

<b>S.B. Flatlands LLC v New York City Dept. of Citywide Admin. Servs.</b>
2022 NY Slip Op 31714(U)
March 17, 2022
Supreme Court, New York County
Docket Number: Index No. 650100/2022
Judge: Laurence Love
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LAURENCE LOVE PART 63M**

*Justice*

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S.B. FLATLANDS LLC

Petitioner,

- v -

THE NEW YORK CITY DEPARTMENT OF CITYWIDE  
ADMINISTRATIVE SERVICES,

Respondent.

-----X

INDEX NO. 650100/2022

MOTION DATE 04/15/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for STAY.

Upon the foregoing documents, it is

The following reads on Petitioner's Order to Show Cause to Stay Arbitration, CPLR 7503; and for a Declaratory Judgment that Respondent cannot compel the arbitration to be administered by the American Arbitration Association ("AAA").

The Court of Appeals has ruled that, "this State favors and encourages arbitration as a means of conserving the time and resources of the courts and the contracting parties. Therefore, New York Courts interfere as little as possible with the freedom of consenting parties to submit disputes to arbitration" (see *Smith Barney Shearson Inc. v. Sacharow*, 91 N.Y.2d 39, 49 – 50 [1997]).

A Petition was submitted to this Court, in relation to a ground lease (see NYSCEF Doc. No. 3), dated September 1, 1984, for the real property located at 567 East 105th Street (Block 8156, Lot 100), Brooklyn, New York. Per the Petition, "[t]he basic rent amount for each renewal term ("Basic Rent") is to be determined, in part on the fair market value ("FMV") of the Land.

Pursuant to the Lease, where the parties cannot agree on the FMV of the Land, they will submit the issue to arbitration conducted ‘in accordance with the then prevailing Real Estate Valuation Arbitration Rules of the American Arbitration Association ... Importantly, however, the Lease does not direct that the dispute be submitted to the AAA to administer the arbitration, but only that it be conducted in accordance with the Real Estate Valuation Arbitration Rules of the American Arbitration Association (“AAA” Rules). Yet, Respondent has unilaterally submitted the arbitration to AAA, without Petitioner’s consent” (see NYSCEF Doc. No. 1 Pars. 2, 3). Causes of action include i) Stay of Arbitration, ii) Preliminary Injunction, and iii) Declaratory Judgment.

Respondent submitted a Verified Answer on February 8, 2022.

Section 22.03 of the lease provides, “[i]f Lessor and Lessee are unable to agree on the FMV ... then the FMV shall be determined by arbitration as provided in Article 23 hereof” (see NYSCEF Doc. No. 3 P. 58).

Section 23.03 of the lease states, “[t]he arbitration shall be conducted, to the extent consistent with this Article, in accordance with the then prevailing Real Estate Valuation Arbitration Rules of the American Arbitration Association” (see NYSCEF Doc. No. 3 P. 60 – 61).

Respondent exhibits the “AAA Real Estate Valuation Rules,” which provides under the title “Administrator, [w]hen parties agree to arbitrate under these Rules, they thereby constitute AAA the administrator of the arbitration” (see NYSCEF Doc. No. 24 P. 4).

Respondent points to the replacement of the AAA Real Estate Valuation Rules with the AAA Real Estate Industry Arbitration Rules as of June 1, 2009 (see NYSCEF Doc. No. 21 Par. 71). These new rules state under Administrator and Delegation of Duties, “[w]hen parties agree

to arbitrate under these rules, or when they provide for arbitration by the AAA and an arbitration is initiated under these rules, they thereby authorized the AAA to administer the arbitration” (see NYSCEF Doc. No. 25 P. 16 Sec. 3).

Respondent continues that, “beginning in or about 2018, the AAA began applying its Commercial Arbitration Rules to real estate valuation disputes” (see NYSCEF Doc. No. 21 Par. 74). The Commercial Arbitration Rules state, “[w]hen parties agree to arbitrate under these rules, or when they provide for arbitration by the AAA and an arbitration is initiated under these rules, they thereby authorize the AAA to administer the arbitration” (see NYSCEF Doc. No. 26 P. 11 Par. R – 2).

Respondent’s Verified Answer documents the history of the attempt to arbitrate this case. Various arbitrators were selected and denied for various reasons (see NYSCEF Doc. No. 21 Pars. 78 – 92). A So – Ordered Stipulation of Settlement settled the matter of arbitrators (see NYSCEF Doc. No. 9). However, Respondent’s Answer, filed with the AAA on or about November 29, 2021, objected to the AAA administering the arbitration and asserted that AAA lacked jurisdiction (see NYSCEF Doc. No. 12 Par. 17).

Respondent further seeks a motion for Declaratory Judgment not to compel arbitration. Under the CPLR 7503(b), a party opposing arbitration may stay arbitration solely “on the ground that a valid agreement was not made or has not been complied with or that the claim sought to be arbitrated is” time – barred. Specifically, a stay of arbitration depends upon: “1) whether the parties made a valid agreement to arbitrate; 2) if so, whether the agreement has been complied with; and 3) whether the claim sought to be arbitrated would be time – barred if it were asserted in State Court” (see *Matter of Allstate Insurance Co. v. Laldharry*, 130 A.D.3d 814, 815 [2nd Dep’t 2015]).


A clear reading of the lease agreement dictates that when the parties “are unable to agree on the FMV ... the arbitration shall be conducted ... in accordance with the then prevailing Real Estate Valuation Rules of the American Arbitration Association.” The AAA Real Estate Valuation Rules provide, “when the parties agree to arbitrate under these Rules, they thereby constitute AAA the Administrator of the arbitration.”

Further, “under the applicable AAA rules incorporated into the arbitration agreement, the arbitration panel could determine jurisdictional issues” (see *Lake Harbor Advisors, LLC v. Settlement Services Arbitration & Mediation, Inc.* 175 A.D.3d 479 [2nd Dep’t 2019]).

ORDERED that Petitioner’s motion to Stay Arbitration is DENIED; and it is further

ORDERED that Petitioner’s motion for a Declaratory Judgment that Respondent cannot Compel Arbitration is DENIED.

3/17/2022  
DATE

  
LAURENCE LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					OTHER
					REFERENCE