Littman Krooks LLP v Grant
2024 NY Slip Op 33243(U)
September 12, 2024
Supreme Court, New York County
Docket Number: Index No. 652626/2024
Judge: Lynn R. Kotler
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 08

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LITTMAN KROOKS LLP, Petitioner,	INDEX NO. 652626/2024
- v -	MOTION DATE 05/23/2024
PENNY GRANT, Respondent.	MOTION SEQ. NO. 001
	DECISION + ORDER ON MOTION

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HON. LYNN R. KOTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 13, 14, 15, 16 were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Upon the foregoing documents, this motion is decided as follows. This is a special proceeding to vacate an arbitration award. Petitioner Littman Krooks LLP ("Littman") moves for an order pursuant to CPLR § 7511 to vacate an arbitration award against it. The award, dated March 11, 2024, was entered by a Panel of three arbitrators in a NYCLA Fee Dispute Arbitration under Case Number 206386 and directs a refund to Littman's client, respondent Penny Grant, for $17,000. Littman argues that the Panel exceeded its powers and that the award is arbitrary and capricious and lacks a rational basis. Grant opposes the petition. For the reasons that follow, the petition is granted.

Facts

The relevant facts, which are based on the petition and the affirmation in opposition submitted by Grant's counsel, are largely undisputed. On or about May 9, 2016, Grant signed a retainer agreement with Littman in connection with Grant's mother's guardianship to become co-guardian and to assist in any related elder law issues. As part of this agreement, both parties

agreed that any disputes arising out of the agreement be submitted to binding fee arbitration pursuant to Part 137 of the Rules of the Chief Administrator (22 NYCRR Part 137). The parties further agreed to waive "the right to reject the arbitration decision by commencing an action on the merits (trial de novo) in a court of law". Grant's father, co-guardian with Littman, passed away on June 3, 2016. Grant's mother passed away on August 28, 2016, requiring Grant to file a final guardianship accounting with the Court covering November 15, 2012, to the date of her mother's passing.

Grant directed Littman to prepare a 4-year accounting which resulted in a 113-page final accounting of the guardianship. Along with this accounting, Littman also prepared a petition to discharge Grant as co-guardian, along with a proposed order discharging Grant. In addition, Littman filed of an Order to Show Cause, a Verified Petition and a Proposed Order Permitting Final Account. It is undisputed that Littman performed its final legal services on behalf of Grant pursuant to the parties' retainer agreement on June 12, 2019.

On October 20, 2020, Grant filed a complaint against Littman with the Grievance Committee for the Ninth Judicial District, which was acknowledged by that Grievance Committee in a letter dated April 23, 2021, advising that the matter "appears to fall within the jurisdiction of the Part 137 Fee Dispute Resolution Program". The 4/23/21 Letter further advised that Grant's complaint was "being transferred to that program". On July 21, 2021, the Ninth Judicial District Attorney-Client Fee Dispute Resolution Program ("Ninth District Fee Dispute Program) sent another letter to Grant advising that since Littman's work was performed outside the Ninth Judicial District and completed in New York County, the Ninth District Fee Dispute Program "is denying to hear this matter for lack of jurisdiction and is transferring the file to the

Program that covers fee disputes in New York County, namely the New York County Lawyers Association ("NYCLA").

Meanwhile, Grant filed another grievance with the Appellate Division, First Department, entitled Matter of Elizabeth Valentin, Esq. (an attorney employed by petitioner Littman) which was denied in a letter dated July 27, 2022. The 7/27/22 Letter further advised that Grant's dispute "essentially involves a fee dispute over which the Committee does not have jurisdiction" and was subject to mandatory arbitration "under certain conditions" and advised Grant to reach out to NYCLA for arbitration.

Grant then filed a Client Request for Fee Arbitration dated June 30, 2023 with NYCLA wherein Grant sought a refund of $37,670.83. Littman claims that it only received notice of the arbitration via email from NYCLA advising that a hearing was scheduled for November 2, 2023. Littman filed written opposition dated March 1, 2024 claiming that of the amount Grant sought, $9,268.00 was paid to a non-party accountant which provided professional services in connection with the underlying guardianship proceeding. Therefore, Littman argued that the total amount Grant paid to Littman for attorneys fees was $28,402.83. The Panel held a hearing on March 7, 2024, at which both sides appeared.

