

Spartan Capital Sec., LLC v Demetri

2025 NY Slip Op 32993(U)

August 5, 2025

Supreme Court, New York County

Docket Number: Index No. 652433/2024

Judge: Leslie A. Stroth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

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SPARTAN CAPITAL SECURITIES, LLC

Petitioner,

- v -

GARY DEMETRI,

Respondent.

INDEX NO. 652433/2024

MOTION DATE 06/10/2024

MOTION SEQ. NO. 001 002

AMENDED DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 12 were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Petitioner Spartan Capital Securities, LLC ("Spartan") renews its previous motion to vacate the Award entered by FINRA Dispute Resolution Services on February 12, 2024 in the proceeding Spartan Capital Securities, LLC v. Gary P. Demetri, Case No. 23-00501 (Exh A). The instant petition arises from claims filed by Michael Flick, Philip Hoff, and James Holstine against Spartan, all three of whom were customers of Spartan under a Joint Representative arrangement made between respondent Gary Demetri and non-party Robert Marcus. Their petition alleges, inter alia, fraud, unsuitability, excessive trading, and failure to supervise. Both Mr. Demetri and Mr. Marcus were independent contractors for Spartan. Between 2016 and 2018, Mr. Flick, Mr. Hoff, and Mr. Holstine filed claims against Spartan, and Spartan hired counsel to defend each of those claims. All claims resulted in settlements in which Spartan paid the claimants in exchange for a dismissal of said claims. Petitioner filed for arbitration against respondent to recover the settlement amounts, as well as attorneys' fees and costs, pursuant to an

1 The Court previously denied petitioner's motion without prejudice to renew within 30 days, based on petitioner's failure to attach the FINRA Arbitration Award to its papers. Petitioner has timely renewed its motion within 30 days.

indemnification provision under the Independent Contractor Agreement between Spartan and Mr. Demetri dated and entered into on January 17, 2014 (Exhs C & D). The Award by FINRA dated February 12, 2024 denied Spartan's claim for indemnification, as well as its request for attorneys' fees. Petitioner now moves to vacate the subject award. Respondent failed to file any opposition to the instant application.

The subject FINRA award provided the following (Exh A, p 3): "After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows: 1. Claimant's claims are denied in their entirety. 2. Any and all claims for relief not specifically addressed herein, including any requests for attorneys' fees, are denied."

Petitioner argues that the award should be vacated pursuant to an indemnification clause in the Independent Contractor Agreement (Exh C, p 6-7):

Indemnification of SPARTAN CAPITAL SECURITIES by Contractor [Gary Demetri]:
Contractor hereby agrees that he shall be responsible for and shall fully indemnify and hold SPARTAN CAPITAL SECURITIES (and each of its officers, control persons, employees and agents) harmless from all losses, claims, actions and expenses (including, but not limited to, attorney fees and costs) which are incurred by SPARTAN CAPITAL SECURITIES (and each of its officers, control persons, employees and agents) in connection with any of the following:

...

d) Contractor's failure to comply with or the breach of any provision of any applicable law, rule or regulation, or any provision of this Agreement.

...

f) Contractor's negligence in connection with the handling of client accounts.

...

l) Any claims arising from any customer claims or disputes with respect to Contractor...

...

Contractor hereby agrees that the foregoing indemnification shall survive the termination of this Agreement. Contractor grants SPARTAN CAPITAL SECURITIES the right to deduct any loss for which Contractor is responsible from Contractor's commissions.

Petitioner points out that the Independent Contractor Agreement further provides, "Joint Rep Liability: Contractor is personally liable for all debits incurred in any accounts under his joint rep

or joint production numbers whether incurred by Contractor or by the broker(s) with whom Contractor maintains the joint production number” (Id., p 10).

Respondent testified during the panel hearing on January 23, 2024 that, “I was employed at Spartan Capital from January of 2015 until approximately June of 2018. During that time, I had a joint representative account with Robert Joseph Marcus, a broker in which some accounts were handled by myself and other accounts were handled by Robert Joseph Marcus. As Mr. Rabinowitz stated, all brokers, when they join the firm, are required to sign an independent contractor agreement, which Robert J. Marcus signed as well” (Exh B, p 25).

Mr. Demetri noted the split of the payout on the Hoff and Flick accounts between he and Mr. Marcus as 70% payout, with a 50% split between Mr. Demetri and Mr. Marcus (Id., p 119). Mr. Demetri also indicated that the large bulk of commissions he earned were in the joint account with Mr. Marcus (Id., p 125-126, 129). Mr. Flick, Mr. Hoff, and Mr. Holstine, customers through the joint representative arrangement with Mr. Demetri and Mr. Marcus, filed arbitration claims against Spartan (Id., p 47, 60, 70). Spartan paid settlements for each claim (Id., p 60-62, 65, 71-72). Petitioner alleges that Spartan’s claims against respondent as to the Holstine arbitration were resolved prior to this action. As a result of the subject claims, petitioner argues that it incurred damages in the amount of \$361,744.00, excluding attorneys’ fees for the arbitration (Exh E).

First, the Court notes that under the Independent Contractor Agreement between Spartan and Mr. Demetri, “Any claim or controversy arising out of or relating to this Agreement or the breach thereof shall be settled by arbitration in New York City before FINRA Dispute Resolution, Inc, and under the then prevailing FINRA Rules and FINRA Code of Arbitration Procedure. Notwithstanding anything to the contrary, SPARTAN CAPITAL SECURITIES reserves the right to seek injunctive relief before any court of competent jurisdiction, and

reserves the right to enforce any claims for money advanced to or on behalf of Contractor before a court of competent jurisdiction” (Exh C, p 9).

However, petitioner argues that the subject arbitration award should be vacated since the panel exceeded its power in failing to abide by the plain meaning of the Independent Contractor Agreement between Spartan and Mr. Demetri. Petitioner requests that the Court vacate the Award pursuant to CPLR §7511(b), or in the alternative, remand the matter back to FINRA for further proceedings on the grounds that the Panel exceeded its authority by dismissing the entirety of Spartan’s claims and disregarding the indemnification clause in the Independent Contractor Agreement.

Pursuant to CPLR §7511(b)(1)(iii), “The [arbitration] award shall be vacated on the application of a party [. . .] if the court finds that the rights of that party were prejudiced by: [...] (iii) an arbitrator, or agency or person making the award exceeded his power or to imperfectly executed it that a final and definite award upon the subject matter was not made; [...].”

To succeed under CPLR 7511(b)(1)(iii), the movant must demonstrate that the arbitration agreement limited the arbitrator’s authority to act, and the arbitrator subsequently violated that limitation (*New York City Tr. Auth. v. Transport Workers’ Union of Am. Local 100, AFL-CIO*, 6 N.Y.3d 332 (2005)). Absent an agreement or statute, as long as an arbitrator addresses the issue(s) submitted for resolution, vacatur will not be granted, unless the award is completely irrational – that is, the resulting award goes beyond the issues before the arbitrator (*Rochester City Sch. Dist. v. Rochester Teachers Ass’n*, 41 N.Y.2d 578, 583 (1977)). “Vacatur of an award pursuant to [CPLR 7511(b)(iii)] is warranted only if it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator’s power” (*Id.*[internal citations omitted]) (*Am. Transit Ins. Co. v. Excell Clinical Lab*, 83 Misc. 3d 1227(A) (N.Y. Civ. Ct. 2024)).

Here, the Independent Contractor Agreement requires, in addition to mandating arbitration, that any contractor, including respondent, indemnify Spartan for any claims, including, but not limited to, attorney fees and costs arising from any customer claims or disputes with respect to the Contractor (See Exh. C). The dispute brought to arbitration arose because Spartan wanted to recoup the settlement amounts as well as its attorneys' fees and costs pursuant to the indemnification provision in the Independent Contractor Agreement as to the awards in favor of customers Flick and Hoff, with both Spartan and respondent, the contractor, named as defendants. The dispute arbitrated falls under section (l) of the indemnification clause and said clause should have been adhered to by the Panel. Thus, the Court finds that the Panel did exceed their power in dismissing Spartan's claims for indemnification, and is granting the petition in its entirety.

* * *

Accordingly, it is hereby

ORDERED that the Arbitration Award issued on February 12, 2024, is hereby vacated; and it is further

ORDERED that the case captioned *Spartan Capital Securities, LLC v. Gary Demetri*, Case No. 23-00501 is hereby remanded to FINRA Dispute Resolution for a new arbitration hearing and to take into account the indemnification clause in the Independent Contractor Agreement (Exh C, p 6).

The foregoing constitutes the decision and order of the Court.

HON. LESLIE A. STROTH
J.S.C.

DATE: 8/5/2025

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED
<input checked="" type="checkbox"/>	GRANTED
<input type="checkbox"/>	SETTLE ORDER

DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SUBMIT ORDER

OTHER

APPLICATION: