

**Wallace v Foundation Group LLC**

2025 NY Slip Op 30685(U)

February 28, 2025

Supreme Court, New York County

Docket Number: Index No. 654044/2021

Judge: Debra A. James

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. DEBRA A. JAMES**

**PART 59**

*Justice*

-----X

KATIE MALONEY WALLACE,

Petitioner,

- v -

FUNDATION GROUP LLC,

Respondent.

-----X

**INDEX NO.** 654044/2021

**MOTION DATE** 10/13/2023<sup>1</sup>

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 67, 68

were read on this motion to/for VACATE - AWARD.

ORDER

Upon the foregoing documents, it is

ORDERED that, to the extent that it seeks to vacate, in part (i.e., modify), the Arbitration Award dated April 21, 2021 and the Supplemental Award dated May 19, 2021, the petition, pursuant to CPLR § 7511(e), is denied; and it is further

ORDERED and ADJUDGED that the petition to confirm in part and the cross petition to confirm in their entirety, pursuant to CPLR § 7510, the foregoing Awards is granted, and the Arbitration Award dated April 21, 2021 and Supplemental Arbitration Award dated May

<sup>1</sup>Oral argument of the papers was held before the court on September 14, 2023, for which the transcript was obtained on October 13, 2023.

19, 2021, issued in favor of Respondent and against Petitioner are confirmed; and it is further

ADJUDGED that Petitioner Katie Maloney Wallace, having an address at \_\_\_\_\_, do recover from respondent Foundation Group LLC, having an address at 9 East 37<sup>th</sup> Street, New York, New York 10006, the amount of \$ 8,982.00, plus interest at the statutory rate from the date of April 8, 2019, as computed by the Clerk in the amount of \$ \_\_\_\_\_, together with costs and disbursements in the amount of \$ \_\_\_\_\_ as taxed by the Clerk, for the total amount of \$ \_\_\_\_\_, and that the Petitioner have execution therefor.

#### DECISION

The subject of this special proceeding is an arbitration concerning Petitioner's termination of employment from Respondent Foundation Group, LLC on April 8, 2019. Petitioner seeks partial vacatur of an Arbitration Award dated April 21, 2021, and a Supplemental Arbitration Award dated May 19, 2021.

#### Background

Respondent Foundation Group LLC ("Foundation") is a financial services company headquartered in New York City (Amended Petition [NYSCEF Doc. No. 17] at ¶¶ 10-11). Petitioner Katie Maloney Wallace ("Ms. Wallace") was employed with Foundation as a Senior Strategic Partnerships Director beginning in March or April 2018 until April 8, 2019, when she was terminated (*id.* at

¶ 6, 11; Foundation's Memorandum of Law in Opposition [NYSCEF Doc. No. 64] at p. 3; Employment Agreement [NYSCEF Doc. No. 22]). As required by Petitioner's employment agreement with Foundation, Petitioner served a demand for arbitration (id.).

On September 11, 2019, Petitioner served a demand for arbitration on the Respondent, asserting three claims: (1) disparate treatment based on her gender in violation of Title VII of the Civil Rights Act of 1964 and the Virginia Human Rights Law; (2) discrimination based on her gender in violation of the New York City Human Rights Law ("NYCHRL"), and (3) breach of contract and violation of the New York Labor Law ("NYLL") for failure to pay to Petitioner her accrued, unused paid time off ("PTO") (Amended Petition at ¶ 82; Arbitration Award [NYSCEF Doc. No. 58]).

The Arbitrator's Interim Order dated December 21, 2020, provides that federal, New York, and Virginia law are applicable (NYSCEF Doc. No. 57).

A three-day arbitration hearing was held before the arbitrator, Judge Sherrie L. Krauser ("Arbitrator" or "Judge Krauser") after which she issued an Arbitration Award dated April 21, 2021 ("Arbitration Award"). By such Arbitration Award, she denied Petitioner's first and second claims, and granted the third claim (id.).

On April 28, 2021, Ms. Wallace filed a Motion for Reconsideration of the Arbitration Award, asserting that Judge Krauser failed to rule on Petitioner's NYCHRL claim and set forth her reasons for that ruling (Request for Reconsideration [NYSCEF Doc. No. 59]). Petitioner also sought to be awarded all her attorney's fees and expenses incurred in the arbitration (id.). Judge Krauser issued a Supplemental Arbitration Award dated May 19, 2021 ("Supplemental Award"), in which she reaffirmed that Petitioner prevailed on only a "single claim of unpaid leave, wholly separate and unrelated to her failed claims for discrimination in her employment with Foundation," and determined the damages, including attorneys fees', to Petitioner (Supplemental Award [NYSCEF Doc. No. 62]).