Littman alleges that during the hearing the Panel did not "meaningfully address" its request to dismiss the arbitration for being outside the scope of the Part 137 program. Grant maintains that the arbitrators did address this request prior to commencing the evidentiary portion of the hearing. In an affidavit submitted in opposition to the petition, Grant maintains that the fees Littman billed were "excessive". Grant has also provided to the court an "affirmation" of a witness who was present at the arbitration, Mark Snyder. Snyder states in his affirmation that he "witnessed the arbitrators first address and deny Petitioners procedural

objections which included the timeliness of the proceedings and the statute of limitations, before proceeding to the substance of the fee arbitration."

The Panel issued the award directing Littman to refund Grant $17,000 on March 11, 2024. The award provides in pertinent part as follows:

> Based upon our review of the evidence-including the retainer agreement, the attorney's billing statements and the testimony of the witnesses, the client and the attorney- we find that Littman Krooks LLP has not proved by a preponderance of the evidence that its entire fee is reasonable.

This special proceeding ensued. In the petition, Littman argues that it was prejudiced by the delayed filing for a fee dispute hearing and the Arbitrator's disregard of Part 137 time limitations because "the employees who worked on Respondent's case were no longer with the Firm." Littman otherwise asserts that the award lacks a rational basis because it "provide[s] no explanation of how the Arbitrators calculated the $17,000 figure nor what was unreasonable about the fees."

In opposition to the petition, Grant contends that Littman failed to meet a condition precedent set forth in CPLR § 7503(c) and is now precluded from asserting that the arbitration was time barred. Grant further argues that the Panel considered Littman's timeliness argument and rejected it, and Littman improperly seeks to relitigate the issue here. Grant further argues that Littman failed to establish that the award was arbitrary and capricious or lacks a rational basis, although Grant does not substantiate why she believed she overpaid her attorneys in the underlying guardianship matter.

Discussion

CPLR § 7511(b)(1)(iii) provides that an award may be vacated when a party who participated in the arbitration or was served with notice of arbitration was prejudiced by "an arbitrator, or agency or person making the award exceeded his power or so imperfectly executed

it that a final and definite award upon the subject matter submitted was not made." Generally, judicial review of arbitration awards is extremely limited (*Wien & Malkin LLP v. Helmsley-Spear, Inc.,* 6 NY3d 471, 479 [2006]). An arbitration award will only be set aside if it is completely irrational, violative of a strong public policy, or exceeds a limitation on the arbitrator's power (*Obot v. New York State Dep't of Correctional Servs*., 637 NYS2d 544 [4th Dept 1996] *aff'd* 653 NYS2d 883 [1996]). The deference given to arbitral awards is such that even a misapplication of the law will not be a sufficient basis for vacatur under CPLR § 7511 (*Matter of Douglas v. New York City Dept. of Educ.*, 34 NYS3d 340 [Sup Ct New York County 2016]; *Matter of Associated Teachers of Huntington v. Board of Educ., Union Free School Dist. No. 3, Town of Huntington*, 33 NY2d 119 [1973]). The "party seeking to overturn an arbitration award on one or more grounds stated in CPLR 7511(b)(1) bears a heavy burden, and must establish a ground for vacatur by clear and convincing evidence" (*Matter of Denaro v. Cruz*, 115 AD3d 742, 742–743 [2d Dept 2014] [citations and internal quotation marks omitted]).

The court will first address Grant's argument as to whether CPLR § 7503(c) and § 7502(b) precludes Littman's argument herein that the underlying arbitration was untimely. CPLR § 7503(c) states: "[a]n application to stay arbitration must be made by the party served within twenty days after service upon him of the notice or demand, or he shall be so precluded."

Meanwhile, CPLR § 7502(b) provides as follows:

> (b) Limitation of time. If, at the time that a demand for arbitration was made or a notice of intention to arbitrate was served, the claim sought to be arbitrated would have been barred by limitation of time had it been asserted in a court of the state, a party may assert the limitation as a bar to the arbitration on an application to the court as provided in section 7503 or subdivision (b) of section 7511. The failure to assert such bar by such application shall not preclude its assertion before the arbitrators, who may, in their sole discretion, apply or not apply the bar. Except as provided in subdivision (b) of section 7511, such exercise of discretion by the arbitrators shall not be subject to review by a court on an application to confirm, vacate or modify the award.

The court agrees with Grant's counsel that Littman waived its right to stay the arbitration under CPLR § 7503(c), the arbitration was already held. However, CPLR § 7502(b) does not preclude review of the arbitrator's decision pursuant to CPLR § 7511(b) if the argument is that the Panel exceeded its authority because it lacked subject matter jurisdiction to consider Grant's fee dispute. Rather, the statute expressly provides that the review of an arbitrator's decision on the application of the statute of limitations may be reviewed "as provided in subdivision (b) of section 7511". Therefore, under CPLR § 7511(b), Littman can now argue that the Panel exceeded its authority in considering the fee dispute outside the express time limitations set forth in Part 137.1(b)(6).

Part 137 establishes "the New York State Fee Dispute Resolution Program, which provides for the informal and expeditious resolution of fee disputes between attorneys and clients through arbitration and mediation" (Part 137.0). However, Part 137.1(b)(6) provides that the program shall not apply to "disputes where no attorney's services have been rendered for more than two years." Littman maintains that the arbitrators exceeded their power by ignoring Littman's motion to dismiss Grant's fee dispute claim as untimely under Part 137.1(b)(6).

In order to prove that the Panel exceeded its power, it must be shown that the arbitrator's "award violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power" (*Matter of Kowaleski (New York State Dept. of Correctional Servs.)*, 16 NY3d 85, 90 [2010] *quoting New York City Transit Auth. v. Transp. Workers' Union of Am.*, 6 NY3d 332, 336 [2005]); *see Matter of Adirondack Beverages Corp. (Bakery, Laundry, Beverage Drivers & Vending Mach. Servicemen & Allied Workers, Local Union No. 669 of Albany, N.Y. & Vic.)*, 108 AD3d 832, 834 [3d Dept 2013]; *see also Matter of Local 832 Term. Empls. of City of N.Y. v Department of Educ. of City of N.Y.*, 60 AD3d 567, 569 [1st Dept 2009];

Nassau Health Care Corp. v. Civil Serv. Empls. Ass'n, Inc., 20 AD3d 401, 402 [2d Dept 2005] [vacating award where arbitrator exceeded express limitations for filing grievances by ignoring time limitations period]).

While there is limited case law specifically covering whether untimeliness is a sufficient justification for vacating an award in a Part 137 fee dispute arbitration pursuant to CPLR 7511(b)(1)(iii), the Second Department has considered timeliness when it upheld an award brought within the two years after legal representation ceased (*see Matter of Susan D. Settenbrino, P.C. v Barroga-Hayes*, 89 AD3d 1094, 1096 [2d Dept 2011]).

In this case, Grant did not file the request for arbitration until July 2, 2023, significantly more than two years after Littman stopped performing legal services for Grant on June 12, 2019. Because the arbitration request by Grant was untimely, the Panel did not have jurisdiction over the dispute and clearly exceeded the specifically enumerated limitation on the Part 137 Program's ability to hear Grant's claim.

While there are no cases directly on point where Part 137 arbitrators considered untimely claims, similar issues are common in collective bargaining agreements (CBAs) containing enumerated time limits. CBAs often have directions for arbitrators which "explicitly limit[] the scope of the arbitrator's authority" (*Matter of Massena Cent. School Dist. [Massena Confederated School Employees' Assn., NYSUT, AFL-CIO]*, 64 AD3d 859, 861 [3d Dept 2009]). For example, after determining the subject is beyond the arbitrator's jurisdiction, the CBA may direct the arbitrator to dispose of the case and give discretion to return the subject back to the parties (*id.*).

Addressing subject matter that is not covered by the CBA amounts to exceeding authority (*id.*). Deciding a dispute which an arbitrator is without authority to hear constitutes grounds to

vacate an award (*Matter of Massena*, AD3d at 861; *see Rochester City Sch. Dist. v. Rochester Tchrs. Ass'n*, 41 NY2d 578, 582 [1977] [agreement may set express limits to narrow the scope of arbitration]). To determine if "the arbitrator exceeded his power in interpreting the exclusionary language, [the] Court must exercise its threshold responsibility to determine independently whether the dispute is arbitrable" *Matter of Massena Cent. School Dist. [Massena Confederated School Employees' Assn., NYSUT, AFL-CIO]*, 82 AD3d 1312, 1315 [3d Dept 2011]). Where the "plain language interpretation" of the agreement indicates the parties did not intend to arbitrate the dispute, an "arbitrator's determination to the contrary may be set aside" (*id.* at 316).

Where CBAs have contained time limitations on submitting grievances, courts have found that "the arbitrator exceeded an express limitation on his powers by ignoring the limitations period for filing disciplinary grievances thereby extending the grievant's right to file a disciplinary grievance beyond the period set forth in the CBA" (*Nassau Health Care Corp.*, 20 AD3d at 402; *see Matter of Local 832 Term. Empls. of City of N.Y. v Department of Educ. of City of N.Y.*, 60 AD3d 567, 569 [1st Dept 2009]). "By refusing to address whether the time limitation set forth in the CBA precluded the grievances from being arbitrated, the arbitrator ignored a specifically enumerated limitation on his powers and effectively modified, added to or subtracted from the terms of the CBA" (*Matter of Adirondack Beverages*, 108 AD3d at 834). Awards granted after the expiration of the limitations period "mandates vacatur of arbitration" (*Matter of Local 832 Term. Empls. of City of N.Y.* 60 AD3d at 569; *see Matter of Rockland County Bd. of Coop. Educ. Servs. v BOCES Staff Assn.*, 308 AD2d 452, 454, [2d Dept 2003]).

To the extent that Grant argues the Panel merely made a mistake of law in permitting the arbitration to continue after Littman moved to dismiss, the court disagrees. Subject matter jurisdiction is a threshold issue" (*Denson v. Donald J. Trump For President, Inc.*, 180 AD3d

446, 451 [1st Dept 2020] ["Enumerated limits of an arbitrator's authority may be found in the arbitration clause of an agreement [or] in a statute."]; *see also Silverman v. Benmor Coats, Inc.*, 61 NY2d 299, 307, [1984]; *Matter of MKC Dev. Corp. v Weiss*, 203 AD2d 573, 574 [2d Dept 1994]). Nor is the court persuaded that Littman's failure to move for a stay of arbitration constitutes a waiver of its right to challenge whether the Panel exceeded its authority for the reasons already stated herein.

Even where the retainer agreement contains a "mandatory arbitration provision," Part 137 will not apply where the arbitrators have no jurisdiction to hear the dispute (*Krantz & Berman, LLP v. Dalal*, 2010 WL 1875695 at *3 (SD NY May 11, 2010). Therefore, by hearing Grant's fee dispute after two years had passed from when Littman stopped providing legal services, the Panel exceeded its authority and violated a clear limitation on its powers, so the award must be vacated.

Littman also argues that the amount of the award was arbitrary and capricious and that the Panel lacked a rational basis for their decision to order a $17,000 refund on the record or in their Statement of Reasons in the Arbitration Award. Where arbitration review is compulsory, "judicial review is broad, requiring that an award be in accord with due process, have a rational basis supported by adequate evidence in the record, and not be arbitrary and capricious" (*Matter of Forest Riv., Inc. v Stewart*, 34 AD3d 474 [2d Dept 2006]). In conducting this broader review "our decisional law imposes closer judicial scrutiny of the arbitrator's determination under CPLR 7511(b)" (*Motor Vehicle Acc. Indemnification Corp. v. Aetna Cas. & Sur. Co.*, 89 NY2d 214, 223, [1996]). As the agreement made arbitration compulsory, the decision would be subject to both an arbitrary and capricious standard and a rational basis standard.

Here, the decision by the Panel lacked both a rational basis and was arbitrary and capricious. "On review, an award may be found to be rational if any basis for such a conclusion is apparent to the court based upon a reading of the record" *State Farm Mut. Auto. Ins. Co. v. City of Yonkers*, 21 AD3d 1110, 1111 [2d Dept 2005]). Nothing on record provides a basis for the conclusion reached by the Panel. Littman provided three years of services for Grant, from 2016 to 2019, and provided detailed invoices to the Panel. Each charge was accompanied by a description of the services rendered and which member of the firm provided such services. Grant's opposition does not describe why Littman's services were "excessive and improper" or cite any support for her position other than stating she was advised by a "legal expert" to that effect.

Conversely, in their verified petition, Littman describes the difficultly of completing the work as they "encountered numerous delays as the Petitioner continually requested documents and information from the Respondent, and Respondent's accountant, often with little to no response." Information needed to prepare the accounting was provided in a "scattered manner, sporadically" creating delays in preparing the accounting. Further, when awarding the $17,000 refund, it is unclear if the Panel even considered that of the $37,670.83 in professional services paid to Littman, $9,268.00 was paid to the non-party accountant. Thus it is unclear if the Panel determined that the reasonable value of the work Littman performed was only $11,402.83.

In addition to providing no rational basis on which to give the award, the amount itself is arbitrary. The award states "that Littman Krooks LLP has not proved by a preponderance of the evidence that its entire fee is reasonable" but makes no attempt to explain which services were reasonable and which were not. The $17,000 refund represents 45% of the total services charged and 60% when considering the non-party accountant fees paid. There is nothing in the award

itself which supports the arbitrary reductions the Panel applied. Therefore, the award should be vacated as irrational and arbitrary.

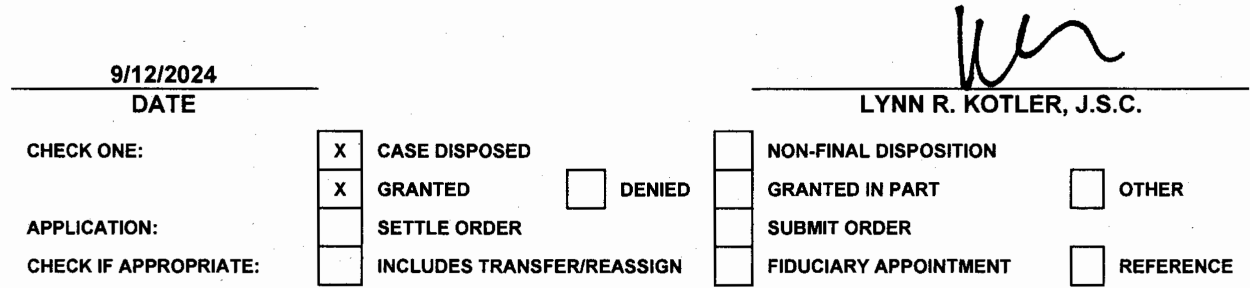
Accordingly, the petition is granted and the arbitration award is vacated pursuant to CPLR 7511(b)(1)(iii).

Conclusion

Accordingly, it is hereby

ADJUDGED that the petition is granted and the award dated March 11, 2024 rendered in favor of Grant and against Littman under Case Number 206386 is vacated.

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.



9/12/2024					
DATE			LYNN R. KOTLER, J.S.C.		
CHECK ONE:	X CASE DISPOSED		NON-FINAL DISPOSITION		
APPLICATION:	X GRANTED	DENIED	GRANTED IN PART		OTHER
	SETTLE ORDER		SUBMIT ORDER		
CHECK IF APPROPRIATE:	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT		REFERENCE