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| <b>Matter of Barton LLP v Maybank</b>  |
| 2023 NY Slip Op 30170(U)   |
| January 5, 2023  |
| Supreme Court, New York County   |
| Docket Number: Index No. 654372/2022   |
| Judge: Laurence L. Love  |
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and in accordance with Part 137 of the Rules of the Chief Administrator, seeking \$78,170.83. On May 27, 2022, NYCLA's Fee Dispute Resolution Program Administrator, Federica Romanelli, directed Respondent to submit a Client Response to Request for Fee Arbitration and any other materials relevant to the case by June 13, 2022. And thereafter, Ms. Romanelli confirmed that NYCLA had not received any response from Respondent and notified both parties that an arbitration hearing had been scheduled for August 17, 2022. On August 17, 2022, the date on which the arbitration hearing was scheduled to begin, the hearing was converted to a mediation on consent of both parties, which was apparently unsuccessful. The arbitration was scheduled for October 3, 2022 and thereafter rescheduled to October 25, 2022. On October 18, 2022, Respondent's then newly engaged counsel, requested that the arbitration hearing be postponed to a date in November. Said request was denied in an e-mail on October 19, 2022. By letter dated October 20, 2022, Respondent's counsel requested that the arbitration hearing be cancelled on the ground that the parties' fee dispute allegedly was not arbitrable, alleging that there were inextricably intertwined issues of attorney malpractice. Specifically, the letter alleged "that (1) Barton engaged in excessive delays in pursuing her case, resulting in the need for new counsel to revisit work and charge legal fees for tasks that should have been performed properly by Barton; (2) Barton failed to provide Myra Freed (the Attorney for the Child appointed to represent Ms. Maybank's children) and Judge Katz with available proof that her husband physically abused their children; (3) Barton failed to properly oversee the work of Clarion Consulting Associates, LLC; and (4) Barton baselessly refused to take legitimate, good faith positions requested by Maybank." On October 25, 2022, the arbitrators issued an Interim Order, ruling that they had jurisdiction to hear the parties' fee dispute and denying Respondent's application to cancel, postpone, or otherwise delay the arbitration hearing. On November 8, 2022, the arbitrators issued the

Arbitration Award, pursuant to which Barton was awarded the net sum of \$66,561.69, which remains unpaid resulting in the instant Petition.

Pursuant to CPLR §7511(b)(1)(iii), An arbitration award shall be vacated on the application of a party who either participated in the arbitration or was served with a notice of intention to arbitrate if the court finds that the rights of that party were prejudiced when an arbitrator exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made. To be upheld, an award in compulsory arbitration must have evidentiary support and cannot be arbitrary and capricious, See, *Matter of Motor Veh. Acc. Indemnity Corp. V. Aetna Cas. And Surety Co.*, 89 N.Y2d 214 (1996). The determination must be in accord with due process and supported by adequate evidence; it must also be rational and satisfy the arbitrary capricious standards of CPLR Art. 78, See, *Lakow v. Dept. of Education of the City of New York*, 53 A.D.3d 563 (1st Dept. 2008). Further, pursuant to CPLR § 7511(b)(2)(ii), an arbitration award shall be vacated where “a valid agreement to arbitrate was not made.”

Respondent argues, as discussed in *Filemyr v. Hall*, 186 A.D.3d 117 (1<sup>st</sup> Dept. 2020) that Part 137 does not apply to fee claims that are “inextricably intertwined with malpractice claims” and as such, the NYCLA arbitrator did not have the power to hear the fee dispute. However, as the Court in *Filemayr* noted, “it is for the ‘Local Administrative Body,’ not the lawyer, to make the determination that the defense of malpractice is inextricably intertwined with the plaintiff’s claim for payment, and then issue a letter declining jurisdiction and giving the attorney the ‘right to sue,’ after first evaluating the case” Further, a review of all of the cases cited by Respondent reveals that they are inapplicable to the facts at issue here. The arbitrators’ interim order contains a detailed explanation of why Respondent’s cited cases are inapplicable and specifically cites *Mahler v.*

Campagna, 60 A.D.3d 1009 (2nd Dept. 2009) for the proposition that fee arbitration does not have a *res judicata* effect on any potential future malpractice claims.

Respondent further argues that “Maybank only agreed to arbitrate “fee disputes” and to do so “by arbitration conducted pursuant to Part 137 of the Rules of the Chief Administrator of the Courts” and as such, there is no valid agreement to arbitrate. As discussed *supra*, there is a clear agreement to arbitrate and any potential malpractice actions are not foreclosed by a fee dispute arbitration. The Court further notes that all of Respondent’s malpractice allegations can easily be described as a difference in litigation strategy between attorney and client. A vague statement of malpractice on the eve of an arbitration is certainly insufficient to dismiss said arbitration, especially where Respondent fails to participate. As such it is hereby

ORDERED that Respondent’s motion is DENIED in its entirety; and it is further

ADJUDGED that the petition is GRANTED and the award rendered in favor of Petitioner and against Respondent is confirmed; and it is further

ADJUDGED that petitioner, Barton, LLP the does recover from respondent, Alexis Maybank, the amount of \$66,561.69, plus interest at the rate of 9% per annum from the date of November 8, 2022, as computed by the Clerk, together with costs and disbursements as taxed by the Clerk, and that the petitioner have execution therefor.

1/5/2023

DATE



LAURENCE L. LOVE, J.S.C.

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| <input type="checkbox"/> | FIDUCIARY APPOINTMENT | <input type="checkbox"/> | REFERENCE |

APPLICATION:

CHECK IF APPROPRIATE: