

Simkowitz v Roth

2024 NY Slip Op 33365(U)

September 24, 2024

Supreme Court, Kings County

Docket Number: Index No. 514236/2024

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : COMMERCIAL PART 8

-----x
ESTHER M. SIMKOWITZ,

Petitioner,

Index No. 514236/2024

- against -

HERMAN ROTH and OHR REALTY, INC.,

September 24, 2024

Respondents,
-----x

PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #1 & #2

The petitioner Esther Simkowitz has moved pursuant to CPLR §7503 seeking to compel arbitration. The respondents have cross-moved seeking to dismiss the petition. The motions have been opposed respectively. Papers were submitted by the parties and arguments were held. After reviewing all the arguments, this court now makes the following determination.

According to the verified petition, the petitioner Esther Simkowitz and the respondent Herman Roth entered into an agreement on June 23, 2003 concerning property located at 5211 15th Avenue in Kings County. The agreement contained a clause that stated any disputes must be resolved by a "Bais Din Zabla" for resolution (see, Agreement, ¶28 [NYSCEF Doc. No. 2]). Disputes have arisen between the parties and March 25, 2024 the petitioner served the respondent with a demand and notice of intent to arbitrate. The notice indicated the arbitration would take place on May 6, 2024. The respondent did not appear and this petition seeking to compel arbitration has now been filed. The respondent has filed a cross-motion seeking to dismiss the

petition.

Conclusions of Law

"It is firmly established that the public policy of New York State favors and encourages arbitration and alternative dispute resolutions" (Westinghouse Electric Corporation v. New York City Transit Authority, 82 NY2d 47, 603 NYS2d 404 [1993], citing earlier authority). Arbitration has long been shown to be an effective "means of conserving the time and resources of the courts and the contracting parties" (Matter of Nationwide General Insurance Company, 37 NY2d 91, 371 NYS2d 463 [1975]). The Court of Appeals noted that "one way to encourage the use of the arbitration forum...would be to prevent parties to such agreements from using the courts as a vehicle to protract litigation" as such conduct "has the effect of frustrating both the initial intent of the parties as well as legislative policy" (id). Indeed, "New York courts interfere as little as possible with the freedom of consenting parties to submit disputes to arbitration" (Smith Barney Shearson Inc. v. Sacharow, 91 NY2d 39, 666 NYS2d 990 [1997] quoting, Matter of 166 Mamaroneck Ave. Corp. v. 151 E. Post Rd. Corp., 78 NY2d 88 [1991]).

As particularly relevant here, it is well established that an agreement to proceed before a Bais Din is treated as an agreement to arbitrate (see, Spilman v. Spilman, 273 AD2d 316, 710 NYS2d 86 [2d Dept., 2000], Weisenberg v. Sass, 209 AD2d 424,

619 NYS2d 597 [2d Dept., 1994]). Therefore, arbitration agreements giving a religious tribunal power to resolve disputes over disposition of partnership assets either by judgment or by settlement according to Jewish law gives a tribunal broad authority in settling such disputes (Meisels v. Uhr, 79 NY2d 526, 583 NYS2d 951 [1992]). Further, Zabla is a method in Jewish law whereby each party elects one arbitrator, and the two selected arbitrators choose a third neutral arbitrator. The three arbitrators comprise the Bais Din panel (see, Zeiler v. Deitsch, 500 F3d 157 [2d Cir 2007]).

In this case the agreement clearly authorizes the petitioner Esther Simkowitz and the respondent Herman Roth to settle all disputes concerning the property via a Bais Din Zabla arbitration. Thus, the petitioner selected her arbitrator and the respondent is now required to select his arbitrator permitting the two to then choose a third. It is true the agreement did not provide a deadline by which the respondent must select his arbitrator, however, a reasonable time is imposed. There are no reasons presented why the respondent Herman Roth cannot participate in an arbitration that he expressly agreed he would participate in. It is further true that the petitioner had no authority to unilaterally select the time or the location of the actual arbitration proceedings. However, that does not negate the arbitration's authority to resolve any disputes at all


and does not absolve Roth of his participation. Therefore, the cross-motion seeking to dismiss the petition is denied.

The motion seeking to compel arbitration is granted. The respondent shall have thirty days from receipt of this order in which to select an arbitrator. The two arbitrators will then select a third arbitrator. The arbitration panel will then notify the parties of the time and date and location of any arbitration proceedings.

So ordered.

ENTER:

DATED: September 24, 2024
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC