

Gibbs v Holland & Knight, LLP

2023 NY Slip Op 30506(U)

February 17, 2023

Supreme Court, New York County

Docket Number: Index No. 159345/2014

Judge: Andrew Borrok

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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CHARLES F. GIBBS

Plaintiff,

- v -

HOLLAND & KNIGHT, LLP,

Defendant.

INDEX NO. 159345/2014

MOTION DATE N/A

MOTION SEQ. NO. 009

**DECISION + ORDER ON
MOTION**

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HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 009) 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333

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

The Plaintiff’s motion to vacate the Arbitrator’s (hereinafter defined) award of attorneys’ fees and costs to the Defendant in the Final Award (hereinafter defined) must be denied because there is no misconduct, fraud, or partiality, and the Arbitrator did not exceed his power (CPLR 7511[b][1]). Contrary to the Plaintiff’s argument, the award of attorneys’ fees to the Defendant does not violate public policy. Nor is it irrational such that the Arbitrator exceeded his power (*New York Transit Authority v Transport Workers’ Union of America, Local 100, AFL-CIO*, 6 NY3d 332, 336). The Defendant’s cross-motion to confirm the Final Award must be granted.

The Relevant Facts and Circumstances

Reference is made to (i) a Partial Final Award (the **Partial Award**; NYSCEF Doc. No. 319) dated February 15, 2022 and issued by Jack P. Levin (the **Arbitrator**), (ii) Final Award (the **Final Award**; NYSCEF Doc. No. 308) dated May 2, 2022 and issued by the Arbitrator, and (iii) an Amended and Restated Partnership Agreement (the **Partnership Agreement**; NYSCEF Doc. 159345/2014 GIBBS, CHARLES F. vs. HOLLAND & KNIGHT, LLP Motion No. 009 Page 1 of 6

No. 313) effective as of September 27, 2012 which governed the scope of the Plaintiff's employment as a Partner with the Defendant.

The Partnership Agreement provides that an arbitrator may assess costs and attorneys' fees to a prevailing party:

Section 22.4 Costs. Notwithstanding any otherwise applicable, statutory fee-shifting provisions or judicial authority to the contrary, the parties shall bear their respective costs in connection with the dispute resolution procedures (non-litigation) described in this Article XXII; except that, if the Firm is a party to a dispute resolution procedure under this Article XXII, the Firm shall pay the fees and expenses of any neutral third party or arbitrator and the costs of any facility used in connection with such dispute resolution procedures and ***except that the arbitrator in any dispute resolution procedure conducted in accordance with Section 22.3 may assess all or any portion of the costs and reasonable attorneys' fees of the prevailing party to the non-prevailing party***

(NYSCEF Doc. No. 313, ¶ 22.4 [emphasis added]).

The Plaintiff worked for the Defendant as a Class C Partner pursuant to the Partnership Agreement from June 1, 2000 until March 28, 2014 (NYSCEF Doc. No. 319, ¶¶ 6-7). As set forth in the Complaint (NYSCEF Doc. No. 1), the Plaintiff alleged that the Defendant unfairly and improperly refused to compensate him for the years 2012 and 2013 in accordance with the Partnership Agreement and wrongly declared that the Partnership Agreement terminated prior to March 17, 2014 (*id.*, ¶ 1). The Plaintiff asserted a single cause of action for a declaratory judgment that (i) the Partnership Agreement was not terminated until March 17, 2014, (ii) the Plaintiff was the principal originator of the Clark litigations, and (iii) the Plaintiff must be properly compensated for the years 2012-2014 and thereafter in accordance with paragraphs 2(a), 2(b), and 11 of the Partnership Agreement (*id.*, ¶ 49).

By decision and order dated April 28, 2015 (NYSCEF Doc. No. 50) the Court (Kornreich, J.) granted the Defendant's motion to stay the action and compel arbitration and the Appellate Division affirmed (*Gibbs v Holland & Knight LLP*, 143 AD3d 507 [1st Dept 2016]). The proceedings before the Arbitrator were commenced on December 7, 2016 by the Plaintiff, asserting, among other things, breach of the Partnership Agreement for failure to pay fair and reasonable compensation. The Arbitrator issued an order on January 16, 2018 (NYSCEF Doc. No. 314) granting the Defendant's motion to dismiss claims for statutory violations of New York Labor Law and limiting the Plaintiff's recovery, if any, to compensatory damages, interests, costs, and attorneys' fees (*id.*, at 7).

