

**PHX Fin., Inc. v Yaklin**

2025 NY Slip Op 31405(U)

April 9, 2025

Supreme Court, New York County

Docket Number: Index No. 659387/2024

Judge: Emily Morales-Minerva

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. EMILY MORALES-MINERVA PART 42M
Justice

INDEX NO. 659387/2024
MOTION DATE 12/03/2024
MOTION SEQ. NO. 001
PHX FINANCIAL, INC., KEVIN CHEN, DANIEL O. OTOYA, STEROS CHRISTOFOROU, BERNARD F. JASMIN, VLADIMIRO M. PANICHI, HAKIM A. DONADELLE, SERGE PARAKHNEVICH,

Petitioners,

- v -

DECISION + ORDER ON MOTION

EDDIE YAKLIN, MIGUEL TAVAREZ, DANIEL PRIELIPP, ROBERT MCCALL,

Respondents.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 8, 9, 10, 11, 12 were read on this motion to/for CONFIRM ARBITRATION AWARD.

APPEARANCES:

Moss & Gilmore LLP, Mineola, NY (Michael Patrick Gilmore, Esq., of counsel), for petitioners.

EMILY MORALES-MINERVA, J.S.C.

In this special proceeding, petitioners PHX FINANCIAL, INC., KEVIN CHEN, DANIEL O. OTOYA, STEROS CHRISTOFOROU, BERNARD F. JASMIN, VLADIMIRO M. PANICHI, HAKIM A. DONADELLE, and SERGE PARAKHNEVICH (petitioners) move, unopposed, by notice of petition (motion sequence no. 001), for orders, pursuant to CPLR § 7510,<sup>1</sup> (1) confirming the award of the Arbitration Panel

<sup>1</sup> CPLR § 7510 provides, "The court shall confirm an [arbitration] award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in section seventy-five hundred eleven of this article."

dated June 24, 2024; and (2) directing judgment in the amount of \$10,000.00 in favor of petitioners and against respondents EDDIE YAKLIN, MIGUEL TAVAREZ, DANIEL PRIELIPP, and ROBERT MCCALL (respondents).

As explained below, the petition (mot. seq. no. 001) is granted entirely.

#### BACKGROUND

The FINRA Arbitration Panel (Panel) conducted an arbitration on In the Matter of the Arbitration Between Eddie Yaklin, Miguel Tavarez, Daniel Prielipp and Robert McCall (Claimants) v PHX Financial, Inc., Kevin Chen, Daniel Otoya, Steros Christoforou, Vladimiro Panichi, Hakim Donadelle, and Serge Parakhevich (Respondents), Case No. 23-00050. Claimants asserted causes of action against respondents sounding in, among other things, breach of fiduciary duty, breach of contract, and negligence (see New York State Electronic Filing System [NYSCEF] Doc. No. 02, Arbitration Award, dated June 24, 2024).

Following said arbitration and in "consideration of the pleadings, the testimony, and the evidence presented at the hearing", the Panel, on June 24, 2024, issued an award dismissing, with prejudice, the claims of claimants; directing claimants to pay respondents the sum of \$10,000.00 in discovery

sanctions; and awarding expungement of all references to Occurrence Numbers 2280853 and 2280386 from registration records maintained by the Central Registration Depository (CRD) for respondents Kevin Chen and Daniel Otoya (id.).<sup>2</sup> The Panel also directed respondents to "obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive" (id.).

Thereafter, respondents did not move to vacate or modify the award pursuant to CPLR § 7511.<sup>3</sup> Now, petitioners timely move, unopposed, to confirm the June 24, 2024 Arbitration Award (see NYSCEF Doc. Nos. 01-04, Notice of Petition and Exhibits).

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<sup>2</sup> The Arbitration Award states, in pertinent part, "FINRA Rule 2080(b)(1) states a FINRA matter can be ordered expunged from a registered person's securities industry record if at least a majority of the Panel concludes, after a recorded hearing on the matter, that either: (A) the claims are factually impossible or clearly erroneous; (B) the registered person was not involved in the alleged investment-related sales practice violations; or (C) the claims are false. Following a recorded FINRA hearing on the pending Motion for Expungement, the Panel unanimously concludes that the claims leveled against Chen and Otoya by Claimants in FINRA Arbitration Case Number 23-00050 are (i) clearly erroneous, (ii) do not involve, directly or indirectly, either Chen or Otoya, and (iii) are false" (NYSCEF Doc. No. 03, Arbitration Award, p 5).

<sup>3</sup> Section 7511 of the CPLR provides, as pertinent here, "(a) An application to vacate or modify an award may be made by a party within ninety days after its delivery to him.

(b)(1) The award shall be vacated on the application of a party who either participated in the arbitration or was served with a notice of intention to arbitrate if the court finds that the rights of that party were prejudiced by:

(i) corruption, fraud or misconduct in procuring the award; or  
(ii) partiality of an arbitrator appointed as a neutral, except where the award was by confession; or  
(iii) 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  
(iv) failure to follow the procedure of this article, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection."

Additionally, petitioners submit a FINRA waiver in support of the petition (see NYSCEF Doc No. 03, FINRA Waiver [confirming that petitioners need not name FINRA as a party in the judicial proceeding to confirm the arbitration award]).

#### ANALYSIS

Judicial confirmation of an arbitration award is a prerequisite to its entry as a judgment (see CPLR § 7514[a]). An arbitrator's award, wherein the arbitrator evaluates the evidence and identifies the salient issues, is final and definite (see Matter of Isernio v Blue Star Jets, LLC, 140 AD3d 480 [1st Dept 2016]). Under New York law, arbitration awards are entitled to substantial deference, and are subject to extremely limited judicial review (see Wien & Malkin LLP v Helmsley-Spear, Inc., 6 NY3d 471, 479-480 [2006] [finding that "it is well settled that judicial review of arbitration awards is extremely limited"])). "A final and definite award will not be vacated unless it is violative of a strong public policy, or is totally irrational, or exceeds a specifically enumerated limitation on the arbitrator's power" (Matter of Isernio, 140 AD3d at 480, citing Montanez v New York City Hous. Auth., 52 AD3d 338, 339 [1st Dept 2008] [internal quotation marks omitted]).

Here, despite a showing of personal service upon all four respondents (see NYSCEF Doc Nos. 8-11, Affidavits of Personal Service), respondents have defaulted on the instant application. Therefore, having reviewed the arbitration award and finding that none of the exceptions to confirming the award apply, the court grants the application for a judgment pursuant to CPLR § 7510, and confirms the June 24, 2024 arbitration award.

Accordingly, it is hereby

ORDERED that petitioners PHX FINANCIAL, INC., KEVIN CHEN, DANIEL O. OTOYA, STEROS CHRISTOFOROU, BERNARD F. JASMIN, VLADIMIRO M. PANICHI, HAKIM A. DONADELLE, and SERGE PARAKHNEVICH petition (mot. seq. no. 001) to confirm the June 24, 2024, arbitration award is granted, and the arbitration award is confirmed entirely; it is further

ORDERED that petitioners PHX FINANCIAL, INC., KEVIN CHEN, DANIEL O. OTOYA, STEROS CHRISTOFOROU, BERNARD F. JASMIN, VLADIMIRO M. PANICHI, HAKIM A. DONADELLE, and SERGE PARAKHNEVICH shall have judgment and recover the amount of \$10,000.00 from respondents EDDIE YAKLIN, MIGUEL TAVAREZ, DANIEL PRIELIPP, and ROBERT MCCALL, jointly and severally; it is further

ORDERED that that all references to Occurrence Number 2280853 are to be expunged from the FINRA CRD records for petitioner KEVIN CHEN (CRD Number 4871316), and all references to Occurrence Number 2280386 are to be expunged from the FINRA

CRD records for petitioner DANIEL ORLANDO OTOYA (CRD Number 2208241); and it is further

ORDERED that the Clerk shall enter judgment accordingly.

4/9/2025

DATE

*Emily Morales-Minerva*  
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE