Jones Law Firm, P.C. v Keep Healthy, Inc.
2024 NY Slip Op 32519(U)
July 15, 2024
Supreme Court, New York County
Docket Number: Index No. 653385/2023
Judge: Kathleen Waterman-Marshall
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. KATHLEEN WATERMAN-MARSHALL** **PART** **09M**

Justice

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JONES LAW FIRM, P.C.,

Plaintiff,

- v -

KEEP HEALTHY, INC.,FMF CORP F/K/A FARMER'S MARKET OF FORT SOLONGA, INC.,HARBOR PARK REALITY, LLC,BROADWAY ROYAL, INC.,JACOB ADONI

Defendant.

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INDEX NO. 653385/2023

MOTION DATE 07/13/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24

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

Petitioner Jones Law Firm, P.C. ("Jones Law Firm") seeks to confirm the arbitration award dated July 7, 2023 (the "Award") (NYSCEF Doc. No. 5) and for costs associated with the underlying arbitration proceeding and this motion. Respondents Keep Healthy, Inc, FMF Corp, Harbor Park Realty, LLC, and Jacob Adoni ("Respondents")[1] oppose and cross-move to vacate the Award on the bases that: the arbitrator engaged in misconduct, the arbitrator was partial, the arbitrator exceeded her authority, and the Respondents were not notified of the arbitration proceeding. Alternatively, Respondents seek to modify the Award on the basis that there was a miscalculation of figures and a mistake in the corporate entities referred to in the Award.

Background

Respondents Keep Healthy and Mr. Adoni retained Jones Law Firm in February 2022 to represent Keep Healthy in an action it brought in the Commercial Division of Nassau County Supreme Court (NYSCEF Doc. No. 3). Respondents FMF Corp, Harbor Park Realty, and Adoni retained Jones Law Firm in March 2022 to represent them in an action they brought in Westchester Supreme Court.

It is undisputed that Respondents paid Jones Law Firm an initial retainer of $2,500.00; a subsequent retainer of $15,000.00; and a further retainer of $10,000.00, which, less processing fees, was reflected as a payment of $9,453.00. Two months later, in May 2022, Jones Law Firm resigned from representing the Respondents in the Westchester and Nassau County matters. In December 2022, Jones Law Firm sent Mr. Adoni an email demanding arbitration of outstanding legal fees pursuant to the retainer agreements (NYSCEF Doc. Nos. 4 and 22).

[1] Although the opposition and cross-motion are ostensibly submitted only on behalf of respondents Keep Healthy, FMF Corp, Harbor Park Realty and Adoni, it is noteworthy that Broadway Royal, Inc. is represented by the same counsel in this matter as the other respondents.

The retainer agreements ("Retainer Agreements") between Jones Law Firm and Respondents provide, in relevant part:

> In the event a dispute should arise under this contract, including but not limited to disputes over payment fees [sic], malpractice claims, or defamation claims relating to representation, the Firm and Clients agree to resolve the dispute by binding arbitration through Professional Arbitration and Mediation LLC ("PAM").

(NYSCEF Doc. No. 3 at pp. 4-5 and 13-14).

The day after receiving the demand for arbitration, Mr. Adoni emailed Jones Law Firm and PAM stating, "I hear-by [sic] decline any arbitration Proceeding" (NYSCEF Doc. No. 22). PAM thereafter assigned an arbitrator to hear the dispute, Mr. Porges, who advised the parties that he had a limited professional relationship with Mr. Jones of Jones Law Firm, but that this relationship would not impact his ability to remain impartial during arbitration and sought the parties' confirmation that they would proceed with arbitration before him notwithstanding this professional relationship (NYSCEF Doc. No. 23). Jones Law Firm responded that it had no objection to Mr. Porges continuing as arbitrator, stating "If you [Mr. Porges] feel comfortable proceeding then the claimant [Jones Law Firm] feels comfortable fronting the costs of arbitration with you as arbitrator and defending any award in a subsequent confirmation proceedings [sic]" (*id.*). Mr. Adoni responded that he never agreed to arbitrate, was in the process of engaging counsel to sue Jones Law Firm for malpractice, and did not consent to Mr. Porges serving as arbitrator, given the relationship between Mr. Porges and Mr. Jones (*id.*). Mr. Porges then declined to continue as arbitrator.