Thereafter, Petitioner, commenced this proceeding, pursuant to CPLR Article 4, CPLR §§ 3001, 7502, 7511, and 9 USC §§ 10(a)(2) and 10(a)(4) to: (1) affirm the award of actual and liquidated damages on Petitioner's claim under the NYLL; (2) vacate that part of the award denying Petitioner's employment discrimination claim under the NYCHRL; (3) award Petitioner damages in the amount of \$352,531.00 on her claim under the NYCHRL; and (4) vacate that part of the arbitration award that failed to award Petitioner the entirety of her attorney's fees, expenses and interest, and award Petitioner the entirety of such

attorney's fees, expenses and interest (Notice of Petition [NYSCEF Doc. No. 4]).

Respondent filed a cross petition to confirm both Awards (Notice of Cross Petition [NYSCEF Doc. No. 63]). Petitioner filed a Reply to dismiss the cross petition (Reply to Notice of Cross Petition to Confirm Arbitration Award [NYSCEF Doc. No. 66]).

The matter was removed by Foundation to Federal Court and subsequently remanded back to the New York State Supreme Court with Foundation's consent (NYSCEF Doc. No. 15).

#### DISCUSSION

It is well settled that judicial review of arbitration awards is extremely limited and the arbitrator's award should not be vacated for errors of law and fact committed by the arbitrator (Wien & Malkin LLP v Helmsley-Spear, Inc., 6 NY3d 471, 479 [2006]). A party seeking to vacate an arbitration award bears a heavy burden, particularly because the questions of law and fact are merged in the arbitrator's award, which the judiciary does not have the authority to resolve (Fishman v Roxanne Mgt., 24 AD3d 365, 366 [1st Dept 2005]) (internal citations omitted). The court cannot replace the arbitrator's judgment with its own (Bevona v Caprice Management Corp., 146 AD2d 500, 500 [1st Dept 1989]). Once the arbitrator renders a decision following a hearing where both parties had the

opportunity to be heard, the decision stands unless a legal basis is provided to overturn (id.).

One seeking to vacate an arbitration award pursuant to CPLR § 7511 must demonstrate that he or she has been prejudiced by corruption, fraud, misconduct, partiality, or an abuse of power by the arbitrator (CPLR § 7511[b]; Fishman, 24 AD3d at 366).

The Federal Arbitration Act ("FAA") similarly permits vacatur of an arbitration award on the same grounds (9 USC § 10 [a]). In addition to the grounds mentioned above, an arbitration award may be vacated under federal law if the award was rendered in manifest disregard of the law (Wien & Malkin LLP, 6 NY3d at 480). This limited doctrine is only used as a last resort when none of the other provisions of the FAA apply and is limited to occurrences where the arbitrator acts with "egregious impropriety" (id.) (internal quotation marks and citations omitted).

#### NYCHRL Claim

Generally, courts have held that employment discrimination claims are analyzed under the McDonnell Douglas framework (McDonnell Douglas Corp. v Green [411 US 792, 802 [1973]]). Under this burden shifting framework, plaintiff has the initial burden to establish a prima facie case to show that she (1) is a member of a protected class; (2) was qualified for the position held; (3) was terminated from her employment or suffered an adverse

employment action; and (4) her termination or other such adverse employment action arose under circumstances that give rise to an interference of discrimination (Melman v Montefiore Med. Ctr., 98 AD3d 107, 113 [1st Dept 2012]). If the plaintiff meets her burden, the burden then shifts to the employer to rebut the presumption of discrimination by proving that there was a legitimate, nondiscriminatory reason for its employment decision (id. at 113-114). If the employer meets this burden, the burden shifts back to the plaintiff to "prove that the legitimate reasons proffered by the defendant were merely a pretext for discrimination" (id.) (internal quotation marks and citations omitted).

Prior to 2005, New York's federal intermediate appeals court often interpreted the NYCHRL as equivalent to its federal and state counterparts (Mihalik v Credit Agricole Cheuvreux North America, Inc., 715 F3d 102, 108 [2d Cir. 2013]). However, with the NYCHFL amendments by way of the Local Civil Rights Restoration Act of 2005, the New York City Council made it clear that the NYCHRL should be "construed independently" and more "liberally" than its federal and state counterparts (id. at 109). This amendment emphasized that courts should construe the NYCHRL "broadly in favor of discrimination plaintiffs, to the extent that such a construction is reasonably possible" to advance its remedial purposes (id.) (internal citations

omitted). Under this standard, the plaintiff need only demonstrate by a preponderance of the evidence that she has been treated less well than other employees because of her gender (id. at 110).

Claims under the NYCHRL must be analyzed under both the McDonnell Douglas framework and a "mixed motive" framework (Melman, 98 AD3d at 113). Under a mixed-motive theory, a plaintiff prevails in an action under the NYCHRL if she can prove that unlawful discrimination was one of the motivating factors, even if it was not the sole motivating factor, for an adverse employment decision (id. at 127).

In the Arbitration Award, Judge Krauser stated that she reviewed Petitioner's gender discrimination claims using the McDonnell Douglas framework to determine whether they violated Title VII of the Civil Rights Act of 1964 and the Virginia Human Rights Act (Arbitration Award at p. 2). Judge Krauser determined that Ms. Wallace established a prima facie case to show that she was treated unfairly by Foundation because of her gender (id. at p. 4). The burden was then shifted to Foundation to establish a legitimate, nondiscriminatory reason. Judge Krauser found that Foundation

"established not only legitimate, nondiscriminatory reasons for terminating [Ms.] Wallace based on her performance, but also that she was not 'similarly situated' with [her male colleague] because his background and experience in a field more closely akin

to Foundation's objectives warranted his higher salary and higher rank in the corporate structure" (id. at p. 6).

The burden again shifted to the plaintiff to prove that the reasons proffered by Foundation were merely a pretext for discrimination. Judge Krauser determined that Ms. Wallace was unable to meet her burden, as she found that "Foundation's defenses to [Ms.] Wallace's claims are not merely pretextual, but legitimate and nondiscriminatory" (id. at p. 7). Judge Krauser further states that "[i]n fact, [Ms.] Wallace's insistence on her own perspective, and her inability to understand the value to Foundation of [her male colleague's] approach, evidence her inability to comprehend [Foundation CEO's] objectives for Foundation (id.). On such basis, Judge Krauser concluded that Petitioner's claims of discrimination under the federal, Virginia, and New York laws were unfounded (id.).

Petitioner argues that Judge Krauser manifestly disregarded the law and exceeded her authority, by failing to conduct a separate analysis of Petitioner's NYCHRL claim under the more liberal standard for NYCHRL claims (Petitioner's Reply Memorandum of Law [NYSCEF Doc. No. 65] at p. 6)). Petitioner asserts that as the Arbitrator determined that she proved her prima facie case of discrimination to show that she was treated unfairly by Foundation simply because of her gender, that is

sufficient for her to prevail under the NYCHRL (Petitioner's Reply Memorandum of Law at p. 8).

As the court is limited in its powers of review, we may only consider the issue of whether there was misconduct by the Arbitrator and have no discretion to review the Arbitrator's findings of law or fact. This court finds that Petitioner failed to meet her burden of establishing that the Arbitrator manifestly disregarded the law or that she exceeded her authority.

The Arbitrator did not exceed her authority pursuant to CPLR § 7511(b)(1)(iii). Arbitrators are responsible for interpreting and applying agreements (NY City Tr. Auth. v Transp. Workers' Union of Am., Local 100, AFL-CIO, 6 NY3d 332, 336 [2005]) (internal citations omitted). An award may be vacated under CPLR § 7511(b)(1)(iii) only when the arbitrator's award "violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power (id.) (internal citations omitted). It is well settled that courts must grant an arbitrator's decision great deference, even if the arbitrator incorrectly applied the substantive law (id.). Here, the decision of the arbitrator did not violate a strong public policy. Such decision was neither irrational nor in excess of a specifically enumerated limitation on the arbitrator's power. Judge Krauser conducted a hearing over a

three-day period, during which both sides had the opportunity to be heard, submitting evidence in support of their respective claims, after which she issued an award, as mandated under the applicable law (see Montanez v NY City Hous. Auth., 52 AD3d 338, 339 [1st Dept 2008]). Moreover, after Petitioner moved for reconsideration of Krauser's first award dated April 21, 2021, Judge Krauser issued a supplemental award dated May 19, 2021.

Contrary to Petitioner's argument, the Arbitrator did not exceed her authority under 9 USC § 10(a)(4). Instead, as argued by Respondent, under federal law, the court has "consistently accorded the narrowest of readings to the FAA's authorization to vacate awards pursuant to § 10(a)(4)" (T.Co Metals, LLC v Dempsey Pipe & Supply, Inc., 592 F3d 329, 342 [2d Cir. 2010]) (internal quotation marks and citations omitted). The court's focus is to determine "whether the arbitrators had the power based on the parties' submissions or the arbitration agreement, to reach a certain issue, not whether the arbitrators correctly decided that issue" (Banco de Seguros del Estado v Mut. Mar. Off., Inc., 344 F3d 255, 262 [2d Cir. 2003]) (internal quotation marks and citations omitted). An arbitration award should be enforced, even if a court disagrees with it on the merits, as long as there is a barely colorable justification for the outcome reached (T.Co Metals, LLC, 592 F3d at 339). As discussed above, the Arbitrator did not exceed her authority to

hear and determine the issues the parties presented before her. Judge Krauser simply determined that Petitioner's claims lacked merit.

Nor did the Arbitrator manifestly disregard the law. As stated above, the manifest disregard doctrine is a severely limited doctrine and is only used as a last resort when none of the other provisions of the FAA apply (Wien & Malkin LLP, 6 NY3d at 480). Furthermore, the arbitrator must act with "egregious impropriety" for this doctrine to be applicable to vacate the arbitration award (id.). In order to modify or vacate an award on this limited doctrine, a court must find both of the following: "(1) the arbitrators knew of a governing legal principle yet refused to apply it or ignored it altogether, and (2) the law ignored by the arbitrators was well defined, explicit, and clearly applicable to the case" (id. at 481) (internal citations omitted).

Pursuant to the Arbitration Scheduling Order, Judge Krauser provided that she will issue a written Final Award as required by JAMS Employment Rule 24, which states, inter alia, that "[t]he Award shall consist of a written statement signed by the Arbitrator regarding the disposition of each claim and the relief, if any, as to each claim (Arbitration Scheduling Order [NYSCEF Doc. No. 55]; Amended Petition at ¶ 90). Judge Krauser's Arbitration Award and Supplemental Award are signed written

statements that ruled on each of Petitioner's claims and the relief as to each claim. Petitioner's contention that there was a manifest disregard of the law, for failure to separately analyze Petitioner's NYCHRL claim under the more liberal standard for NYCHRL claims is without merit. Arbitrators have no obligation to explain their award (Wallace v Buttar, 378 F3d 182, 190 [2d Cir. 2004]; Halligan v Piper Jaffray, Inc., 148 F3d 197, 204 [2d Circuit 1998]). Furthermore, Petitioner moved for reconsideration on this issue after the Arbitration Award, and Judge Krauser issued the Supplemental Award, where she reiterated her findings.

#### Attorney's Fees and Costs

Petitioner asserts that Judge Krauser exceeded her authority by awarding her only 2.5 hours of the 304.1 total hours, she requested for her attorney's fees, and no costs pursuant to her claim under the NYLL (Amended Petition at ¶ 123). She further argues that the Arbitrator incorrectly rejected her claim that a working year is equal to 2080 hours, rather than the 2000 hours that Petitioner used in her calculation (id. at ¶ 124).

Respondent asserts that the Arbitrator correctly awarded Petitioner her reasonable attorney's fees for her sole prevailing claim under the NYLL (Foundation Memorandum of Law in Opposition at p. 20).

Both parties concede that the Arbitrator had the authority to allocate attorney's fees permitted by applicable law or agreed to by the parties (id. at ¶ 118; Foundation's Memorandum in Opposition at pp. 16-17). Pursuant to Rule 24(g) of the JAMS Employment Arbitration Rules, "[t]he Award of the Arbitration may allocate attorney's fees and expenses and interest (at such rate and from such date as the Arbitrator may deem appropriate) if provided by the Parties' Agreement or allowed by applicable law" (Amended Petition at ¶ 96).

Pursuant to NYLL § 198 (1-a), an employee who prevailed on a wage claim may recover all reasonable attorney's fees and prejudgment interest. See CPLR § 5001. To determine the prevailing party's reasonable attorney's fees, a court must: (1) evaluate the number of hours that counsel spent "with a view to the value of the work product to the client's case"; (2) exclude "excessive, redundant or otherwise unnecessary hours, as well as hours dedicated to severable unsuccessful claims"; and (3) multiply the remaining reasonable number of hours that the case required by the reasonable hourly billing rate (Gamero v Koodo Sushi Corp., 328 F Supp 3d 165, 172 [SD NY 2018]) (internal citations omitted). The party seeking attorney's fees has the burden to provide "accurate, detailed, and contemporaneous time records" to support its claim for hours expended" (id. at 173). Reasonable attorney's fees may include "reasonable out-of-pocket

expenses incurred by attorneys and ordinarily charged to their clients" (id. at 178). However, if a party prevailed on a claim and all of the claims are based on a "common core of facts" or "related legal theories," making it challenging to allocate hours spent on each claim individually, then a fee award should be granted for all time reasonably spent on the litigation as a whole (LeBlanc-Sternberg v Fletcher, 143 F.3d 748, 762 (US Court of Appeals, Second Circuit 1998) (anything omitted?).

Here, the Arbitrator found that Ms. Wallace only prevailed on the claim of unpaid leave, which is separate and unrelated to her unfounded claims for discrimination against Foundation (Supplemental Award at p. 3). Furthermore, Petitioner's claim for unpaid leave is "wholly distinct from her failed claims of discrimination" and therefore, Ms. Wallace is only entitled to the attorney's fees directly related to her sole prevailing claim of unpaid leave (id.). The Arbitrator stated that as Petitioner declined to distinguish her "ordinary costs" and fees related to her single prevailing claim and determined that approximately only 2.5 hours were attributable to the unpaid leave claim, with her attorney's hourly rate of \$715.00, she determined that Petitioner was entitled to \$1,787.50 in attorney's fees (id.). However, as Foundation suggested to increase the award to \$1,800.00, the Arbitrator awarded said amount to Petitioner as her attorney's fees (id.).

Petitioner fails to prove that the Arbitrator exceeded her authority with respect to the award for attorney's fees. The Arbitrator acted consistently with the discretion afforded to her by the parties.

Prejudgment Interest

Petitioner also alleges that the Arbitrator exceeded her authority and violated NYLL by not awarding her prejudgment interest on her claim for unpaid wages from the date of termination, pursuant to the NYLL.

Again, both parties concede that the Arbitrator had the authority to allocate attorney's fees and expenses and interest as specified in Rule 24(g) above (Amended Petition at ¶ 96; Foundation's Memorandum in Opposition p. 18).

The Arbitration Award provides that Petitioner is "entitled to payment of her unused accrued time off, with interest at the legal rate from the date of her termination" (Arbitration Award at p. 8). The Supplemental Award provides that Petitioner is entitled to \$3,591.00 in unpaid leave, \$3,591.00 in liquidated damages, and \$1,800.00 in attorney's fees, plus interest at the legal rate from thirty days after receipt of [the Supplemental Award]" (Supplemental Award at p. 3).

Petitioner's assertion that the Arbitrator exceeded her powers is without merit. It is undisputed that the Arbitrator had discretion to award interest. Even when prejudgment interest

is typically granted, an arbitrator's refusal to award it is not a valid basis to vacate the arbitration award (Kessler v Wollmuth Maher & Deutsch LLP, 79 Misc 3d 1225[A], [Sup Ct, NY County 2023, Reed, J.]) Furthermore, once again, as stated above, arbitrators have no obligation to provide an explanation for their decision (Wallace, 378 F3d at 190 [2d Cir. 2004]; Halligan, supra, 148 F3d at 204 [2d Circuit 1998]).

The Court finds no legal basis to vacate the Arbitration Award dated April 21, 2021, and the Supplemental Award dated May 19, 2021. Petitioner's motion to vacate is denied.

#### Respondent's Cross Petition

Respondent cross-moved by Notice of Cross Petition to dismiss the petition and confirm both the Arbitration Award and the Supplemental Award in full. Petitioner asserts that Respondent's Notice of Cross Petition must be dismissed because it fails to state a cause of action, is barred under the state of limitations, and fails to comply to comply with the requirements of CPLR § 403(a).

Pursuant to CPLR § 7510, upon a party's application to confirm the arbitration award within one year of receiving said award, the court shall confirm it unless the award is vacated or modified. However, while CPLR § 7510 suggests that an application to confirm an arbitration award must be filed within one year of delivery of said award, the Respondent is not

required to file a cross petition for confirmation, as CPLR § 7511(e) mandates an automatic confirmation if a motion to vacate or modify is denied (Matter of White v Dept. of Law of State of NY, 184 AD2d 229 [1st Dept 1992], lv to appeal denied 80 NY2d 759 (1992); CPLR § 7511[e]).

Therefore, the court declines to dismiss Respondent's cross petition on the basis of untimeliness, inter alia. As Petitioner's motion to vacate is denied, resulting in the confirmation of both the Arbitration Award and the Supplemental Award, Respondent's cross petition is technically moot, in any event.

*Debra A. James*

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<u>2/28/2025</u>				<u>DEBRA A. JAMES, J.S.C.</u>	
<b>DATE</b>					
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	SETTLE ORDER	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT
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