SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON **PART** 37
Justice

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KORPENN LLC,

Plaintiff,

- v -

ONE PENN PLAZA LLC,

Defendant.

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INDEX NO. 651615/2023

MOTION DATE 07/21/2025

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 131, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 195, 196, 197, 198, 199,

were read on this motion to VACATE APPRAISAL REPORT.

The instant action arises out of a "rent reset" provision in a July 10, 1970 lease (the "Lease," NYSCEF Doc. No. 143) between the parties (or their predecessors in interest) for the parcel of land between Seventh and Eighth Avenues and 33rd and 34th Streets in New York County (a/k/a Manhattan), denominated as 420 Seventh Avenue, 460 Eighth Avenue, and 250 West 34th Street. NYSCEF Doc. No. 1.

Lease § 21.04 provided, that plaintiff/landlord, Korpenn LLC ("Korpenn"), and defendant/tenant, One Penn Plaza LLC ("One Penn"), would each appoint appraisers who would "fairly and impartially" determine the fair market value of the property as if, pursuant to Lease § 21.01, "vacant, unimproved, and unencumbered" as of June 17, 2023. NYSCEF Doc. No. 143. As matters now stand, the appraisal would be used to reset the rent both retrospectively (briefly, back to June 17, 2023) and prospectively (long term, 25 years hence).

If the two appraisers could not agree (and they could hardly have disagreed more), they would appoint a third appraiser to act as the Chair (and tie-breaking vote) of the panel.

In a "Final Determination" (the "Appraisal Report") dated April 22, 2025, the panel appraised the property at $250,000,000 if encumbered by a disputed sublease and at $337,000,000 if unencumbered by the disputed sublease (a dispute that the parties are currently litigating). NYSCEF Doc. No. 94. Korpenn now moves to vacate the Appraisal Report. NYSCEF Doc. No. 92. For the reasons set forth hereinbelow, and at oral argument held virtually on October 22, 2025, the motion is granted, and defendant's cross-motion to confirm is denied.

Background

Courts do not appraise the value of real estate; rather, they appraise the fairness of the procedures used to appraise the value of real estate.

Korpenn appointed David Pearson, and One Penn appointed Darcy Stacom, to act as the "fair and impartial" appraisers. When they first met, they had vastly different views on the value of the property. Pearson proposed a value of $1,900,000,000; Stacom proposed a value of (essentially) $0. NYSCEF Doc. No. 93 ¶¶ 29, 32.

A third appraiser was necessary. The parties agree that finding an "impartial appraiser" who would actually be "impartial," was difficult. However, Pearson eventually suggested Jonathan M. Estreich, a mortgage debt broker, of Estreich & Company. Both sides interviewed Estreich and agreed to appoint him. Estreich became the Chair of the panel. He requested, and the parties agreed, that Andrew Brooks, whom Estreich employed, would be the Recording Secretary and would administratively assist the panel.

Pursuant to § 21.04 of the Lease, the "written decision of any two of the appraisers … fixing such fair market value of said land as aforesaid shall be binding and conclusive on the parties." NYSCEF Doc. No. 143.

Fair market value was to be determined using the widely accepted "willing buyer/willing seller, neither under duress" standard.

Numerous factual and legal disputes arose, particularly over an arguable sublease and zoning rights. However, as Pearson states, "the Panel was determined to continue the appraisal process." NYSCEF Doc. No. 93 ¶ 43. Relatively late in the process, non-party Empire State Development Corporation ("ESD") issued a memorandum to the three appraisers on the zoning rights question, a memorandum with which Korpenn took and takes substantive and procedural issue. NYSCEF Doc. No. 102.

Closing statements took place on March 20, 2025. NYSCEF Doc. Nos. 103, 104. On March 24, during deliberations, Stacom allegedly said that if things did not go her way, One Penn (or its owner, Vornado Realty Trust, or some Vornado entity) would sue Estreich and Pearson, and that Stacom would "ruin" Pearson in the real estate business. NYSCEF Doc. No. 93 ¶¶ 61-62; NYSCEF Doc. No. 153 ¶¶ 76-79. Estreich admonished Stacom, who apologized the next day. NYSCEF Doc. No. 153 ¶ 80.

The parties had long agreed that the Appraisal would be "unreasoned." Of course, "unreasoned" in the appraisal context does not mean, as a layperson might assume, "without reason"; rather, it essentially means "unexplained."

On April 22, the Chair, with Stacom's acquiescence (or, at least, formal agreement), issued the Appraisal Report, valuing the property at $250,000,000 or $337,000,000 (see supra). The Chair refused to reveal the model he used to arrive at this figure. NYSCEF Doc. No. 93 ¶ 72.

