

**Waterview Condominium LLC v Indig**

2024 NY Slip Op 33366(U)

September 24, 2024

Supreme Court, Kings County

Docket Number: Index No. 516634/2024

Judge: Leon Ruchelsman

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

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WATERVIEW CONDOMINIUM LLC,

Petitioner,

Decision and order

-against-

Index No. 516634/2024

MENDEL INDIG and M. FELDMAN REALTY, LLC,

Respondents,

September 24, 2024

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PRESENT: HON. LEON RUCHELSMAN

Motion Seq. #1, #2, #3 & #4

The petitioner has moved pursuant to CPLR §7510 seeking to confirm an arbitration award and to stay any further arbitration proceedings. The respondents have cross-moved seeking to vacate the arbitration award and to initiate further arbitration proceedings. The motions have been opposed respectively. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

According to the petition, on February 17, 2021 the petitioner and respondents entered into an agreement to arbitrate a dispute between them before the Beth Din of America. The petitioner, the condominium board for a condominium complex, asserted the respondent owed certain common charges. The matter was heard before the Beth Din of America and an interim decision was issued on October 18, 2021 and a final decision on July 10, 2023. The final decision held the respondents owed \$131,954.22

in common charges for the years 2016 through 2021. The respondents appealed the final decision and in a decision dated November 2, 2023 the arbitration panel issued a decision explaining that there are no appeals in arbitration decisions and modified its earlier decision concerning issues not relevant here. The respondents paid \$131,954.22.

This petition seeks recovery of an additional \$164,806.59 which include insurance charges and common charges for 2022, 2023 and part of 2024 and other fees. The amount sought has been calculated utilizing the percentages of all such charges the Beth Din determined were required to be paid by the respondents.

These motions have now been filed.

#### Conclusions of Law

"It is firmly established that the public policy of New York State favors and encourages arbitration and alternative dispute resolutions" (Westinghouse Elec. Corp. v. New York City Tr. Auth., 82 NY2d 47, 603 NYS2d 404 [1993], citing, Nationwide Gen. Ins. Co. v. Investors Ins. Co. of Am., 37 NY2d 91 [1975]). CPLR Article 75 establishes mechanisms for court confirmation, vacatur, modification, and enforcement of arbitration awards. The Article states that a "court shall confirm an award upon application of a party...unless the award is vacated or modified

upon a ground specified in section 7511" (CPLR §7510). Where no such grounds exist, a "judgment shall be entered upon the confirmation of an award" (CPLR §7514[a]).

As particularly relevant here, it is well established that an agreement to proceed before a Beth 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]).

First, the respondents argue the petitioner lacks standing to pursue the petition since it is an unincorporated association.

It is true that generally unincorporated associations cannot sue or be sued since they are not really legal entities separate from its members (Martin v. Curran, 303 NY 276, 101 NE2d 683 [1951], Chestnut v. United Methodist Church, AD3d , 215 NYS3d 376 [2d Dept., 2024]). Thus, lawsuits against such entities must also include the president or treasurer of the unincorporated association (General Associations Law §13). When the unincorporated association initiates any action or proceeding it

must be initiated by the president or treasurer (General Associations Law §12). However, any action or proceeding can be brought by anyone who is the functional equivalent of a president or treasurer (Locke Associates Inc. v. Foundation for Support of United Nations, 173 Misc2d 502, 661 NYS2d 691 [Civil Court of the City of New York, New York County 1997]). Furthermore, the mere fact the action was filed in the name of the unincorporated association and not an individual with the functional equivalent of the president or treasurer is "not fatal" and can be corrected (see, Arbor Hill Concerned Citizens Neighborhood Association v. City of Albany N.Y., 250 F.Supp2d 48 [N.D.N.Y. 2003], Concerned Citizens of Albany-Shaker Road v. State, 140 AD2d 842, 528 NYS2d 230 [3<sup>rd</sup> Dept., 1988]). Indeed, any error regarding the pleadings is merely procedural and not jurisdictional and can be amended (Sackman v. Maritas, 156 Misc2d 939, 595 NYS2d 655 [Supreme Court Nassau County 1992]). This is especially true where no prejudice has accrued to any party as a result of the name listed on the pleadings (Stephentown Concerned Citizens v. Herrick, 223 AD2d 862, 636 NYS2d 470 [3<sup>rd</sup> Dept., 1996], Gianunzio v. Kelly, 90 AD2d 623, 456 NYS2d 227 [3<sup>rd</sup> Dept., 1982]). Thus, a corrected pleading naming proper parties surely satisfies the requirements necessary to consider the motion (see, Chinuch v. Congregation Lubavitch

Inc., 82 Misc3d 29, 204 NYS3d 380 [Appellate Term 2d Dept., 2024]).

Therefore, the motion seeking to dismiss the petition on these grounds is denied.

Next, turning to the motions seeking to confirm and alternatively vacate the arbitration award, CPLR Article 75 establishes mechanisms for court confirmation, vacatur, modification, and enforcement of arbitration awards. The Article states that a "court shall confirm an award upon application of a party...unless the award is vacated or modified upon a ground specified in section 7511" (CPLR §7510). Where no such grounds exist, a "judgment shall be entered upon the confirmation of an award" (CPLR §7514(a)). Thus, to overturn an arbitration award the party maintains a heavy burden and must establish such vacatur by clear and convincing evidence (Jurcec v. Moloney, 164 AD3d 1461, 84 NYS3d 433 [2d Dept., 2018]). CPLR §7511 presents four grounds for vacatur of an arbitration award. They are, corruption, fraud or misconduct in procuring the award, partiality of an arbitrator appointed as a neutral, 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 or the failure to follow the procedures of CPLR Article 75.

The respondents assert the petitioner intentionally concealed a portion of the by-laws which, as a first option, permits arbitration of any disputes before a single arbitrator in accordance with the rules of the American Arbitration Association (see, By-Laws of the Waterview Condominium II, Article IX(1) [NYSCEF Doc. No. 26]). It is true the By-Laws permit the parties to mutually choose any other dispute resolution option, however, the respondents argue they were never notified of the first option.

First, the petitioner vigorously disputes that any such omission occurred. Moreover, an examination of the by-laws allegedly sent to the respondents and a complete set of by-laws have been provided for review. The by-laws allegedly sent to the respondents omit pages 16 through page 18. Furthermore, page 15 ends with a paragraph from Article VI Section 15 while page 18 commences with Section 3 of Article IX. Thus, Articles VII, VIII and Sections 1 and 2 of Article IX are missing. The omission, if made by the petitioner is clearly noticeable. Indeed, in an email dated November 12, 2019 a member of GMI Construction Inc., sent an email to Ariel Katz, the board member that had sent the by-laws to the respondents at the end of 2016 or the beginning of 2017, notifying him that pages 16 and 17 were missing (see, Email dated November 12, 2019 [NYSCEF Doc. No. 39]). The respondents

assert they first received the complete by-laws on August 23, 2023 (Verified Cross-Petition, ¶49 [NYSCEF Doc. No. 29]). However, the respondents included a complete set of by-laws, including the missing pages, in papers filed pursuant to an appeal on August 11, 2023 (see, NYSCEF Doc. No. 76). Notwithstanding the email sent wherein the respondents noted missing pages, the respondents never demanded to review its contents. Thus, there can hardly be any fraud where the respondents were fully aware of missing pages. The fact they failed to pursue the missing pages does not mean the petitioner committed fraud by omitting them. The failure to pursue the return of missing pages can only be compared to failing to read an entire document (Washington Capital Ventures LLC v. Dynamicsoft Inc., 373 F.Supp2d 360 [S.D.N.Y. 2005]). There can be reasonable reliance in this instance and no fraud is possible.