The Arbitrator issued the Partial Award dated February 15, 2022, (i) granting the Plaintiff's claim for \$224,000 in unpaid compensation in 2013, (ii) otherwise denying the Plaintiff's claim for breach of the Partnership Agreement, (iii) denying the Plaintiff's claim for breach of the implied duty of good faith and fair dealing, (iv) denying the Plaintiff's claim for breach of fiduciary duty, (v) denying the Plaintiff's claim for unjust enrichment/quantum meruit, (vi) granting the Plaintiff's claim for attorneys' fees and costs only as to the claims on which the Plaintiff was the prevailing party, and (vii) granting the Defendant's claim for attorneys' fees and costs only as to the claims on which the Defendant was the prevailing party (NYSCEF Doc. No. 319, at 37-38).

In the Final Award, the Arbitrator (i) denied the Plaintiff's claim for attorneys' fees, (ii) denied the Plaintiff's claim for costs, (iii) granted the Defendant's claim for attorneys' fees in the amount of \$500,000, (iv) granted the Defendant's claim for disbursements paid by its counsel in

the amount of \$37,730.87, (v) granted the Defendants claim for disbursements paid directly by the Defendant to the document management vendor in the amount of \$50,821.81, and (vi) granted the Defendant's claim for one-half of the total fees of \$162,607.50 charged the Tribunal (NYSCEF Doc. No. 308, at 7). In so holding, the Arbitrator found:

3. In this arbitration the central issue has always been whether Claimant's written contract entitled him to a negotiation of his annual compensation according to how he had been compensated in previous years and with an outcome satisfactory to him. That central issue, relating to \$1,182,000 of Claimant's \$1,406,000 in alleged damages, was resolved against him in the Partial Final Award. That central issue was factually and legally distinct from the claim resolved in Claimant's favor, i.e., whether \$224,000 unconditionally offered by Respondent as Claimant's 2013 compensation, which Claimant declined to accept in early 2014, was waived. The \$224,000 claim was in no way dependent on the facts or the law applicable to the resolution of the central issue

(*id.*, ¶ 3).

The Plaintiff now moves to vacate the portion of the Final Award granting attorneys' fees and costs to the Defendant. He argues that, because he prevailed on one of the issues in the Partial Award, a total denial of his claims for attorneys' fees and costs and a total grant of the Defendants' claims for attorneys' fees and costs is irrational because it would make the Defendant the only prevailing party.

Discussion

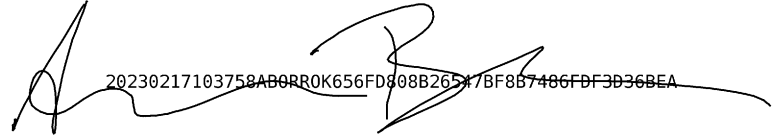
A motion to vacate an arbitration award must be granted where the rights of a party participating in the arbitration were prejudiced by (i) corruption, fraud or misconduct in producing the award, (ii) partiality of an arbitrator appointed as a neutral, or (iii) an arbitrator exceeded their power or so imperfectly executed it than a final award upon the subject matter submitted was not made (CPLR 7511[b]). An excess of the arbitrator's power "occurs only where the arbitrator's award

violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power" (*New York City Transit Authority*, 6 NY3d at 336). Court's are obligated to give deference to the decision of the arbitrator, even if the arbitrator misapplied the substantive law in the area of the contract (*id.*). Mere errors of fact or law are insufficient to vacate an arbitral award (*NRT New York LLC v Spell*, 166 AD3d 438, 439 [1st Dept 2018]). An arbitration award must be confirmed if there is a barely colorable justification for the outcome reached (*Matter of Steyn v CRTV, LLC*, 175 AD3d 1, 7 [1st Dept 2019]).

The Arbitrator did not exceed his power in denying the Plaintiff's claims for attorneys' fees and costs and granting the Defendant's claims for attorneys' fees and costs, and the Final Award is not irrational. It is not irrational for the Arbitrator to find that, although the Plaintiff was entitled to certain unpaid compensation, he was not the prevailing party on the central issue of the arbitration and therefore was not entitled to attorneys' fees or costs. As the Arbitrator found, the award of compensation to the Plaintiff was not factually or legally related to the issue of the arbitration. The amount awarded to the Plaintiff was offered to him by the Defendant in 2014, and the only finding made by the Arbitrator was that the Plaintiff did not waive his right to that money (NYSCEF Doc. No. 308, ¶ 3). That was not the issue that was sent to arbitration and is not related to the claims asserted by the Plaintiff in the Complaint or in the arbitration. There is clearly more than a colorable justification for the decision reached by the Arbitrator. The Plaintiff's motion must be denied and the Defendant's cross-motion must be granted.

It is hereby ORDERED that the motion is denied and the cross-motion to confirm the Final Award is granted; and it is further

ORDERED that Holland & Knight, LLP shall enter judgment on notice.



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2/17/2023

DATE

ANDREW BORROK, 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