The Issues/Korpenn's Objections

Korpenn objects to the Appraisal Report on numerous procedural and substantive grounds, including that it failed to consider comparable sales, that the Panel Secretary assumed an outsized role, that (the alleged) consideration of the ESD memorandum was improper, that the Panel never engaged in significant substantive deliberations, that the Panel's appraisal was absurdly low, and that Stacom was neither fair nor impartial. NYSCEF Doc. No. 122.

Trial judges are overly familiar with disputed issues of fact and law. They are part and parcel of our admirable, adversarial system of justice. However, this Court has rarely, if ever, seen such *Rashomon*-like differences in perspective, all the more striking because the events at issue were recent and mostly or totally matters of record in emails and in transcripts. Was the appraisal process perfunctory, secret and suspicious? Or was it substantive, open, impeccable?

Discussion

General Principles

Militating in Favor of Accepting the Appraisal

CPLR 7601 provides that appraisal agreements are to be enforced pursuant to the standards set forth in CPLR Article 75 (arbitrations), and, thus, may only be set aside, as here relevant, because of corruption, fraud, misconduct or partiality.

"An award is not to be invalidated merely because the respective appraisers zealously maintain a position favorable to the rights of the parties who nominated them." Gansevoort Holding Corp. v Palatine Ins. Co., 11 Misc2d 518, 522 (Sup Ct, NY County 1957), affd 7 AD2d 720 (1st Dept 1958), lv denied 6 NY2d 705 (1959).

Appraisal proceedings are less formal than arbitrations. Penn Central Corp. v Consolidated Rail Corp., 56 NY2d 120, 126-27 (1982) ("Historically the courts have recognized a basic distinction between appraisal and arbitration. Although both contemplate a nonjudicial and informal resolution of a dispute by a third party, the prevailing practice in appraisals is more informal and entirely different [from the] procedure governing arbitration.").

"[A]ppraisers have broad discretion as to their methods and as to their sources of information." Perlbinder v Jakubovitz, 239 AD2d 294, 294 (1st Dept 1997).

Arbitration awards can only be overturned by "clear and convincing evidence" and upon a showing that "any impropriety prejudiced rights or affected the integrity of the arbitration process." Arab v ATC Jewelers, Inc., 45 AD3d 588, 588 (2d Dept 2007).

Even in the context of a more formal arbitration proceeding, the inability to cross-examine a party to the arbitration regarding a specific subject matter is not grounds for vacatur. Schwimmer v Malinas, 38 Misc3d 1220(A) (Sup Ct, Kings County 2013).

Militating Against Accepting the Appraisal

"[W]here the rights of parties are adjudicated, not by trained lawyers and judges, but by fellow-businessmen, every safeguard possible should be thrown about the proceeding to insure the utmost fairness and impartiality of those charged with the determination of the rights of the parties." Matter of Friedman, 215 AD 130, 136 (1st Dept 1926).

"[I]t is only necessary to demonstrate the potential for bias to find misconduct." Matter of Catalyst Waste-To-Energy Corp. of Long Beach (City of Long Beach), 164 AD2d 817, 820 (1st Dept 1990) (vacating award where "[n]otwithstanding petitioner's assertion that there is no indication of prejudice, the actions of the arbitrators herein give the appearance of impropriety").

Analysis

After reading reams of affirmations, this Court finds the subject appraisal process to be troubling and suspect. In particular, the Chair seems (possibly due to fear of being sued) to have withdrawn from any meaningful contact with the parties, to have delegated much of his responsibility to an underling, and to have issued an award that is not just "unreasoned" but inscrutable. A Court reviewing even an "unreasoned" award should be confident that the award was the result of "reason." Maybe appraisals, like laws, are like sausages, best not seen being made; but parties and courts should feel reasonably confident that a process meant to be fair was actually a process, not just a shot in the dark, or worse.

Nevertheless, given the law set forth above, this Court is constrained to reject most of plaintiff's objections, considered individually or even cumulatively.

The Panel was not obligated to consider comparable sales, even if Pearson, a licensed appraiser, as opposed to Estreich and Stacom, licensed mortgage brokers with a different perspective, thinks it should have.

As a judge with two law clerks, this Court can understand, and allow, the panel secretary to assist Estreich. Korpenn arguably waived any claim by failing to object to Brooks' involvement prior to issuance of the award. Atlantic Purchasing, Inc. v Airport Props. II, LLC, 77 AD3d 824, 825 (2d Dept 2010).

