

<b>Matter of Compass v Weitzman</b>
2023 NY Slip Op 30282(U)
January 19, 2023
Supreme Court, New York County
Docket Number: Index No. 653836/2022
Judge: Laurence L. Love
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LAURENCE L. LOVE PART 63M**

*Justice*

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**INDEX NO. 653836/2022**

IN THE MATTER OF THE APPLICATION OF COMPASS,

**MOTION DATE 12/12/2022**

Petitioner,

**MOTION SEQ. NO. 001**

- v -

ELAINE WEITZMAN,

**DECISION + ORDER ON  
MOTION**

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46

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

Upon the foregoing documents, the instant Petition is resolved as follows:

Petitioner, Compass, filed the instant Petition on October 17, 2022, seeking to confirm an arbitration award issued September 20, 2022. As described in the arbitration award issued by the American Arbitration Association in *Compass v. Elaine Weitzman*, Case No. 01-22-0002-0759, said arbitration was conducted in accordance with paragraph 11(g) of an Exclusive Co-op Sales Agreement dated September 12, 2020 between the parties herein, wherein Respondent failed to appear, the Arbitrator found that Respondent was unjustly enriched by Claimant’s services and awarded the Claimant the principal amount of \$49,000.00, together with an additional sum of \$2,875.00, totaling \$51,875.00. Said Petition further includes a copy of a September 17, 2020 agreement entered into between the parties to sell a property described as 169 East 69<sup>th</sup> Street, Apartment 16B, New York, NY 10021.

CPLR § 7510 provides that 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. An arbitrator's award "must be sustained by the courts if that award has a rational basis." *Matter of Kalgren v. Central Mutual Ins. Co.*, 68 A.D.2d 549, 552 (1st Dept. 1979). The award must be supported by a "reasonable hypothesis" and not be contrary to settled law. *State Farm Mut. Auto. Ins. Co. v. Lumbermans Mut. Cas. Co.*, 17 A.D.3d 762, 63 (2d Dept 2005).

In opposition to the Petition and in Support of the cross-petition to vacate, Respondent submits an affidavit, incorporating a letter written by her daughter, Jessica S. Weitzman, together with supporting documentation, which alleges as follows: Respondent engaged Austin Schuster (Compass) for his services in assisting her with the sale of her apartment on Sept. 17th, 2020 in a contract which was scheduled to expire on March 11, 2021. In March, 2021, the contract was extended until June 11, 2021 at which time the contract allegedly expired and Respondent opted to take her apartment off the market. In November, 2021 buyers Matthew and Lindsey Pietroforte contacted Respondent directly, and offered the full asking price of \$1,400,000.00. Said offer was accepted and the sale closed on January 18, 2022. Respondent seeks vacatur as Austin Schuster (Compass) "had not been my mother's broker since June 11th, 2021 nor did he proactively list any prospective buyers who had once expressed interest in the apartment."

In response to the cross-petition, Petitioner submits an e-mail, dated May 30, 2021, submitting an offer on behalf of the Pietrofortes seeking to purchase the subject premises. Thereafter, on or about June 16, 2021, Compass sent Respondent a Transaction Deal Sheet, memorializing the Buyers' offer to purchase the Property. On or about June 22, 2021, a Contract of Sale, for the sale of the Property from Respondent to the Buyers was prepared and sent to Respondent. Thereafter, in an e-mail Jessica Weitzman informed Petitioner that they are not proceeding with the sale at that time. Petitioner continued to present offers from the Pietrofortes

to Respondent until September, 2021. Upon the closing of the sale of the apartment, and Respondent's failure to pay commission as demanded, on May 10, 2022 Compass submitted a claim to the American Arbitration Association. On June 2, 2022 AAA advised Respondent that her answer was due June 17, 2022. No answer was submitted. On June 30, 2022, the parties were informed by AAA that an arbitrator had been appointed. On July 15, 2022 AAA sent the parties correspondence proposing dates for an initial conference, which was thereafter scheduled for July 20, 2022. Respondent did not participate. On July 20, 2022, the AAA sent Your Affirmant and Respondent a Notice of Hearing, which notified the parties that an evidentiary hearing was scheduled for September 14, 2022 at 3:30pm via ZOOM. This correspondence was sent to Respondent by Certified Mail as well as electronic mail. On September 14, 2021, an evidentiary hearing was held, in which Respondent did not participate, resulting in a decision in Petitioner's favor on September 20, 2022.

Petitioner having established that Respondent was on notice of the arbitration and that Respondent failed to appear for same and the resulting arbitration award having a rational basis, it is hereby

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 Urban Compass, Inc. d/b/a Compass, having an address at 10 East 53<sup>rd</sup> Street, New York NY 10022, do recover from respondent Elaine Weitzman, having an address at 20320 Fairway Oaks Drive Apartment 364 Boca Raton, FL 33434, the amount of \$ \$51,875.00, plus interest at the rate of 9 % per annum from the date of September 20, 2022, as computed by the Clerk in the amount of \$ \_\_\_\_\_ , together with costs and disbursements in

the amount of \$ \_\_\_\_\_ as taxed by the Clerk, for the total amount of \$ \_\_\_\_\_ ,  
and that the petitioner have execution therefor.

1/19/2023

DATE



LAURENCE L. LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE