(f) of the Amended and Restated Limited Liability Company Agreement, dated as of January 30, 2015, by and between York and Blue Sphere (the "Concord Agreement"), and the Amended and Restated Limited Liability Company Agreement, dated as of April 8, 2015, by and between York and Blue Sphere (the "Rhode Island Agreement"), filed as NYSCEF Nos. 107-108;
2. Blue Sphere refused to provide adequate assurances of its ability to perform, including in relation to its ability to finance any transaction;
3. YREP and its affiliated entity York are free to proceed with its marketing and sales process to buyers other than Blue Sphere; and
4. Blue Sphere's counterclaim for specific performance of the Buy-Out Provisions is denied without prejudice to seek such relief in the event Blue Sphere provides a valid, binding irrevocable offer with customary terms and acceptable to YREP under the Buy-Out Provisions.

FURTHER, IT IS ORDERED, ADJUDGED AND DECREED, that the Second Partial Final Arbitration Award signed and affirmed by Arbitrator Skulnik on November 30, 2020 is hereby confirmed pursuant to CPLR § 7510 and the Clerk of the Court is directed to enter Judgment pursuant to CPLR § 7514 on the Second Partial Final Arbitration Award declaring and awarding that:

1. In rejecting the Offer made by Blue Sphere on November 16, 2020 under the Buy-Out Provisions (“Buy-Out Offer”), YREP acted consistently with Delaware law principles of good faith and fair dealing;
2. By virtue of YREP’s good faith rejection, Blue Sphere has exhausted any and all rights it had under the Buy-Out Provisions and is not entitled to tender any further offers thereunder;
3. Blue Sphere’s counterclaim for specific performance of the Buy-Out Provisions is denied with prejudice; and
4. York and YREP are free to proceed with their marketing and sales process, including by selling Concord Energy Partners, LLC (“Concord”) and Rhode Island Energy Partners, LLC (“Rhode Island” and, together with Concord, the “Projects”) to a third-party, without any obligation to engage further with Blue Sphere concerning the Buy-Out Offer or the Buy-Out Provisions. In rejecting the Offer, YREP acted consistently with Delaware law principles of good faith and fair dealing.

FURTHER, IT IS ORDERED, ADJUDGED AND DECREED, that Blue Sphere shall pay all costs and disbursements of the Partial Final Motion and the Second Partial Final Motion.

SO ORDERED this ___ day of May, 2021.

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Hon. Debra James