

Muratore v LPL Fin. LLC
2023 NY Slip Op 30161(U)
January 17, 2023
Supreme Court, New York County
Docket Number: Index No. 651598/2022
Judge: Laurence L. Love
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

<p>PRESENT: <u>HON. LAURENCE L. LOVE</u></p> <p style="text-align: center;"><i>Justice</i></p> <p>-----X</p> <p>MICHAEL MURATORE</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">- v -</p> <p>LPL FINANCIAL LLC,</p> <p style="text-align: center;">Respondent.</p> <p>-----X</p>	<p>PART 63M</p> <p>INDEX NO. <u>651598/2022</u></p> <p>MOTION DATE <u>06/08/2022, 06/15/2022</u></p> <p>MOTION SEQ. NO. <u>001 002</u></p> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>
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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22

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

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

Upon the foregoing documents, Petitioner's Petition seeking to vacate a FINRA arbitration award dated February 9, 2022, in favor of LPL Financial LLC ("LPL") against Michael Muratore ("Muratore") and Respondent's opposition/counter-petition responding to same are resolved as follows:

As described in the Petition and supporting papers, a Statement of Claim was submitted in LPL Financial LLC v. Michael Muratore, FINRA Dispute Case No. 21-0224 alleging a breach of a promissory note with an outstanding balance of \$169,600.00. In an Award dated, February 9, 2022, the arbitrator, finding that Petitioner was properly served and has failed to record an appearance or file a statement of answer and awarded LPL a total of \$169,600.00 together with interest at a rate of 8.56% per annum from February 3, 2021, together with \$1,300 of arbitration fees. Petitioner alleges that he was never served with a copy of the award, never received any mail related to the arbitration and was unaware of the award until he received a solicitation from an

attorney. Petitioner further alleges that any arbitration was required to take place in California, which it did not.

In opposition, LPL submits a copy of the relevant promissory note, statement of claim, a copy of the first and second service letter allegedly sent to petitioner, a copy of the FINRA award and service letter, a copy of Muratore's BrokerCheck report, a copy of Petitioner's form U4 filed on or about March 28, 2022 and a copy of FINRA's service rules. Petitioner was listed on the BrokerCheck report as employed by Benchmark Investments, LLC from March 2021 through April 2022. The address listed for Petitioner on his Form U4 "Uniform Application for Securities Industry Registration or Transfer" dated March 28, 2022 is 17 Battery Place, Suite 625, New York, NY 10004. The address listed on the first service letter for Muratore is 1193 California Road, Eastchester, NY 10709, the service address listed in Petitioner's Form U4, which was returned. The service addresses listed on the second letter, dated November 3, 2021 are Benchmark Advisory Services, 17 Battery Place, Suite 625, New York, NY 10004; and two addresses found through a Lexis database search, 3 Wild Apple Lane, West Dover, VT 05356 and 3235 Spencer Drive, Apt. 1, Bronx, NY 10465. The award was served at Benchmark Advisory Services, 17 Battery Place, Suite 625, New York, NY 10004. Petitioner's Reply papers are devoid of any mention of the addresses.

CPLR § 7510 states: "The court shall confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in section 7511." N.Y. C.P.L.R. § 7510. The First Department, in interpreting CPLR § 7510, gives "the word 'shall' its ordinary meaning" and the Court is "directed unequivocally by CPLR 7510 to confirm an arbitration award if a timely application is made whenever the award is not vacated or modified under CPLR 7511." Bernstein Family Ltd. P'ship v. Sovereign Partners,

L.P., 66 A.D.3d 1, 5 (1st Dept 2009). CPLR § 7511 (b)(2)(i) provides: “[t]he award shall be vacated on the application of a party who neither participated in the arbitration nor was served with a notice of intention to arbitrate if the court finds that: (i) the rights of that party were prejudiced by one of the grounds specified in paragraph one...” In support of the instant Petition, Petitioner cites *Nadel & Assocs., P.C. v. O’Neil*, 50 A.D.3d 358, 854 N.Y.S.2d 724 (2008), an action where an Arbitration award was vacated on the grounds that the Arbitrator’s entry of award against a law firm constituted an abuse of discretion and misconduct where the arbitrator’s notice of hearing was sent to firm’s former business address, despite the firm’s timely notification of a change of address, hypothesizing that when “Muratore worked for LPL, his LPL business address was listed in the Note in question as 729 Saw Mill River Rd, Ardsley, NY 10502. LPL fired Muratore prior to the arbitration, thereby prohibiting him entry to that address. It is possible that LPL used Muratore’s old LPL business address to serve him with the notice of intent to arbitrate. If that was the case, they would have done so knowing that he would not receive it.”

Here, service upon Petitioner was attempted at four separate addresses, two of which are the addresses specifically listed for service in his FINRA filings. As such, Petitioner was properly served. Additionally, Petitioner’s objection that the hearing was held in New York, rather than California, is a nullity as no party to this action has any connection to California.

ADJUDGED that the petition is DENIED and the award rendered in favor of respondent and against petitioner is confirmed; and it is further

ADJUDGED that respondent, LPL Financial, LLC, having an address at 729 Saw Mill River Rd, Ardsley, NY 10502, do recover from respondent, Michael Muratore having an address at Benchmark Advisory Services, 17 Battery Place, Suite 625, New York, NY 10004, the amount of \$169,600.00, plus interest at the rate of 8.56 % per annum from the date of February 3, 2021,

as computed by the Clerk in the amount of \$ _____ , together with \$1,300 of arbitration fees, and costs and disbursements in the amount of \$ _____ as taxed by the Clerk, for the total amount of \$ _____ , and that the petitioner have execution therefor.

1/17/2023
DATE


LAWRENCE L. LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: