

Adam Leitman Bailey, P.C. v Motamedy

2024 NY Slip Op 33154(U)

September 4, 2024

Supreme Court, New York County

Docket Number: Index No. 652586/2024

Judge: Lynn R. Kotler

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER PART 08

Justice

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ADAM LEITMAN BAILEY, P.C.,
Petitioner,

INDEX NO. 652586/2024

MOTION DATE 05/20/2024

MOTION SEQ. NO. 001

- v -

SUSAN MOTAMEDY, NADER MOTAMEDY,
Respondent.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 11, 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for MODIFY

Upon the foregoing documents, this motion is decided as follows. In this special proceeding, petitioner Adam Leitman Baily, P.C. ("ALBPC") moves pursuant to CPLR § 7511 to modify an arbitration award entered in its favor and against respondents Susan and Nader Motamedy (the "Respondents"). The award, dated March 5, 2024, was entered in an arbitration held before Arbitrator Jill Pilgrim (the "Arbitrator") by the American Arbitration Association (the "AAA") under Case Number 01-23-0003-6620. The award directs Respondents to reimburse ALBPC the sum of \$1,650 representing apportioned costs for the arbitration. ALBPC argues that the award should be modified as the award was miscalculated and imperfect in its form by failing to include the principal sum of \$24,873.10 in unpaid fees sought together with interest thereon. Respondents, pro se, oppose the motion. For the reasons that follow, the petition is granted.

Facts

The relevant facts, which are based on petition and the answer filed by respondents, are largely undisputed. On January 10, 2020, Respondents signed a retainer agreement with ALBPC in connection with a construction dispute at 5b and 6b at 1192 Park Avenue. As part of this

agreement the parties agreed to resolve any fee disputes by arbitration and to be bound by the decision and waive the rights to reject the arbitrator's award. ALBPC provided legal services in connection with the construction dispute from "January to approximately June/July 2020," billing Respondents a total of \$59,354.66 of which \$24,873.10 was unpaid.

Respondents contend that they paid all of their invoices thorough May 2020, but stopped paying when ALBPC ignored an email sent on May 26, 2020, questioning the fees that had been charged and that an associate had been working on the case rather than Attorney Adam Baily. Respondents also maintain that ALBPC was not performing legal services for them between May and December 2020 but continued to charge them. In September 2020, Respondents claim that they retained new counsel to represent them in the construction case.

ALBPC alleges that Respondents refused to communicate with them, stopped paying their outstanding invoices and did not respond to calls from ALBPC's billing department. On June 11, 2021, Respondents were served with a Notice of Client's Right to Arbitrate. ALBPC then submitted an application to the AAA on August 18, 2023. AAA assigned the dispute to the Arbitrator on November 11, 2023. In a preliminary hearing held over telephone on January 3, 2024, the parties agreed to a "desk hearing" based on written submissions by both parties.

The Arbitrator received documents as written arguments from both sides and on March 5, 2024, issued the award which provided that ALBPC "met its burden of establishing entitlement to legal fees for services rendered" and "established entitlement to relief pursuant to the legal standards of an account stated." The award further stated, "Claimant's demand for damages, in the amount of \$24,873.10, is GRANTED against Respondents, jointly and severally, to the extent indicated below." On March 5, 2024, ALBPC sent an email to the AAA requesting the arbitrator review the award for "scrivener's error" in leaving out the principal sum, however, the

AAA responded via letter dated April 5, 2024 that the Arbitrator had declined to clarify the award.

This special proceeding ensued. In the petition, ALBPC argues that the arbitrator made a mistake by only awarding arbitration costs and by leaving out the principal amount, despite finding that ALBPC was entitled to damages amounting to the unpaid legal fees. ALBPC requests that the award be modified to include the \$24,873.10 pursuant to CPLR § 7511(c)(1) for miscalculation of figures and mistake in the description of the amount awarded. ALBPC otherwise asserts that they are entitled to modification pursuant to CPLR § 7511(c)(3) for being imperfect in a matter of form for finding that they met their burden of establishing entitlement to legal fees but failing to include these legal fees in the decretal portion of the award.

In opposition to the petition, Respondents argue that the award was a full settlement of all claims and that ALBPC is bound to accept the award and waived their right to dispute it in the retainer agreement.

Discussion

CPLR § 7510 states that “the 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.” CPLR § 7511(c) provides for modification of an award under three instances: 1) the award contains a miscalculation or a mistake in the description of any person, thing or property referred to in the award; 2) the award concerns matters not submitted to arbitration, and the award can be corrected without affecting the merits of the decision; or 3) the award is imperfect as a matter of form, not affecting the merits of the controversy.

CPLR § 7511(c)(1) “is applicable only if there is a mathematical miscalculation of figures used in determining an award, and not where the basis of the award is challenged”

(*Hough v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 757 F Supp 283, 288 [SD NY 1991], *affd sub nom. Hough v. Merrill Lynch*, 946 F2d 883 [2d Cir 1991]; *see also Matter of City of Troy (Village of Menands)*, 48 A.D.2d 733, 734 [3d Dept 1975]). “Where no mathematical error appears on the face of the award and where no computational error can be clearly inferred, an arbitration award will not be altered” (*Hough*, 946 757 F Supp at 288; *see also Flores v. Allstate Ins. Co.*, 38 Misc. 3d 1222(A) at *3-4 [Sup Ct, NY County 2013]).

When CPLR § 7511(c)(1) is construed literally, it requires “that the miscalculation appear on the face of the award” (*Avamer Assocs., L.P. v. 57 St. Assocs., L.P.*, 67 AD3d 483, 484 [1st Dept 2009]); *see Mid Atl. Cap. Corp. v. Bien*, 956 F3d 1182, 1198 [10th Cir 2020]). Here, there was no miscalculation of figures, the arbitrator simply appears to have left the principal out of the award altogether, despite reasoning that ALBPC had met their burden of proof and demonstrated entitlement to an award of legal fees. The Arbitrator further held that respondents had not met their burden of refuting ALBPC’s claims. Since there was no miscalculation, modification is not available under CPLR § 7511(c)(1). However, ALBPC may still be “entitled to modification on the independent and alternative ground of ‘misdescription’ under subsection (c)(3)” (*Matter of Tamaron Invs. (Raia)*, 167 Misc. 2d 125, 128 [Sup Ct, NY County 1996]).

CPLR § 7511(c)(3) is only applicable when the challenge to the award is based entirely on the form of the award, but not when it goes to the substance (*Matter of Ververs & Schueller Co. [Emory Mach. & Tool Co., Inc.]*, 190 AD2d 1079, 1079 [4th Dept 1993]; *Seafarer Fiberglass Yachts, Inc. v. Chelius*, 112 AD2d 412, 414-415 [2d Dept 1985]). Here, the substance of the award is not being challenged, as the award clearly states that ALBPC met its burden and the award of arbitrator stated both that “[ALBPC] has established its entitlement to relief pursuant to the legal standards of an account stated” and that “[ALBPC]’s demand for damages,

in the amount of \$24,873.10, is GRANTED.” Based on the conclusions of the arbitrator, it would be unjust and imperfect in form to award only apportioning arbitration fees and exclude the principal sum of \$24,873.10 in unpaid fees sought and the interest thereon.

Accordingly, the petition is granted and the arbitration award is modified pursuant to CPLR 7511(c)(3).

Conclusion

Accordingly, it is hereby

ORDERED that the petition to modify the award dated March 5, 2024, is granted, and the award rendered in favor of ALBPC and against Respondents is modified as follows:

Petitioner ALBPC is awarded a money judgment of \$24,873.10 together with interest from June 1, 2020 plus the sum of \$1,650.00 representing the apportioned costs previously incurred and paid by ALBPC plus costs and disbursements as taxed by the Clerk; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

9/4/2024

DATE

LYNN R. KOTLER, 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