It appears, based upon the parties' papers, that there was no further communication from PAM until an arbitration award (the "Award") was rendered by a second arbitrator, Ms. Meyers, on July 7, 2023. The Award declared that Respondents had not answered, Jones Law Firm had presented a prima facie case, and Jones Law Firm was entitled to a default judgment in the amount of $21,950.00 (NYSCEF Doc. No. 5).

Petitioner's Contentions

Jones Law Firm contends that Respondents were notified of the arbitration proceedings in accordance with the Retainer Agreements and PAM rules, and failed to answer or participate in same. Accordingly, Jones Law Firm contends that it is entitled to the default Award. Likewise, having filed the instant special proceeding within one year from the date of the Award, Jones Law Firm claims it is entitled to judicial confirmation of the Award.

Respondents' Contentions

Respondents contend that the arbitration proceeding was marred by partiality and improper conduct. Respondents allege that the professional relationship between Mr. Porges and Mr. Jones of Jones Law Firm tainted the proceedings. As evidence of this claim, Respondents cite Jones Law Firm's offer to "front" the costs of arbitration as an improper payment to the arbitrator. Similarly, Respondents allege that the second arbitrator also engaged in improper conduct, as Respondents contend they never received any communication from PAM following Mr. Porges' recusal, including notice that a second arbitrator had been assigned, that the second arbitrator "rushed, at light speed" to render the Award, and the second arbitrator committed numerous errors of law and fact in calculating the award.

Respondents contend that the Award focused solely on Mr. Adoni and the arbitrator failed to render any award as against the other Respondents. Likewise, Respondents allege that Respondent Broadway Royal Inc. has no connection to Mr. Adoni or the other respondents, and they believe Jones Law Firm is seeking "to enforce the award against some random corporate entity which Petitioner did not represent as far as respondents are aware" (NYSCEF Doc. No. 15).

Respondents also challenge the amount of the Award, contending that Jones Law Firm performed minimal work, earned a minimal fee, and the Award fails to credit Respondent's retainer payments. Respondents claim that the entirety of their interaction with Jones Law Firm occurred during the COVID pandemic, with social distancing, and that their transactions and interactions with Jones Law Firm were conducted remotely. In essence, Respondents contend that Jones Law Firm misrepresented its size and capability to represent Respondents in various lawsuits and failed to perform the legal work for which it billed. Thus, Respondents seek to vacate the arbitration award as erroneously awarding fees which were not earned.

Cross-motion – Vacate Arbitration Award

The Court first addresses Respondents' cross-motion to vacate the arbitration award, as denial of the vacatur motion necessarily requires the Court to confirm the award (CPLR 7511[e]; *see also Matter of Board of Educ. of Ardsley Union Free School Dist., Town of Greenburgh v Ardsley Congress of Teachers*, 78 AD2d 879 [2d Dept 1975]).

CPLR 7511 provides that within 90 days of service of an arbitrator's award, a party may seek to vacate the award where the party's rights were prejudice by: (i) corruption or fraud; (ii) partiality of the arbitrator; (iii) an arbitrator acting in excess of their authority or imperfectly executing their authority such that the final award did not address the subject of the arbitration proceedings; or (iv) by the arbitrator's failure to follow the procedures of Article 75 of the CPLR. Likewise, where a strong public policy is violated by the award or the award is irrational, vacatur is proper (*In Re Falzone [New York Cent. Mut. Fire Ins. Co.]*, 15 NY3d 530 [2010]).

CPLR 7503 (c) requires, *inter alia*, that notice of intention to arbitrate be served "in the same manner as a summons or by registered or certified mail, return receipt requested." The dictates of CPLR 7503 are rigidly applied, and where service of the intention to arbitrate fails to comply with the statute, vacatur of the underlying arbitration award is appropriate, as the arbitrator never obtained jurisdiction (*Yak Taxi, Inc. v Teke*, 41 NY2d 1020 [1977]; *Metropolitan Cas. & Property Ins. Co. v Suggs*, 268 AD2d 240 [1st Dept 2000]). Additionally, due process requires the method of service be "reasonably calculated, under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections" (*Matter of Beckman v Greentree Sec.*, 87 NY2d 556, 570 [1996] citing *Mullane v Central Hanover Bank & Trust Co.*, 339 US 306, 314 [1950]). However, where the parties have consented to some other form of service, and notice of the intention to arbitrate is served in accordance with this agreed to form of service, jurisdiction is acquired (*Pohlers v Exeter Mfg. Co.*, 293 NY 274, 279-80 [1944]).

The grounds for vacatur provided by CPLR 7511 are exclusive and narrowly applied, "Courts are reluctant to disturb the decisions of arbitrators lest the value of this method of resolving controversies be undermined" (*Goldfinger v Lisker*, 68 NY2d 225 [1986]; *see also Geneseo Police Benevolent Assn. v Village of Geneseo*, 91 AD2d 858 [4th Dept 1982] *aff'd* 59 NY2d 726 [1983]). Consequently, errors of law or fact do not form a basis to vacate an arbitrator's award (*Wien & Malkin LLP v Helmsley-Spear, Inc.*, 6 NY3d 471 [2006]; T*ransport Workers' Union of Am., Local*

100, AFL-CIO, 6 NY3d 332 [2005]). "An arbitration award must be upheld when the arbitrator offer[s] even a barely colorable justification for the outcome reached" (*Susan D. Settenbrino, P.C. v Barroga-Hayes*, 89 AD3d 1094 [2d Dept 2011] quoting *Wien & Malkin LLP v Helmsley-Spear, Inc.*, 6 NY3d at 479 [internal quotation removed]). Simply put, it is well established that an arbitrator's award is largely unreviewable by this Court (*In re Falzone*, 15 NY3d at 534).

Respondent Adoni's Declination to Arbitrate

The Retainer Agreements do not provide any party with the authority to decline or opt-out of arbitration. Thus, Mr. Adoni's email stating "I hear-by [sic] decline any arbitration Proceeding" is of no consequence; it does not form a basis to vacate the arbitration award, nor does it require the arbitrator inquire as to whether other respondents were amenable to arbitration, as argued by Respondents. Stated simply, the Retainer Agreements require mandatory binding arbitration for claims related to payment of fees. Whether a party to the Retainer Agreements is amenable to arbitration is irrelevant to the issue of confirming an arbitration award.[2]

First Arbitrator's Alleged Misconduct

Respondents' argument that the first assigned arbitrator, Mr. Porges, was biased and partial is not supported by any evidence. The email exchanges between Mr. Porges and the parties do not evince any impropriety by the arbitrator. Indeed, Mr. Porges disclosed his limited professional relationship with Mr. Jones to the parties and declined to continue as arbitrator when Respondents took issue with this relationship. In any case, allegations related to an arbitrator who did not render the Award are not germane to the challenge of the Award.

Second Arbitrator's Alleged Misconduct & Failure to Serve Notice

To the extent that Respondents contend the second arbitrator, Ms. Meyes, was also biased, their argument is similarly without merit. Contrary to Respondents' argument, the second arbitrator was not required to provide additional notice of the arbitration proceedings, pursuant to the PAM rules. As Jones Law Firm provided in their email correspondence with Respondents, and Respondents have not challenged, PAM Rule 8.4 provides:

> Respondent shall have exactly 7 days from the timestamp of the e-mail to which a Demand for Arbitration is attached to submit a Preliminary Response to admin@pamsadr.org. The Preliminary Response need not address every individual allegation or raise all affirmative defenses, nor must it be as formal as a pleading in court. However, it must raise sufficient doubt as to an issue of fact or law so as to indicate that a bona fide dispute exists and that Respondent intends to contest the Claim. In the absence of a Preliminary Response or a request for an extension of time, which shall be granted by the arbitrator only for good cause shown, on the next business day the arbitrator shall review the Demand for Arbitration sufficiency to grant an award. If the arbitrator finds it insufficient, the arbitrator shall reject it with leave to renew, specifying the reasons for such rejection. If the arbitrator finds the Demand for Arbitration sufficient

[2] To the extent that Respondents' argument may be considered a stay of the notice of intention to arbitrate, it is untimely. An application to stay arbitration must be brought within 20 days of the receipt of the notice, pursuant to CPLR 7503(c).

> to sustain a conclusion of liability on the part of the Respondent, and if no Preliminary Response has been field or if the arbitrator deems the Preliminary Response to be clearly frivolous, filed in bad faith, or wholly non-responsive to the claims, the arbitrator shall either issue a default award or issue a default as to liability only and schedule an inquest on damages. Otherwise PAMS shall notify the parties that the Respondent shall have an additional 7 days to enter a more formal Final Response to the Claims. Extensions to this deadline shall be granted for good cause shown only.

(NYSCEF Doc. No. 22). [3]

It is undisputed that Respondents, by Mr. Adoni's email, declined to participate in arbitration. Having chosen not to participate in arbitration, Respondents did not file a preliminary response with PAM within 7 days from Jones Law Firm's demand, as required by PAM's Rule 8.4, and were in default. Accordingly, the arbitrator was entitled, pursuant to PAM's Rule 8.4, to review the sufficiency of Jones Law Firm's demand for arbitration and, upon finding same sufficient, to issue a default award against Respondents (*see Rockland County v Primiano Const. Co., Inc.*, 51 NY2d 1, 8 [1980] [issues surrounding rules of arbitration are to be resolved by the arbitrator]). The Award did exactly this, finding:

> Respondents have not entered a response in this proceeding within the time allotted by PAMS Rules. Claimant's claim presents a prima facie case and is therefore entitled to a default award under the PAMS Rules in the amount set forth below.

(NYSCEF Doc. No. 5).

To the extent that Respondents argue additional notice should have been sent to the other respondents, not only Mr. Adoni, and that the failure to send additional notices was an excess of the arbitrator's authority, their argument is without merit. Mr. Adoni engaged and signed, as an officer of these corporate entities, the Retainer Agreements giving rise to the arbitration. In any event, Respondents do not allege to whom else notice was required to be sent. Consequently, contrary to Respondents' claims, they were not entitled to additional notice before the arbitrator rendered her Award.

Similarly, Respondents' claim that the Award was erroneously rendered as against Mr. Adoni only is belied by a plain reading of the Award. The arbitrator's note under "Additional Comments on Decision" that Mr. Adoni emailed PAM declining to participate in any arbitration does not modify the plain language of the Award that the *plural* "Respondents" failed to respond and that a default judgment was entered against them. Accordingly, the Award was not erroneously issued as against respondent Adoni only, but was rather issued as against all Respondents.

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[3] The Retainer Agreements incorporate the PAM rules available at www.pamsadr.org; however, the rules are not available at that webpage. The email correspondence between the parties and PAM prior to the first arbitrator's recusal reference PAM's arbitration rules, and the email chain shows an attachment titled "PAM_rules.pdf" sent by the first arbitrator, but a complete copy of the rules is not provided by the parties. Nevertheless, Respondents do not challenge the PAM rules nor Jones Law Firm's recital of PAM's Rule 8.4.

Mistake of Entity

Respondents' claim that they have no affiliation with Broadway Royal, Inc., and the related claim that the Award against Broadway Royal is therefore a mistake, is disproven by the Retainer Agreements. Mr. Adoni signed the Retainer Agreement as an officer of Broadway Royal (NYSCEF Doc. No. 3 at p. 18 ["Jacob Adoni Individually, and as an Officer of … Broadway Royal, Inc."]). Furthermore, as noted, Broadway Royal is represented by the same counsel as the other respondents. Thus, Respondents' claim that they have no connection to Broadway Royal is unpersuasive, and does not form a basis to vacate the arbitration award.

Calculation & Credit Mistakes

Finally, Respondents' arguments related to calculations, credits, and reasonable value of actual work performed by Jones Law Firm should have been raised before the arbitrator. These claims amount to alleged factual errors, which are insufficient to vacate or modify the Award (*see e.g. Wien & Malkin LLP v Helmsley-Spear, Inc.*, 6 NY3d 479-80; *Transport Workers' Union of Am., Local 100, AFL-CIO*, 6 NY3d at 336).

Conclusion on Cross-motion

Respondents have failed to establish any of the limited grounds for vacating the Award, as provided by CPLR 7511. At bottom, Respondents were aware of the arbitration proceedings, defaulted in these proceedings, and were not entitled to additional notice prior to the issuance of the arbitration award. Contrary to Respondent's claims, there is no evidence of improper conduct by the arbitrators, nor was the Award issued against improper or omitted parties. Finally, to the extent that Respondents allege the arbitrator committed errors in calculating the award, Respondent's should have raised arguments surrounding appropriate credits and calculation before the arbitrator, as errors of fact are not a sufficient basis to vacate or modify the award. Accordingly, the cross-motion is denied and Court turns to Jones Law Firm's petition to confirm the Award.

Petition to Confirm the Award

CPLR 7510 provides that the Court shall confirm an arbitration award upon application of a party made within one-year following the award unless the award is vacated or modified in accordance with CPLR 7511. Confirmation is summarily granted unless vacatur or modification is raised by a party, or the application to confirm is untimely (*see generally Bernstein Family Ltd. Partnership v Sovereign Partners L. P.*, 66 AD3d 1 [1st Dept 2009]; Practice Commentary CPLR 7510).

As the Court has found no basis to vacate or modify the award, the remaining issue is whether the application to confirm the Award is timely. Here, the Award was issued on July 7, 2023, and the petition to confirm was brought less than one week later on July 13, 2023. Accordingly, the application is timely and the petition to confirm is granted.

Attorney's Fees

Jones Law Firm seeks to recover additional attorney's fees, in an unspecified amount, which it incurred on the instant special proceeding. The Retainer Agreements provide that Jones Law Firm may seek attorney's fees related to its efforts to collect its fees (NYSCEF Doc. No. 3 at pp. 8 and 17 ["The Clients agree to pay the Firm attorney's fees, expenses, and collections costs in any action to recover any amounts owed under this Engagement Agreement"]). However, Jones Law Firm has not provided an invoice or other indicia of the attorney's fees it incurred herein. Consequently, Respondents have not had an opportunity to review or challenge the attorney's fees allegedly

incurred by Jones Law Firm, nor can the Court determine whether the attorney's fees sought are reasonable. Therefore, the request for attorney's fees incurred on this special proceeding is denied for failure of proof.

Conclusion

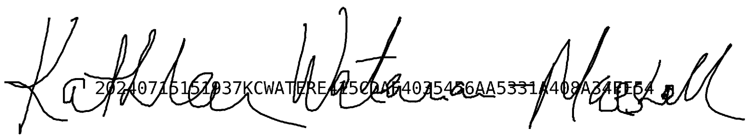
Accordingly, it is

ORDERED that petitioner JONES LAW FIRM, P.C.'s petition to confirm the June 7, 2023 arbitration award is granted; and it is further

ORDERED, DECLARED, and ADJUDGED that petitioner, JONES LAW FIRM, P.C., 1270 Avenue of the Americas, 7th Floor New York, NY 10020, shall have judgment and does recover the amount of $21,950.00, jointly and severally, as against respondents KEEP HEALTHY, INC., FMF CORP f/k/a FARMER'S MARKET OF FORT SOLONGA, INC., HARBOR PARK REALTY, LLC, BROADWAY ROYAL, INC., and JACOB ADONI, all having an address of 1019 Fort Salonga Road, Suite 109 Northport, NY 11769, together with interest at the contractually agreed rate of 25% from the date of the arbitration award, June 7, 2023, as calculated by the Clerk of the Court; and it is further

ORDERED that the request for attorney's fees incurred on this special proceeding is denied; and it is further

ORDERED that the cross-motion of respondents KEEP HEALTHY, INC., FMF CORP f/k/a FARMER'S MARKET OF FORT SOLONGA, INC., HARBOR PARK REALTY, LLC, BROADWAY ROYAL, INC., and JACOB ADONI to vacate or modify the June 7, 2023 arbitration award is denied.



7/15/2024
DATE

KATHLEEN WATERMAN-MARSHALL, J.S.C.

CHECK ONE:	X	**CASE DISPOSED**				**NON-FINAL DISPOSITION**		
		GRANTED		**DENIED**	X	**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**		
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**		**REFERENCE**