

**New York Hotel Trades Council & Hotel Assn. of
New York City, Inc. Health Benefits Fund
v Blakely LLC**

2024 NY Slip Op 31475(U)

April 18, 2024

Supreme Court, New York County

Docket Number: Index No. 656216/2023

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

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NEW YORK HOTEL TRADES COUNCIL AND HOTEL ASSOCIATION OF NEW YORK CITY, INC. HEALTH BENEFITS FUND, NEW YORK HOTEL TRADES COUNCIL AND HOTEL ASSOCIATION OF NEW YORK CITY, INC. PENSION FUND, NEW YORK HOTEL TRADES COUNCIL AND HOTEL ASSOCIATION OF NEW YORK CITY, INC. LEGAL FUND, NEW YORK HOTEL TRADES COUNCIL AND HOTEL ASSOCIATION OF NEW YORK CITY, INC. SCHOLARSHIP FUND, NEW YORK HOTEL TRADES COUNCIL AND HOTEL ASSOCIATION OF NEW YORK CITY, INC. INDUSTRY TRAINING FUND

INDEX NO. 656216/2023

MOTION DATE 04/17/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

Petitioners,

- v -

BLAKELY LLC, CORPHOUSING LLC,

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

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

The petition to confirm an arbitration award is denied; the cross-petition by respondents to vacate the award is granted.

Background

Petitioners are employment benefit plans for employees in the hotel industry in the New York Metropolitan area. They contend that respondents own and operate a hotel in Manhattan and allege that respondents entered into an agreement with the hotel workers' union. This agreement required respondents to follow the terms of a collective bargaining agreement which, as is relevant here, required respondents to make monthly benefit contributions to petitioners.

They contend that respondents routinely failed to make these payments. Petitioners insist that pursuant to the terms of the agreement, called the Industry Wide Agreement (“IWA”), they sent a demand for an arbitration on September 11, 2023. They contend that the hearing was held on November 2, 2023 and respondents did not appear. The arbitrator then rendered a decision on November 29, 2023 in which he awarded petitioners \$435,015.71 (NYSCEF Doc. No. 9 [arbitration award]). Petitioners seek to confirm that award.

Respondents’ cross-move to vacate the award on the ground that the parties resolved their dispute prior to the arbitration. They contend that petitioners omitted that the parties entered into a settlement agreement on November 1, 2023 (prior to the arbitration hearing) that resolved the claims at issue here. Respondents maintain that this agreement required them to pay a negotiated dollar amount to resolve the disputed period of February 2022 through August 2023 and that they would provide a confession of judgment.

Respondents maintain that petitioners did not tell the arbitrator about this settlement agreement. They demand that the Court enforce the settlement agreement as it is a binding and enforceable contract. Respondents observe that the arbitration award covered April 2023 through August 2023 and that the settlement agreement specifically covered that period.

In reply, petitioners contend that nothing in the settlement agreement required them to withdraw their arbitration demand. They emphasize that only respondents’ full payment of the amounts due released respondents from petitioners’ claims. Petitioners argue that respondents did not inform them that they had signed the settlement agreement prior to the hearing before the arbitrator. They emphasize that respondents were aware of the hearing but chose not to appear.

In reply, respondents insist that the terms of the settlement agreement clearly apply to the arbitration award and so the Court should vacate the award.

Discussion

CPLR 7511(b) identifies grounds for vacating an arbitral award. Here the relevant provision is whether the award was obtained by “(i) corruption, fraud or misconduct in procuring the award” (CPLR 7511[b][i]). Moreover, “[a]n arbitration award may be vacated on three narrow grounds: it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power” (*Matter of United Fedn. of Teachers, Local 2, AFT, AFL-CIO v Bd. of Educ. of City School Dist. of City of New York*, 1 NY3d 72, 79, 769 NYS2d 451 [2003]). “Under the public policy exception, courts will intervene only in cases in which public policy considerations, embodied in statute or decisional law, prohibit, in an absolute sense, particular matters being decided or certain relief being granted by an arbitrator” (*New York City Tr. Auth. v Phillips*, 162 AD3d 93, 99, 75 NYS3d 133 [1st Dept 2018]).

Here, the Court vacates the award on both the misconduct and public policy grounds. The subject settlement agreement required respondents to make payments and, upon full payment, petitioners’ claims concerning the “failure to pay contributions to the Funds for the period from February, 2022 through August, 2023” would be released (NYSCEF Doc. No. 18, ¶ 15). That time period directly overlaps with the arbitration award, which covered the failure to pay contributions for April 2023 through August 2023 (NYSCEF Doc. No. 9). That is, the settlement agreement encompassed the time period at issue in the arbitration.

The Court recognizes that petitioners claim they did not know that respondents had signed the agreement prior to the arbitration hearing on November 2, 2023. However, they admit that “Prior to the arbitration hearing, the parties entered into settlement discussions regarding the outstanding balances due to the Funds” (NYSCEF Doc. No. 29, ¶ 8 [petitioners’ reply]). And yet they did not seek to adjourn the hearing when respondents failed to appear.

Despite participating in settlement discussions and forging ahead with a one-sided hearing, petitioners then signed the settlement agreement on November 10, 2023 (NYSCEF Doc. No. 30). And yet, they did not seek to withdraw their arbitration claim prior the issuance of the award. They let the arbitrator issue a decision. And, even more curious, they now seek to confirm that award despite admitting that they entered into a settlement agreement about the same subject matter in the arbitration award. More concerning and deeply troubling is that they wholly omitted any mention of this settlement agreement in their petition.

To be sure, the settlement agreement did not contain a requirement that petitioner drop the subject arbitration. In fact, it references a prior arbitration proceeding and an award that was confirmed in New York County Supreme Court. This arbitration apparently covered the time period of February 2022 through March 2023. Obviously, respondents should have insisted on the inclusion of language that specifically referenced the second arbitration demand at issue here, which covered the period of March 2023 through August 2023 (NYSCEF Doc. No. 7). But there is no way to read this settlement agreement without reaching the conclusion that it directly affects the entire subject matter of the arbitration award that petitioners now seek to confirm. Again, it covered respondents' "indebtedness" from February 2022 through August 2023, which encompasses *both* arbitration demands. The failure to disclose the settlement to the arbitrator prior to the issuance of the award constitutes misconduct in obtaining the award (*Policy Admin. Sols., Inc. v QBE Holdings, Inc.*, 160 AD3d 572, 572, 76 NYS3d 135 [1st Dept 2018] [finding that the failure to disclose pertinent information to an arbitrator constituted misconduct sufficient to vacate an award]).

Petitioners claim that respondent's public policy argument fails because it "rests on the contention that the Arbitrator could not make the Award as the parties settled their dispute"

(NYSCEF Doc. No. 29, ¶ 47). But the fact is that the parties *did settle the dispute* and so petitioners should have therefore withdrawn their arbitration demand or, at the very least, not commenced this proceeding. Petitioners did not explain how the settlement agreement failed to resolve the subject award when it covered the same time period. Instead, they only offer the conclusory assertion that “The Settlement Agreement did not cover the dispute before the Arbitrator” (*id.* ¶ 48). But what was left? In this Court’s view, the settlement agreement resolved the subject matter of the second arbitration award (the April through August 2023 time period).

There appears to be a pattern here that is concerning, to say the least. Petitioners pursued arbitration on default and failed to disclose important information (the settlement negotiations and then the settlement agreement itself) to the arbitrator. And they did the same thing in this proceeding – they commenced this proceeding and never mentioned the settlement agreement in the moving papers.

Any consideration of public policy suggests that this award should be vacated—respondents understandably believed that they had no reason to appear for an arbitration hearing after signing the settlement agreement. Even assuming that there was some miscommunication—that petitioners did not know that respondents signed the agreement—there is no reason to confirm an award under these circumstances. The parties chose to resolve their dispute with a settlement agreement, albeit one that should have been drafted more clearly to avoid the conniving gamesmanship by petitioners.

The Court observes that respondents also cross-moved to “enforce the settlement agreement.” The Court is unable to grant such relief as it appears to request and advisory opinion. However, the fact is that petitioners admit they executed this agreement and the agreement is a basis to vacate the subject arbitral award. But, beyond those findings, the Court

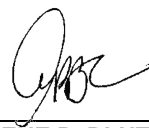
cannot “enforce” an agreement; nothing prevents any party from commencing the appropriate litigation should there be a violation of the settlement.

Accordingly, it is hereby

ADJUDGED that the cross-petition to vacate the award is granted and respondents shall be entitled to costs and disbursements from petitioner upon presentation of proper papers to the County Clerk.

4/18/2024

DATE



ARLENE P. BLUTH, 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