Next, the respondents seek to vacate the arbitration award on the grounds it is not final and is indefinite. The award states that the defendant Indig must pay "his share of the Condominium expenses, as defined above, for these years [2022 and 2023] and future years" (see, Psak Din (Order): Waterview Condominium LLC v. Mendel Indig and M. Feldman Realty LLC, ¶7 [NYSCEF Doc. No. 6]). It is true that the Beth Din order did not specify the amount due and rather stated that Indig must pay 19.18% of common charges which includes insurance adjusted for the higher

commercial rate. Thus, the Beth Din decision was intended to foreclose further disputes about how much the respondents owed and avoid continued disputes.

The respondents argue the Beth Din award did not address the fact that any tenant, including the respondents, have the right to contest the appropriateness of any budget. It is true the Beth Din order stated that "Waterview is entitled to set and determine its own budget, so long as the budget is generally reasonable and fair" (see, Psak Din (Order): Waterview Condominium LLC v. Mendel Indig and M. Feldman Realty LLC, ¶1 [NYSCEF Doc. No. 6]). It is also true the Beth Din award rejected the respondents' challenges to the reasonableness or fairness of the budget as presented (*id.*).

The question that must be addressed is whether the disputes that still remain have actually been decided by the Beth Din at all. According to the respondents there are five areas of dispute. The first is that the condominium board has increased the budget but has not increased fees sought from other tenants. Second, respondents dispute the credit removed by the final Beth Din award for water charges. Third, respondents assert the insurance amount owed is not being applied correctly. Fourth, respondents dispute they should be paying a portion of the salary for someone hired to assist with garbage disposal. Lastly,

respondents dispute they must pay an electric bill for electricity used by other unit owners.

The dispute regarding the water bill and the insurance premiums were decided by the Beth Din. Concerning the insurance, the Beth Din award concluded that "Indig shall pay the difference between the building's actual insurance rates and what the insurance rates would have been if the commercial space were residential space. This is to account for the higher premiums Waterview incurs on account of the commercial space" (see, Psak Din (Order): Waterview Condominium LLC v. Mendel Indig and M. Feldman Realty LLC, ¶3 [NYSCEF Doc. No. 6]). This does not contradict or impermissibly reinterpret the by-laws. The by-laws state that "while it is anticipated that commercial use of the premises will increase the cost of insuring same, the Commercial Unit Owner will remain only and solely responsible for reimbursing the Condominium for any insurance cost over and above that which the Condominium would incur if all units in the building were residential units; which cost is to be determined via letter delivered by the insurance carrier or agent thereof supplying insurance coverage for the building" (see, By-Laws of the Waterview Condominium II, Commercial Unit [NYSCEF Doc. No. 26]). Thus, the mechanism to determine the amount of insurance the respondents owe (in addition to the

19.18% of the overall insurance for the building) is by presenting a simple statement from the insurance agent or broker detailing what the insurance would be if the building were entirely residential and what it is now that a portion is commercial. The Beth Din did not alter that requirement. To the extent the petitioner offered other documentation instead of the documents required by the by-laws such offering has nothing to do with the Beth Din ruling. Therefore, upon the presentation of that information the respondents must then pay that amount. The respondent does not have the ability to influence the broker or insurance agent or contact them. Rather, the respondent must pay the amount provided by such independent insurance agent or broker. The motion seeking to confirm the Beth Din award in this regard is granted and any motion to vacate that award is denied.

Concerning the water bill, the Beth Din award of July 10, 2023 retracted an earlier interim order which granted the respondent a credit in the amount of \$41,998.74. The interim order held that the petitioner had collected that amount from the respondent in error and was thus due a credit. The July 10 order explained that the respondent had failed to provide evidence supporting the payments made by respondents and consequently the credit was retracted. The respondent argues that "the amount of

water paid, due, and credited is highly contested" (Verified Cross-Petition, ¶110(b) [NYSCEF Doc. No. 80]).

The respondents seek to vacate the withdrawal of the credit decided by the Beth Din, essentially, on the grounds that conclusion cannot possibly be correct. However, merely disagreeing with the arbitrator's conclusions is not a basis upon which to vacate any arbitration award. Indeed, it is well settled that even where an arbitrator's award "contains errors of law and fact committed by the arbitrator" the decision will not be vacated and that "the courts should not assume the role of overseers to mold the award to conform to their sense of justice" (Wien & Malkin LLP v. Helmsley-Spear, Inc., 6 NY3d 471, 813 NYS2d 691 [2006], citing, Matter of Sprinzen [Nomberg], 46 NY2d 623 [1979]). Of course, no such errors have been made by the arbitrators in this case. The final award specifically held that the respondents failed to establish their entitlement to any credit. The cross-petition and the opposition to the petition do not raise any question in this regard. The mere displeasure with an arbitration ruling or the insistence the arbitration panel made an error does not entitle a vacatur of an arbitration award. Therefore, the motion seeking to confirm the arbitration award is granted in this regard and the motion seeking to vacate the award or to file a cross-petition is denied.

The three remaining areas of contention, namely the fact other tenants have not paid for any increase in common charges, the garbage disposal and electricity issues are all matters that were not addressed by the Beth Din at all. The Beth Din ruled the petitioner is required to submit a fair and reasonable budget. Article VI Section 1 of the By-laws states that "any dispute relating to the expenses to be borne by the Unit Owners shall be submitted to arbitration in accordance with these By-Laws" (see, By-Laws of the Waterview Condominium II, Article VI(1) [NYSCEF Doc. No. 26]). Thus, these issues have really nothing to do with the Beth Din decision at all. Indeed, the Beth Din did not exceed its authority in any way and simply interpreted the by-laws including respondents' obligations. The mere fact the respondents continue to raise new issues about assessments they argue are not fair and reasonable does not mean the Beth Din exceeded its authority. In truth, there really is no dispute about the reach of the Beth Din award. There can be little argument the Beth Din did not rule regarding these three issues. Indeed, these three issues all concern one idea, namely whether the budget is fair and reasonable. To be sure, the respondents, or any tenant for that matter, can file yearly objections every time a new budget is established. Whether the budget is fair and reasonable for any year after 2021 is not

something that was decided by the Beth Din, other than to note such budget must be fair and reasonable. Therefore, nothing in the Beth Din decision can impose those fees upon the respondents at this time. However, it should be noted that most of the amount sought by the petitioner, namely \$164,806.59, is undisputed. The areas of dispute are small in comparison to the total sought. In fact, the entire electric bill alleged is a mere \$1,500 per year (Verified Cross-Petition, ¶110(e) [NYSCEF Doc. No. 80]). It is surely impermissible for the respondent to fail to pay any of the 19.18% it owes or to pay clearly insufficient amounts or to pay insufficient amounts and then assert the outstanding amounts have been waived by the board's acceptance of them, merely because some disputes exist. While it may be difficult to isolate the precise amount that is in dispute, the respondent has an obligation to pay 19.18% of all common charges to which no disputes exist. The failure to do so is a breach of the by-laws as well as a failure to abide binding arbitration.


Therefore, the motions are resolved as follows: the motion seeking to confirm the arbitration award is granted. The motion seeking to prevent the respondents from initiating an arbitration proceeding is granted to the extent such proceeding seeks to challenge the water or insurance issues noted above. The motions

seeking to file cross-petitions are again denied to the extent they seek to revisit the water and insurance conclusions already reached by the Beth Din. The parties may return to the Beth Din of America to resolve the three outstanding issues. Pursuant to the arbitration agreement entered into between the parties the Beth Din of America retains jurisdiction for one year "after publishing its award" (see, Agreement to Arbitrate, Section D [NYSCEF Doc. No. 3]). The final award was finally published on November 2, 2023. Thus, the Beth Din of America maintains jurisdiction and any further disputes must be raised there. As noted, all matters regarding expenses imposed upon the unit owners must be resolved by arbitration.

So ordered.

ENTER:

DATED: September 24, 2024  
Brooklyn N.Y.

  
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Hon. Leon Ruchelsman  
JSC