In the informal appraisal process, the Panel was permitted to consider the ESD memorandum.

Whether the Panel engaged in "significant substantive deliberations" was up to the Panel (although this Court senses that there was a dearth of them).

The final appraisal was not so low that this Court can reject it ipso facto or second-guess it.

And whether defendant's appraiser, Stacom, was "fair and impartial" is problematic and philosophical, except as noted below. Pearson recognized this reality: "[A]t the end of the day, I'm representing my client, [Stacom] is representing her client and you're being the neutral so it's going to be difficult from time to time, but it is what it is." NYSCEF Doc. No. 101, at 164:19-165:3.

However, just as deliberations were to begin (and now comes the juicy part), Stacom launched her own real estate firm. NYSCEF Doc. No. 115 ("Commercial Real Estate Titans Darcy Stacom and Wendy Silverstein Launch StacomSilverstein, a Premier Boutique Capital Markets Real Estate Advisory Firm"). Steve Roth, Vornado's CEO, knowing that Stacom was serving as

an appraiser in the subject proceeding, publicly wrote to Ms. Stacom's new firm, stating "[they] will be getting many important and complex assignments from us." Id. Hm.

In her affirmation, Ms. Stacom downplays Vornado's promise (or, at least prediction) of future business:

> During my engagement, I had no other engagements with Tenant, its parent company, [Vornado], or any other Vornado affiliates, and had not had any such engagements in the preceding five years. Nor had Vornado or its affiliates indicated to me that I would be considered for any future engagement due to my service in the Appraisal Proceeding.

NYSCEF Doc. No. 153 ¶10.

This doubtless carefully worded statement begs to be parsed. Stacom says that "during her engagement" and prior thereto, she did not do business with Vornado. She does not say that she would not accept future work or assignments with Vornado. She says that Vornado did not "indicate to [her]" that she would be considered for future Vornado work. She does not (nor, apparently, could she) say that Vornado did not announce that it would be sending her future work. Thus, even taking her at her word, Stacom has created the appearance that the palpable prospect of future financial gain might prevent her from being "fair and impartial."

This egregious appearance of impropriety, in and of itself, mandates that the subject Appraisal be rejected, and that the motion to vacate be granted. As plaintiff argues, Stacom had to be aware that an unfavorable appraisal could jeopardize her prospective relationship with Vornado.

In Coon v National Fire Ins. Co., 126 Misc 75, 79 (Sup Ct, Jefferson County, 1925), affd 218 AD 812 (4th Dept 1926), affd 246 NY 594 (1927), the court vacated an appraisal award where the party-appointed appraisers were required to be "disinterested," but one party-appointee had a "close and continuing relationship" with his appointing party. "[F]rom the sentiment of past service and hope that it continue, his position presumably was that of an advocate rather than of a disinterested appraiser." Id.

As plaintiff points out, although the parties agreed on an "unreasoned award," they did not agree on an "unreasoned process."

Finally, the parties disagree as to whether Korpenn waived any objections to the appraisal process by waiting until after the panel issued its award. Korpenn cites to authority that panelists cannot object to panel procedures until the panel issues an award. Mobil Oil Indonesia v. Asamera Oil (Indonesia), 43 NY2d 276, 281 (1977) (party must wait until final arbitration award is rendered before asking court to review any interim arbitration ruling); Matter of Capital Enters. Co. v Dworman, 178 AD3d 507, 508 (1st Dept 2019) (interim arbitration order may be reviewed, but only after arbitrators have issued final award).

In any event, this Court finds that Stacom's possible partiality to Vornado, and thus to One Penn, was so toxic to fairness that only blatant acquiescence, not present here, would qualify as waiver. The appraisal process was flawed, and this Court will not let the appraisal stand.

The Court takes judicial notice that whatever the shortcomings of the surrounding neighborhood, the subject property, by virtue of its adjacency to Pennsylvania Station and Madison Square Garden and propinquity to Midtown Manhattan, is in a well-traveled area. Thus, vacant and unencumbered, it could hardly be worthless, even during the post-pandemic lull in New York City's commercial real estate market (and witness the final appraisal), although whether it could be worth almost two billion dollars might also be an absurd notion.

Interest

As this Court is vacating the instant appraisal, the Court need not and does not decide the issue of interest.

Conclusion

Accordingly, plaintiff's motion to vacate the subject April 22, 2025 Final Determination is hereby granted, defendant's cross-motion to confirm is denied, and the Clerk is hereby directed to enter judgment accordingly.

HON. ARTHUR F. ENGORON

10/31/2025
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	DENIED		GRANTED IN PART	X	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE