SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ARLENE P. BLUTH** **PART** **14**

Justice

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CRONUS EQUITY, LLC,

Petitioner,

- v -

MARK BELOYAN,

Respondent.

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INDEX NO. 652741/2022

MOTION DATE 09/30/2022

MOTION SEQ. NO. 001 and 002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 19, 20, 21, 22, 23, 24, 25, 26, 31, 32, 33, 34, 35, 36, 37, 38

were read on this motion to/for VACATE - AWARD.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 27, 28, 29, 30

were read on this motion to/for PRO HAC VICE.

Motion Sequence Numbers 001 and 002 are consolidated for disposition. The petition (MS001) to vacate the arbitration award dated May 6, 2022 is granted. The motion (MS002) by petitioner to admit an attorney pro hac vice is denied.

Background

Respondent owned Tradespot Market, Inc. ("TMI"), a brokerage firm. Respondent negotiated an agreement with Paul Feller ("Feller"), principal of Cronus Equity, LLC ("CE"), to sell him 20% of TMI. As part of the agreement, respondent would be paid $5,000.00 per month as an at-will employee. Around the time of the agreement, Feller apparently organized Cronus Equity Capital Investments, LLC ("CECI"). In July 2020, two parties signed the subject agreement, which had an arbitration clause: those two parties were respondent Mark Beloyan in his individual capacity and Paul Feller as Chairman of CECI.

The following year, FINRA sent respondent a Wells Notice (a notification recommending enforcement proceedings against a party), and Feller halted respondent's salary payments. Despite respondent's protests, Feller did not resume the payments. Pursuant to the agreement, respondent filed a claim for arbitration with FINRA on August 27, 2021. Respondent named Cronus Equity, LLC in the arbitration complaint.

Between November of 2021 and the spring of 2022, counsel for petitioner, Mr. Kennan Kaeder, claims he engaged in a back-and-forth discussion with FINRA attempting to access the online portal so he could appear on behalf of his client. Mr. Kaeder indicates he never had the necessary information (a Case ID) to access the portal, although he was able to create an account. According to affidavits filed by respondent, FINRA *did* attempt to help Mr. Kaeder, and issued instructions to access the portal. Unfortunately, due to security reasons, FINRA failed to send the Case ID information to Mr. Kaeder. On March 15, 2022, counsel for respondent mailed Mr. Kaeder a motion he filed in the case requesting attorney's fees, and the next time Mr. Kaeder received any communication regarding the arbitration was on May 22, 2022, when FINRA mailed a copy of the award to Mr. Kaeder's office.

Petitioner brings this Article 75 petition to vacate the award because petitioner is not a party to the contract at issue and did not agree to be bound by FINRA. Additionally, petitioner claims it never received proper notice of the arbitration complaint pursuant to CPLR 7506(b), and, through no fault of its own, Mr. Kaeder was unable to access the FINRA portal and properly defend against the breach of contract claim.

Respondent claims petitioner received adequate notice and despite its contentions that Mr. Kaeder could not access the portal, clear instructions were given that Mr. Kaeder failed to

follow. Furthermore, respondent contends that petitioner is the correct party because respondent dealt with petitioner on numerous occasions and received payments from petitioner.

Discussion

"It is well settled that a court may vacate an arbitration award only if it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power" (*In re Falzone (New York Cent. Mut. Fire Ins. Co.)*, 15 NY3d 530, 534, 914 NYS2d 67 [2010]). Under CPLR 7511, an award

> shall be vacated on the application of a party who . . . participated in the arbitration . . . if the court finds that the rights of that party were prejudiced by: (i) corruption, fraud or misconduct in procuring the award; or (ii) partiality of an arbitrator . . . ; or (iii) an arbitrator . . . making the award exceeded his power . . . ; or (iv) failure to follow procedure of this article, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection.

Furthermore, New York law is clear that "a party will not be compelled to arbitrate and, thereby, to surrender the right to resort to the courts, absent evidence which affirmatively establishes that the parties expressly agreed to arbitrate their disputes," (*Waldron v Goddess*, 61 NY2d 181, 183, 473 NYS2d 136 [1984] [internal quotations omitted]; *see also Mionis v. Bank Julius Baer & Co.*, 301 AD2d 104, 109, 749 NYS2d 497 [1st Dept 2002].

The petition to vacate the arbitration award dated May 6, 2022 is granted. The fact is that CECI signed the agreement. The agreement was drafted in anticipation for CE to sign it, but CE did not. The body of the agreement lists the employer as Cronus Equity, Inc. (CE) but it is not signed by that entity. Rather, seemingly out of nowhere, it is signed by Cronus Equity Capital Investments, LLC. (CECI). Because CE did not sign the agreement upon which the entire arbitration is based, CE never agreed to arbitration. There might be an argument that, by signing the agreement, Cronus Equity Capital Investments, LLC (CECI) intended to take on the

obligations of Cronus Equity, Inc., but there is no basis to find that Cronus Equity, Inc. ever bound itself to that specific agreement.

And so, the subject arbitration was brought against an entity that never signed the agreement. Respondent attempts to argue that CE performed under the agreement, but this Court focuses on the arbitration clause of the agreement, and ultimately, CE never agreed to arbitrate, CECI did. Respondent's argument, that signing by CECI was a mere scrivener's error, is rejected; if anyone made a mistake, it was respondent by not looking at the signature page of the agreement upon which this whole dispute is based. And, unfortunately, because petitioner's attorney could not submit papers, petitioner could not bring the fact that Mr. Beloyan was making a claim against the wrong party, a party which never agreed to arbitration. Thus, the arbitrator exceeded his authority as FINRA was without power to issue an award against a party that never agreed to arbitrate.

Courts are tolerant of occasional issues relating to litigating in this online age; in the past, people got stuck in traffic – today, there is sometimes trouble signing in to Zoom appearances. However, this Court is not swayed by petitioner's argument that his counsel could not access the online portal despite his attempts. Mr. Kaeder communicated his issues to FINRA a total of 3 times, weeks apart; however, he also communicated with opposing counsel and for some reason never asked opposing counsel for the Case ID number. Technical difficulties, while frustrating, are sometimes aspects of litigating online; fortunately or unfortunately, attorneys must find solutions, or get someone to help them. If an attorney is unable to litigate online and is unwilling to hire someone to help, then that attorney is incapable of representing that client in that case and should decline the representation. Luckily for Mr. Kaeder's client, it never agreed to arbitrate.

The Court denies the pro hac vice motion by petitioner. The notice of motion is dated September 28, 2022 and the return date selected was September 30, 2022, which is not remotely close to the fastest return date permitted under CPLR 2214(b) (the minimum time is 8 days). Moreover, the notice of motion is signed by the attorney who seeks pro hac admission (NYSCEF Doc. No. 27). That is not permitted; it is the attorney already admitted in New York who must file the motion on behalf of the attorney seeking pro hac admission.

Accordingly, it is hereby

ORDERED that the petition (MS001) to vacate the FINRA Arbitration Award dated May 6, 2022 is granted; and it is further

ORDERED that petitioner's motion (MS002) for pro hac admission is denied.

10/24/2022
DATE

ARLENE BLUTH, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED		DENIED	X	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE