SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73
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In the Matter of the Application of

YECHIEL OBERLANDER a/k/a YECHIEL MICHEL OBERLANDER and KEREM MANAGEMENT CORP. a/k/a KEREM MANAGEMENT a/k/a MANAGEMENT,

Petitioners,

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

-against-

YIDEL FULOP a/k/a YIDA FULOP and MIRIAM FULOP,

Respondents,
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Index No.: 521908/20
Motion Date: 4-11-22
Mot. Seq. No.: 02, 03, 04

DECISION/ORDER

Upon the following e-filed documents, listed by NYSCEF as item numbers 24-53, 58-75, 77-83, these motion are decided as follows:

In Motion Seq. #2, the respondents move for an Order (i) vacating the Court's Decision/Order, dated April 19, 2021, pursuant to CPLR 5015 (a)(1) and, upon such vacatur, (ii) vacating the Beis Din award at issue in this case, under CPLR 7511 (b)(iii), and for such other and further relief that this Court may grant.

In Motion Seq. #3, the petitioners cross-move for an Order: (1) denying Respondents' motion in its entirety; and (2) vacating Respondents' hardship declarations and/or setting the matter down for a hearing to determine whether to invalidate the declarations, pursuant to Chapter 417, Laws of 2021, Part C, Subpart A, §§ 9-10; and (3) upon the hearing being held, invalidating the declarations and permitting Petitioners to obtain Respondent's previously submitted proposed judgment and writ of assistance .

In Mot. Seq. No. 4, the petitioners moved by Order to Show for an Order (1) invalidating the hardship declaration(s) filed by Respondent pursuant to Chapter 417, laws of 2021, Part C,

Subpart A, §9 (the "Eviction Restriction Law"), or, in the alterative (2) pursuant to Eviction Restriction Law §10, setting the matter down for a hearing on whether to Invalidate Respondents' claims of hardship; an (3). Pursuant to CPLR § 408, granting Petitioners leave of court to conduct and receive discovery on Respondents' claims of hardship, so such discovery is complete prior to date of such hearing.

The three motions are consolidated for disposition.

Background:

The parties agreed to arbitrate a landlord-tenant dispute involving residential tenancy before a Beis Din. The dispute proceeded to arbitration and the Beis Din issued an award in petitioners' favor. Petitioners thereafter moved to confirm the award and to enter judgment based on the award and by order dated April 19, 2021, the motion was granted on default. A monetary judgment was entered against the respondents in the amount of $25,575.00 for past due rent and use and occupancy through November 30, 2020. Petitioners' claim for rent and/or use and occupancy that has accrued after November 30, 2020, was dismissed, without prejudice, with leave granted to the petitioner to commence an action to recover these amounts in a court of competent jurisdiction. The Court also entered a judgment of ejectment against the respondents and directed the petitioners to submit for signature a writ of assistance within 30 days.

Respondents now move to vacate their default in failing to oppose petitioners' motion to confirm the arbitration award. To prevail on a motion to vacate their default, the respondents were required to demonstrate a reasonable excuse for their default and a potentially meritorious defense (*see Chowdhury v Weldon*, 185 AD3d 649, 649 [2d Dept 2020]; *Jian Hua Tan v AB Capstone Dev., LLC*, 163 AD3d 937, 937-938 [2d Dept 2018]; *Ashley v Ashley*, 139 AD3d 650, 651 [2d Dept 2016]; *Lambert v Schreiber*, 69 AD3d 904, 905 [2d Dept 2010]). "The determination of what constitutes a reasonable excuse generally lies within the sound discretion of the trial court" (*Jian Hua Tan*, 163 AD3d at 938; *Herrera v MTA Bus Co.*, 100 AD3d 962, 963 [2d Dept 2012]). "At the same time, mere neglect is not a reasonable excuse" (*Chowdhury*, 185 AD3d at 649 [internal quotation marks omitted]; *OneWest Bank, FSB v Singer*, 153 AD3d 714, 716 [2d Dept. 2017]). Conclusory and non-specific allegations do not suffice (*see OneWest Bank*, 153 AD3d at 716).

Here, the respondents' conclusory and unsupported allegation set forth in their affidavits did not constitute a reasonable excuse for their default in failing to oppose the petition to confirm the arbitration award. The petition to confirm the arbitration award was marked submitted without opposition on February 22, 2021. While Mr. Fulop was diagnosed with Covid 19 in April 2020 and Ms. Fulop was diagnosed with Covid 19 in June of 2020, their defaults occurred many months later and was not shown to be related to their diagnoses. The respondents' general fear of Covid 19 did not constitute a reasonable excuse for their default. While the respondents set forth non-specific and general allegations that their poor health caused them to default in this matter, their supporting papers do not include any medical documentation supporting such allegations. While respondents subsequently submitted some documentation of Mr. Fulop's medical condition in their reply papers, a movant may not meet his or her burden on a motion by submitting evidence in reply (*see Pinos v. Clinton Café & Deli, Inc.*, 139 A.D.3d 1034, 33 N.Y.S.3d 322; *Cotter v. Brookhaven Mem. Hosp. Med. Ctr.*, 97 A.D.3d 524, 947 N.Y.S.2d 608; *Tingling v. C.I.N.H.R., Inc.*, 74 A.D.3d 954, 903 N.Y.S.2d 89). In sum, the respondents' failed to demonstrate a reasonable excuse for their default.

Even if the Court were to find that the respondents proffered a reasonable excuse for their default, they did not demonstrate a meritorious defense. The Court rejects respondents' contention that "public policy" prohibits arbitration of landlord tenant disputes involving residential tenancies. First, respondents did not demonstrate that " 'there is [a] statutory, constitutional or public policy prohibition against arbitration'" of the dispute (*Matter of County of Chautauqua v. Civil Serv. Empls. Assn., Local 1000, AFSCME, AFL–CIO, County of Chautauqua Unit 6300, Chautauqua County Local 807,* 8 N.Y.3d 513, 519, 838 N.Y.S.2d 1, 869 N.E.2d 1, quoting *Matter of City of Johnstown [Johnstown Police Benevolent Assn.],* 99 N.Y.2d 273, 278, 755 N.Y.S.2d 49, 784 N.E.2d 1158). While a dispute is not arbitrable "if a court can conclude 'without engaging in any extended factfinding or legal analysis' that a law 'prohibit[s], in an absolute sense, [the] particular matters [to be] decided' by arbitration" (*id.*, quoting *Matter of New York City Tr. Auth. v. Transport Workers Union of Am., Local 100, AFL–CIO,* 99 N.Y.2d 1, 8–9, 750 N.Y.S.2d 805, 780 N.E.2d 490), respondents' did not make such a showing.

With respect to respondents' claim that the Beis Din misapplied the law, Courts are bound by an arbitrator's factual findings and judgment concerning remedies (*Matter of New York*

State Correctional Officers & Police Benevolent Assn. v. State of New York, 94 N.Y.2d 321, 326, 704 N.Y.S.2d 910, 726 N.E.2d 462; *Matter of TC Contr., Inc. v. 72–02 N. Blvd. Realty Corp.*, 39 A.D.3d 762, 763, 833 N.Y.S.2d 622). A court reviewing an arbitration award may not "re-weigh or re-examine the evidence" (*Matter of McMahan & Co. [Dunn New–Fund I]*, 230 A.D.2d 1, 5, 656 N.Y.S.2d 620 [internal quotation marks omitted]; *see Matter of TC Contr., Inc. v. 72–02 N. Blvd. Realty Corp.*, 39 A.D.3d at 763, 833 N.Y.S.2d 622), or otherwise "examine the merits of an arbitration award and substitute its judgment for that of the arbitrator simply because it believes its interpretation would be the better one" (*Matter of New York State Correctional Officers & Police Benevolent Assn. v. State of New York*, 94 N.Y.2d at 326, 704 N.Y.S.2d 910, 726 N.E.2d 462; *see Matter of TC Contr., Inc. v. 72–02 N. Blvd. Realty Corp.*, 39 A.D.3d at 763, 833 N.Y.S.2d 622; *see also Matter of Associated Gen. Contrs., N.Y. State Ch. [Savin Bros.]*, 36 N.Y.2d 957, 958–959, 373 N.Y.S.2d 555, 335 N.E.2d 859). The Court of Appeals has "stated time and again that an arbitrator's award should not be vacated for errors of law and fact committed by the arbitrator and the courts should not assume the role of overseers to mold the award to conform to their sense of justice" (*Wien & Malkin LLP v. Helmsley–Spear, Inc.*, 6 N.Y.3d 471, 479–480, 813 N.Y.S.2d 691, 846 N.E.2d 1201; *see Matter of United Fedn. of Teachers, Local 2, AFT, AFL–CIO v. Board of Educ. of City School Dist. of City of N.Y.*, 1 N.Y.3d 72, 79, 769 N.Y.S.2d 451, 801 N.E.2d 827; *Matter of MBNA Am. Bank, N.A. v. Karathanos*, 65 A.D.3d 688, 688, 883 N.Y.S.2d 917).

"An arbitration award can be vacated by a court pursuant to CPLR 7511(b) [(1)(iii)] on only three narrow grounds: if it is clearly violative of a strong public policy, if it is totally or completely irrational, or if it manifestly exceeds a specific, enumerated limitation on the arbitrator's power" (*Matter of Erin Constr. & Dev. Co., Inc. v. Meltzer*, 58 A.D.3d 729, 729, 873 N.Y.S.2d 315; *see Matter of United Fedn. of Teachers, Local 2, AFT, AFL–CIO v. Board of Educ. of City School Dist. of City of N.Y.*, 1 N.Y.3d at 79, 769 N.Y.S.2d 451, 801 N.E.2d 827). None of these grounds have been demonstrated.

With respect to the filing of a hardship declaration by the respondents, since Chapter 417, Laws of 2021, Part C, Subpart A was not extended, and has expired, any hardship declarations filed by Respondents no longer impact this proceeding. The "stay" of this proceeding has expired on its own terms.

The court has considered respondents' remaining argument in support of their motion and find them to be without merit.

Accordingly, it is hereby

ORDRED that Motion Seq. #2 is **DENIED**; it is further

ORDERED that the branch of Motion Seq. #3 for an order denying the respondents' motion to vacate the order confirming the arbitration and the judgment entered on the award is GRANTED; and it is further

ORDERED the branch motions to vacate the hardship declarations are DENIED as moot. Petitioners may submit a Writ of Assistance for signature.

This constitutes the decision and order of the Court.

Dated: July 8, 2022

PPS

PETER P. SWEENEY, J.S.C.

KINGS COUNTY CLERK
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