

Matter of Rosenberg v Klein
2024 NY Slip Op 35677(U)
March 5, 2024
Supreme Court, Rockland County
Docket Number: Index No. 035797/2023
Judge: Christie L. D'Alessio
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SUPREME COURT: STATE OF NEW YORK
 COUNTY OF ROCKLAND
 HON. CHRISTIE L. D'ALESSIO, J.S.C.

To commence the statutory
 Time period for appeals as of
 right (CPLR 5513 [a]), you
 are advised to serve a copy
 of this order, with notice of
 entry, upon all parties.

-----X
 In the Matter of the Application of

HARRY (a/k/a CHAIM ZVI) ROSENBERG and
 CHAYA GITTY ROSENBERG,

DECISION AND ORDER

Index No. 035797/2023

Petitioners,

-against-

Motion Seq. Nos. 1 & 2

ROBERT (a/k/a YITZCHOK ISSAC) KLEIN,

Respondent,

For an Order Pursuant to Article 75 of the CPLR
 Confirming an Arbitration Award.

-----X
 D'Alessio, J.S.C.

NYSCEF documents numbered 1 through 42 were read on: (1) the application of HARRY (a/k/a CHAIM ZVI) ROSENBERG and CHAYA GITTY ROSENBERG ("Petitioners") under CPLR 7510 to confirm the arbitration award in their favor against ROBERT (a/k/a Yitzchok Issac) KLEIN ("Respondent") and direct judgment in the amount of \$153,982.34 (plus costs); and (2) Respondent's cross-petition and cross-motion to dismiss under CPLR 3211(a)(1),(4), and (7), and vacate or modify the award under CPLR 7511(b)(1) and (b)(2).

It is undisputed that the parties entered a business transaction wherein Petitioners agreed to provide the necessary capital and financial structure to allow Respondent to finance, renovate, and satisfy outstanding monies owed and taxes due on the property located at 7 Cottonwood Lane, Suffern, New York. After such dispute, on December 5, 2022, a summons and complaint were filed by petitioner against respondent under Index number 035159/2022.¹ On February 22, 2023, the parties signed an arbitration agreement submitting to "binding arbitration [of] all controversies, claims and counterclaims between the undersigned parties" before the arbitration panel consisting of three rabbinic judges, Rabbi Avrum Yitzchok Braunstein, Rabbi Moshe Elyukim Fleischman, and Rabbi Eliyahu Vidislawski. The parties submitted their disputes to the panel and approximately four hearings were held where the parties were represented by their experienced

¹The NYSCEF docket reveals that, other than a summons and complaint, no further submissions were made. It appears that Respondent was not served, given the lack of an affidavit of service. Shortly thereafter, in December 2022, the parties moved forward with arbitration. As such, Respondent's argument that this award should not be confirmed because of a prior action is without merit.

To'en (i.e., a rabbinical advocate or attorney). At the conclusion thereof, the panel issued a written award dated July 25, 2023, ordering Respondent to pay Petitioners \$153,982.34 with a breakdown of its decision detailing the amounts owed as to the brokerage fee, the property tax, and the stock purchase agreement.

Petitioners, in this action, seek to confirm the award, arguing that it is final and that Respondent has failed to pay the sum directed. Respondent opposes, moves to dismiss, and argues that this court should vacate or modify the award because: i) it is not final; (ii) the panel exceeded its power; (iii) it was procured through corruption, fraud, misconduct, and the appearance of bias; (iv) the panel refused to hear pertinent and material evidence; (v) the award is against public policy; and (vi) there is a prior action filed by Petitioners.

Analysis

Judicial review of an arbitrator's award is extremely limited. (*See Wien & Malkin LLP v. Helmsley-Spear, Inc.*, 6 NY3d 471, 479 [2006]; *Reddy v Schaffer*, 123 AD3d 935, 936 [2d Dept 2014]). "An arbitration award can be vacated pursuant to CPLR 7511(b) on only three narrow grounds: if it is clearly violative of a strong public policy, if it is totally or completely irrational, or if it manifestly exceeds a specific, enumerated limitation on the arbitrator's power." (*Matter of Erin Constr. & Dev. Co., Inc. v. Meltzer*, 58 AD3d 729, 729 [2d Dept 2009]). "Outside of the narrowly circumscribed exceptions of CPLR 7511, 'courts lack authority to review arbitral decisions, even where an arbitrator has made an error of law or fact.'" (*Dedvukaj v. Parlato*, 136 AD3d 733, 733 [2d Dept 2016], quoting *Allstate Ins. Co. v. GEICO*, 100 AD3d 878, 878 [2d Dept 2012]). An arbitration award may be vacated if the rights of a party were prejudiced by the partiality of the arbitrator. (*See Hackett v. Milbank, Tweed, Hadley & McCloy*, 86 NY2d 146, 154-155 [1995]).

Respondent has failed to demonstrate that the award should be modified or vacated as the arbitration award was not violative of public policy, was not irrational and did not clearly exceed a specifically enumerated limitation on the panel's power. First, the arbitrators here did not exceed their power in any manner as there were no specifically enumerated limitations on their authority. The decision by the panel was not irrational, nor did it exceed a specifically enumerated limitation of power which agreement included broad powers to consider all disputes between the parties. (NYSCEF No. 3). Respondent participated in multiple days of arbitration, thus waiving any claim that the agreement to arbitrate was "blank", vague, or invalid (*Matter of Silverman [Benmor Coats]*, 61 NY2d 299, 307 [1984]). In any event, the Hazmanos (NYSCEF No. 24), noticed the claims with more specificity and Respondent took part without objection.

Respondent has failed to demonstrate that the award was irrational or against public policy as it was based upon a review of the evidence and testimony after multiple hearings. Respondent argues that his ex-wife was precluded as a witness and that other evidence was not considered or permitted. It is within the arbitrator's discretion to determine what evidence it deems appropriate, and the arbitrator is not bound by principles of substantive law or rules of evidence and may do justice and apply their sense of law and equity to the facts as they find them to be. (*See NFB Inv. Services Corp. v. Fitzgerald*, 49 AD3d 747 [2d Dept 2008]). "Courts are obligated to give deference to the decision of the arbitrator." (*New York City Transit Auth. v. Transp. Workers' Union of Am., Local 100, AFL-CIO*, 6 NY3d 332, 336 [2005]). "An arbitrator's rulings, unlike a trial court's, are largely unreviewable." (*Falzone v. New York Centr. Mut. Fire Ins. Co.*, 15 NY3d 530,

534 [2010]). The panel's determination to not hear testimony of Rebecca Klein does not equate to misconduct or prejudice as she was not a party to the underlying contract and the panel exercised its broad discretion to decide what evidence should be presented. This court will not second guess the panel's admission of relevant evidence. In any event, Respondent did not seek a stay of arbitration by this court and rather continued with the arbitration, essentially waiving his claim regarding the panel's failure to consider the evidence. (*See Schwimmer v. Malinas*, 38 Misc3d 1220 [Sup. Ct. 2013]; *Beals v. New York City Tr.*, 94 AD3d 543 [1st Dept 2012]).

Respondent failed to demonstrate the allegations of partiality on the part of Rabbi Babad. Respondent argues that he was not informed prior to the hearing that the Petitioners had prior transactions and ex-parte communications with Rabbi Babad, the Chief Judge of this arbitration court. It appears that Rabbi Babad recused himself at Respondent's request, he did not participate on the panel, and there is no evidence that he had any involvement in the outcome of the arbitration. It is well settled that occasional associations between an arbitrator and a party or witness will not warrant disqualification of the arbitrator on the ground of the appearance of bias or partiality. (*Matter of Henry Quentzel Plumbing Supply Co. v. Quentzel*, 193 AD2d 678, 678-679 [2d Dept 1993]). To that end, Respondent does not allege that the arbitrators that made the decision had any prior contact or ongoing association with the Petitioners to create the appearance of bias or partiality. Notwithstanding, Respondent's participation in multiple hearings belies the statement that he would not have accepted this arbitration panel had he been given prior knowledge of Rabbi Babad's involvement. (*See e.g., Matter of Henry Quentzel Plumbing Supply Co. v. Quentzel*, 193 AD2d 678, 678-679 [2d Dept 1993]; *see also Artists & Craftsmen Bldrs. v. Schapiro*, 232 AD2d 265, 266 [1st Dept 1996]).

Respondent's argument that the arbitration award is not final is unpersuasive. The award is final and definitive, as it outlined the obligations of the parties and resolved the controversy. An arbitration award is indefinite or non-final for purposes of CPLR 7511 and subject to vacatur "only if it leaves the parties unable to determine their rights and obligations, if it does not resolve the controversy submitted or if it creates a new controversy." *Matter of Olidort v. Pewzner*, 125 AD3d 778 [2d Dept 2015]. The award sufficiently set forth the parties' rights and obligations requiring respondent to pay the petitioners \$153,982.34. Despite Respondent's claim that he thought the arbitration hearings were ongoing, the emails demonstrate that the parties were trying to schedule dates, some time lapsed from August through December 14, 2023 (NYSCEF No. 16) with a final email from the panel dated January 4, 2024, stating "The Beis Din agrees that this case is 'considered decided and closed, and the Beis Din agrees that Mr. Rosenberg can confirm the Decision of the Beis Din. If there will be new claims after the Psak is confirmed, the parties can resubmit a request for a hearing.'" (NYSCEF No. 21 (internal quotation marks omitted)). The Beis Din's reservation of jurisdiction concerned only potential disputes that might arise, not because of any indefiniteness in the award.

WHEREFORE, it is hereby ORDERED that the petition to confirm the arbitration award pursuant to CPLR 7510 is granted (seq. 1); and it is further

ORDERED that judgment upon the arbitration award in the amount of \$153,982.34 shall be entered against Respondent in favor Petitioners; and it is further

ORDERED that Petitioners relief for costs of this action is denied; and it is further

ORDERED that Respondent's cross-petition and motion to dismiss (seq. 2) is denied in its entirety; and it is further

ORDERED that the clerk is directed to close this case and motion sequences 1 and 2.

Any other relief sought herein is denied.

The foregoing constitutes the Decision and Order of the Court.

Dated: March 5, 2024
New City, New York

ENTER:

A handwritten signature in black ink, appearing to read 'Christie L. D'Alessio', written over a horizontal line.

HON. CHRISTIE L. D'ALESSIO, J.S.C.