

Rice Sec. LLC v Bonwick Capital Partners LLC

2023 NY Slip Op 32836(U)

August 15, 2023

Supreme Court, New York County

Docket Number: Index No. 654983/2021

Judge: Debra A. James

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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**

<p>PRESENT: <u>HON. DEBRA A. JAMES</u></p> <p align="center"><i>Justice</i></p> <p>-----X</p> <p>RICE SECURITIES LLC D/B/A/ RICE FINANCIAL PRODUCTS COMPANY,</p> <p align="center">Petitioner,</p>	<p>PART 59</p> <p>INDEX NO. <u>654983/2021</u></p> <p>MOTION DATE <u>12/16/2021</u></p> <p>MOTION SEQ. NO. <u>001</u></p>
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- v -

BONWICK CAPITAL PARTNERS LLC and DEVIN WICKER,

Respondents.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30

were read on this motion to/for VACATE – MODIFY AWARD.

ORDER

Upon the foregoing documents, it is

ORDERED that the petition pursuant to CPLR § 7511(c) to modify the portion of the Arbitration Award of the FINRA Dispute Resolution Services dated July 16, 2021, that assessed \$266,422.86 in attorneys’ fees in favor of respondents and against petitioner is denied; and it is further

ADJUDGED that, pursuant to CPLR § 7510, the Arbitration Award of FINRA Dispute Resolution Services dated July 16, 2021, is confirmed in its entirety; and it is further

ADJUDGED that respondents BONWICK CAPITAL PARTNERS LLC and DEVIN WICKER, having an address at 299 Park Avenue, 38th Floor, New York, New York, do recover from petitioner RICE SECURITIES LLC

D/B/A/ RICE FINANCIAL PRODUCTS COMPANY, having an address at 55 Broad Street, 27th Floor, New York, New York, the amount of \$ 266,422.86, with interest at the statutory rate from July 16, 2021, to entry of judgment, 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 respondents have execution therefor.

DECISION

The Arbitration Award dated July 16, 2021, explicitly states "Any and all claims for relief not specifically addressed herein, including any requests for **punitive damages**, treble damages, and attorneys' fees, are denied." (Emphasis supplied.) The court finds of no moment that respondents' Amended Answer referred to legal fees paid to defend respondents against the "original frivolous case", since the Arbitration Award did not specify any award for punitive damages with respect to either the Supreme Court case or the arbitration. This court disagrees with respondents, to the extent that they argue the attorneys' fees were permissible pursuant to the FINRA Dispute Resolution Services Arbitrator's Guide rules about discovery abuse, since the Arbitration Award made no reference to any discovery abuse,

but made clear that "Claimant and Respondents Bonwick and Wicker requested attorneys' fees".¹

Petitioner, as claimant, in the Statement of Claim section entitled "Demand for an Award" sought "all attorneys' fees and other legal expenses incurred by Claimant in connection with this proceeding". Likewise, in their Counterclaimants' Demand for An Award, which was filed more than one year after the Amended Answer dated February 24, 2020, respondents sought "attorneys' fees and costs, as well as all fees associated with the arbitration hearing". This court finds of no moment that the Amended Answer dated February 25, 2020, which predated the Counterclaimants' Demand, sought "\$200,000 of legal fees paid to defend the firm against the original frivolous case", as the Arbitration Award clearly stated the attorneys' fees were based on each side having requested such as award. The Arbitration Award is clear that attorneys' fees were not awarded as a sanction for alleged frivolous litigation on the part of petitioner.

Since it is clear from the record that each side pursued "prevailing party" attorneys' fees by presenting evidence

¹To the extent that it involved discovery abuse accusations, Bear, Stearns & Co, Inc v International Capital & Management Co, LLC, 99 AD3d 402 (1st Dept 2012) is inapposite to the matter before this court.

thereof to the arbitration panel, attorneys' fees based upon such agreement manifested by the parties may be awarded in arbitration. Matter of Matza v Oshman, Helfenstien & Matza, 33 AD3d 493, 494-495 (1st Dept 2006) is distinguishable on its facts, as, in Matza, the court had before it an uncontradicted assertion by respondent's counsel that he never pursued attorneys' fees, after each side made merely "their boilerplate request".

Respondents are entitled to interest on the monetary amount from the date of the award. Board of Ed of Cent School Dist No 1 of Towns of Niagara, Wheatfield, Lewiston and Cambria v Niagara-Wheatfield Teachers Association, 46 NY2d 553 (1979).

Debra A. James

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8/15/2023

DATE

DEBRA A. JAMES, 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