

Zunzurovski v Jacaranda Club, LLC
2022 NY Slip Op 33984(U)
November 21, 2022
Supreme Court, New York County
Docket Number: Index No. 654861/2021
Judge: Frank P. Nervo
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. FRANK P. NERVO PART 04

Justice

-----X

ALEKSANDAR ZUNZUROVSKI,

Plaintiff,

- v -

JACARANDA CLUB, LLC, DAVID MICHAEL TALLA

Defendant.

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INDEX NO. 654861/2021

MOTION DATE 08/09/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 84, 85, 88

were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

The Court has reviewed the papers submitted in this matter along with the on-the-record argument of October 7, 2022 (NYSCEF Doc. No. 91).

CPLR § 7511 provides that within 90 days of service of an arbitrator's award, a party may seek to vacate the award where the party's rights were prejudice by (i.) corruption or fraud, (ii) partiality of the arbitrator, (iii) an arbitrator acting in excess of their authority or imperfectly executing their authority such that the final award did not address the subject of the arbitration proceedings, or (iv) by the arbitrator's failure to follow the procedures of Article 75 of the CPLR. Likewise, where a strong public policy is violated by the award or the award is irrational, vacatur is proper (*In Re Falzone (New York*

Cent. Mut. Fire Ins. Co.), 15 NY3d 530 [2010]). These grounds are exclusive and narrowly applied, “Courts are reluctant to disturb the decisions of arbitrators lest the value of this method of resolving controversies be undermined” (*Goldfinger v. Lisker*, 68 NY2d 225 [1986]; see also *Geneseo Police Benevolent Assn. v. Village of Geneseo*, 91 AD2d 858 [4th Dept 1982] *aff’d* 59 NY2d 726 [1983]). Consequently, errors of law or fact do not form a basis to vacate an arbitrator’s award (*Wien & Malkin LLP v. Helmsley-Spear, Inc.*, 6 NY3d 471 [2006]; *Transport Workers’ Union of Am., Local 100, AFL-CIO*, 6 NY3d 332 [2005]). “An arbitration award must be upheld when the arbitrator offer[s] even a barely colorable justification for the outcome reached” (*Susan D. Settenbrino, P.C. v. Barroga-Hayes*, 89 AD3d 1094 [2d Dept 2011] quoting *Wien & Malkin LLP v. Helmsley-Spear, Inc.*, 6 NY3d at 479 [internal quotation removed]).

Here, petitioner seeks to partially confirm and partially disapprove an arbitration award comprising nearly 70 pages issued after significant hearings, post-hearing briefing, and post-decision briefing. However, as elucidated at on-the-record argument, no authority for this relief has been provided (see oral argument transcript of October 7, 2022). As discussed, *supra*, CPLR §7511 provides that the Court may modify an award but does not provide for partial confirmation and partial vacatur, as sought in this application. To the extent

that petitioner seeks relief stylized as modification of the award pursuant to CPLR § 7511, modification of an arbitration award under § 7511 is limited and may not affect the merits of the controversy (CPLR § 7511 [c]; *In re New York State Nurses Ass'n (Nyack Hosp.)*, 258 AD2d 303 [1st Dept 1999]; see also *Wendt v. BondFactor Co., LLC*, 169 AD3d 808 [2d Dept 2019] finding that CPLR § 7509 precludes modification of an award except as listed under CPLR § 7511[c]).


“Where, as here, issues have been properly placed before an arbitrator, ‘questions of law and fact are merged in the award and are not within the power of the judiciary to resolve’” (*In re New York State Nurses Ass'n (Nyack Hosp.)*, 258 AD2d 303 quoting *Matter of Binghamton Civ. Serv. Forum v. City of Binghamton*, 44 NY2d 23, 28 [1978]).

Consequently, the Court finds the relief sought by petitioner, partial confirmation and partial vacatur, is unavailable; to the extent such relief is classified as a modification, the Court further finds it cannot modify the merits of the award, as sought by petitioner. Ordinarily, where the Court denies vacatur of an arbitration award it must confirm same (CPLR § 7511[e]; see also *Matter of Board of Educ. of Ardsley Union Free School Dist., Town of Greenburgh v. Ardsley Congress of Teachers*, 78 AD2d 879 [2d Dept 1975]). Here, however, as the petition seeks improper relief, and respondents unequivocally stated on the

record that they were not seeking to confirm the award, the Court declines to approve the arbitration award.

Assuming, *arguendo*, that the Court enjoyed the authority to partially confirm and partially vacate an arbitration award, as petitioner contends, the Court would nevertheless find the arbitration award does not violate a strong public policy and decline vacatur on this basis. Likewise, to the extent petitioner alleges the award is not supported by the evidence, the low threshold that the arbitration award need only be supported by a colorable justification is met here.

Accordingly, it is ORDERED that the petition is dismissed as seeking improper relief not available; and it is further ORDERED that, not having reached the merits of the award, the award is neither confirmed nor disapproved.

<u>11/21/2022</u> DATE			 HON. FRANK P. NERVO
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> J.S.C.
			<input type="checkbox"/> OTHER
			<input type="checkbox"/> REFERENCE