

Suzuki v Grant, Herrmann, Schwartz & Klinger LLC

2023 NY Slip Op 32346(U)

July 10, 2023

Supreme Court, New York County

Docket Number: Index No. 651870/2023

Judge: Sabrina Kraus

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS **PART** **57TR**

Justice

-----X

HELDER SUZUKI,

Plaintiff,

- v -

GRANT, HERRMANN, SCHWARTZ & KLINGER LLC,

Defendant.

-----X

INDEX NO. 651870/2023

MOTION DATE 7/10/2023

MOTION SEQ. NO. 001 002 003
004

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 27, 28, 29, 30, 31, 32, 33

were read on this motion to/for AMEND CAPTION/PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 24, 25, 26 were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 34, 35, 36, 37, 38, 39, 40, 41, 51 were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 42, 43, 44, 45, 46, 47, 48, 49, 50 were read on this motion to/for JUDGMENT - MONEY.

BACKGROUND

In July 2021, Petitioner agreed to hire Stephanie Edelstein, Esq who was an attorney with Respondent to represent him and his wife in the purchase of an apartment in Manhattan. The parties entered into a retainer agreement dated July 12, 2021, which provided for a flat fee of \$3500.00. The agreement further provided that in the event Petitioner terminated the services of the firm, Petitioner would remain obligated to pay for services rendered prior to termination. In

conjunction with his execution of the retainer agreement, Petitioner paid the firm \$1750.00 of the retainer in August 2021. The balance was due at closing.

In September and October 2021, Ms. Edelstein worked on a potential purchase for Petitioner, but the deal fell through.

On January 1, 2022, Ms. Edelstein left the firm. About 1 week later, Petitioner had submitted a new offer on another apartment and listed Ms. Edelstein as his attorney, not knowing she had left the firm. When Petitioner learned she had left the firm, Petitioner elected to hire a different firm for the closing.

Petitioner then sought a full refund of the \$1750.00 he had paid Respondent. The parties were unable to agree on a resolution and Petitioner instituted an arbitration proceeding with NYCLA's Fee Dispute Resolution Program. A hearing was scheduled for May 4, 2022. The only evidence of any notification to Respondent of the hearing were emails addressed to a general email address for the firm. Respondent asserts they never received the emails notifying them of the hearing, and that the general email address for the firm is never checked by the attorneys.

Respondent did not appear at the arbitration and Petitioner was awarded \$1750.00 based on Respondent's failure to appear and establish the reasonableness of the fee. The award is dated May 5, 2022.

On September 6, 2022, Petitioner commenced a Small Claims Action against Respondent under Index Number 1758 NSC 2022. Petitioner sued for \$2200.00. A trial was held on March 14, 2023, before Judge Jeanine Johnson who dismissed the claim after trial. During the trial Respondent raised the issue of having not been served with notice of the arbitration hearing, but Judge Johnson ruled the issue was time barred. At the Small Claims Trial, Respondent did

acknowledge receipt of the arbitration award, which was mailed to Respondent on or about May 5, 2022 (NYSCEF Doc # 9).

PENDING APPLICATIONS FOR RELIEF

On April 15, 2023, Petitioner filed the petition to confirm the arbitration award. A notice of petition was filed on April 18, 2023, and an amended Notice of Petition was filed on April 24, 2023.

Petitioner has filed an order to show cause seeking to amend the caption as Respondent was initially named herein as GRANT, HERRMANN, SCHWARTZ & KLINGER LLC, but is in fact GRANT, HERRMANN, SCHWARTZ & KLINGER LLP.

On June 12, 2023, Respondent filed an Order to Show Cause seeking: to vacate the arbitration award, or in the alternative for an order directing the parties to attend arbitration as to the fees disputed; and for an order directing Petitioner to “immediately and permanently remove his Google Review of (Respondent);” and awarding Respondent attorneys’ fees.

Finally, Petitioner filed an order to show cause on June 26, 2023 asking that the court deny Respondent’s order to show cause and award \$450.00 “ ... plus exemplary damages for harm alleged caused by the Respondent’s negligence” and related relief.

The motions are consolidated herein for disposition and determined as set forth below.

DISCUSSION

The motion to amend the caption to properly reflect Respondent’s name is granted without opposition.

The motion to confirm the arbitration award is governed by CPLR §7510 which provides “(t)he 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.”

Petitioner has properly moved to confirm the award within one year.

There is no basis under the CPLR to vacate an award based on excusable default.

Concord Am. Autosales, Inc. v. Nussbaum, 72 Misc. 3d 142(A) (N.Y. App. Term. 2021).

CPLR §7511 sets forth grounds for seeking the vacatur of an arbitration award, which grounds do not, however, include vacatur on the ground that there was good cause for a default. The rules for the Fee Dispute Resolution Program, through which the present matter was submitted to arbitration, do not contain any provision for the vacatur of awards rendered on default (*see* Rules of Chief Admin of Cts [22 NYCRR] Part 137).

The rules for the Fee Dispute Resolution Program do, however, provide that “[a] party aggrieved by the arbitration award may commence an action on the merits of the fee dispute in a court of competent jurisdiction within 30 days after the arbitration award has been mailed” (Rules of Chief Admin of Cts [22 NYCRR] § 137.8 [a]), but foreclose *de novo* review to any party who failed to participate in the arbitration hearing, “absent good cause for such failure to participate” (Rules of Chief Admin of Cts [22 NYCRR] § 137.8 [b]).

Thus, Respondent rather than seeking to vacate the arbitration decision should have commenced an action within 30 days of its receipt of the decision seeking *de novo* review and arguing that it had good cause based on its lack of actual notice of the hearing and its meritorious defense that it had earned the fee retained.

Even if the court were to deem the pending application by Respondent to be one for *de novo* review based on good cause, the court would be constrained to deny it. As noted above the decision was mailed on May 5, 2022, this proceeding was not commenced until April 2023, and Respondent’s order to show cause was filed after that date.

Thus, this Court agrees with Judge Johnson's holding in the related Small Claims Action that Petitioner's application for relief is time barred pursuant to 22 NYCRR § 137.8.

WHEREFORE it is hereby:

ORDERED that the caption shall be amended to reflect respondent is GRANT, HERRMANN, SCHWARTZ & KLINGER LLP; and it is further

ORDERED that, within 30 days from entry of this order, Petitioner shall serve a copy of this order with notice of entry on the Clerk of the Court, who shall mark his records to reflect the amended caption; 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 Helder Suzuki, having an address at 10 West End Avenue, APT 4A New York, NY 10023, do recover from Respondent GRANT, HERRMANN, SCHWARTZ & KLINGER LLP, having an address at 107 Greenwich Street, Suite 2102, New York, NY 10006 the amount of \$ 1750.00, plus statutory interest at the rate of 9 % from the date of April 15, 2023, 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; and it is further

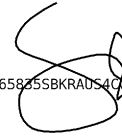
ORDERED that, within 20 days from entry of this order, Petitioner shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for*

Electronically Filed Cases (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

ORDERED that any relief not expressly addressed has nonetheless been considered and is hereby denied; and it is further

ORDERED that this constitutes the decision and order of this court.



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7/10/2023

DATE

SABRINA KRAUS, 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