

BNP Dev. LLC v JDS Principal 9DKB LLC

2025 NY Slip Op 34742(U)

December 9, 2025

Supreme Court, New York County

Docket Number: Index No. 655141/2025

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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BNP DEVELOPMENT LLC,

Petitioner,

- v -

JDS PRINCIPAL 9DKB LLC, JDS PRINCIPAL 9DKB
PARENT LLC

Respondents.

INDEX NO. 655141/2025

MOTION DATE 08/28/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 13, 14, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 were read on this petition to CONFIRM/VACATE ARBITRATION AWARD.

BNP Development LLC (“Petitioner”) petitions for an Order pursuant to CPLR 7510 (i) confirming the April 30, 2025 Partial Final Award rendered in the arbitration (*BNP Development LLC v. JDS PRINCIPAL 9DKB PARENT LLC, and JDS PRINCIPAL 9DKB LLC*, AAA Case No. 01-24-0008-2505 [the “Arbitration”]) between and among Petitioner and Respondents JDS Principal 9DKB LLC and JDS Principal 9DKB Parent LLC (“Respondents”); (ii) confirming the July 2, 2025, Final Award rendered by the Arbitrator in the Arbitration; (iii) compelling immediate production of the books and records set forth in the Partial Final Award and the Final Award; (iv) granting costs; and (v) awarding attorneys’ fees associated with this proceeding.

Respondents cross-petitions pursuant to CPLR 7511 to vacate the Partial Final Award and the Final Award or, in the alternative, to modify the Award to eliminate the requirement that Respondents produce additional documents beyond those already produced to BNP. For the

following reasons, Petitioner's motion is granted in part, and Respondents' cross-petition is denied.

BACKGROUND

This proceeding arises out of Petitioner BNP's investment in the Brooklyn Tower project (the "Project") located at 9 DeKalb Avenue, Brooklyn, New York (NYSCEF 1 ["Petition"] ¶3). Petitioner sought books and records access from Respondents, and after Respondents failed to comply, Petitioners commenced a books and records arbitration pursuant to the parties' contract which resulted in a successful award in favor of Petitioner (Petition ¶¶14-16).

On April 29, 2025, the Arbitrator issued a Partial Final Award granting, among other things, that "Respondents shall, upon 7 days prior written notice, permit BNP, its counsel and/or agents, to inspect and make copies of JDS' books and records and reports concerning the Project" (NYSCEF 2).

On July 2, 2025 the Arbitrator issued a Final Award compelling the production of books and records requested by BNP, including general ledgers of the entities involved in the Project, bank records of those entities, and documents concerning the terms and negotiations of Respondents and their affiliates' transaction with Silverstein Capital Partners ("Silverstein") that purportedly wiped out BNP's investment in the Project (*see* NYSCEF 3). Petitioner submits that "Respondents have produced only a mere fraction of these documents prior to the Final Award and no documents in response to the Final Award" (Petition ¶5).

According to the Cross-Petition, the Award was irrational, expressly contradicted controlling law, and exceeded the Arbitrator's authority (NYSCEF 22 ["Cross-Petition"] ¶1). Specifically, Respondents submit that "[t]he Arbitrator presiding over this contractual 'books and records' action purported to require Respondents to provide access to BNP to nearly every single

financial document -- including, among other things, all general ledgers and bank documents -- from numerous affiliates. The Arbitrator did so even though none of those affiliates are parties to this action, BNP is not a member of any of those affiliates, and BNP had not asserted a single claim against Respondents or any of its affiliates” (Cross-Petition ¶1).

DISCUSSION

CPLR 7510 states that the court “shall confirm an 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 7511” (*Bernstein Family Ltd. Partnership v Sovereign Partners, L.P.*, 66 AD3d 1, 3 [1st Dept 2009]). Here, the Partial Final Award was delivered on April 29, 2025, and the Final Award was delivered On July 2, 2025 (NYSCEF 2, 3), thus the application is timely.

To vacate an arbitration award, which Respondents seek here, the “party moving to vacate an arbitration award has the burden of proof, and the showing required to avoid confirmation is very high” (*U.S. Elecs., Inc. v Sirius Satellite Radio, Inc.*, 17 NY3d 912, 915 [2011] [citation omitted]). “It is well settled that a court may vacate an arbitration award only if it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator’s power” (*In re Falzone (New York Cent. Mut. Fire Ins. Co.)*, 15 NY3d 530, 534 [2010] [citations omitted]). “Moreover, courts are obligated to give deference to the decision of the arbitrator. This is true even if the arbitrator misapplied the substantive law in the area of the contract” (*New York City Transit Auth v Transp. Workers’ Union of Am., Local 100, AFL-CIO*, 6 NY3d 332, 336 [2005] [citations and quotations omitted]). “[A]n arbitrator’s rulings, unlike a trial court’s, are largely unreviewable” (*Falzone*, 15 NY3d at 534).

With these deferential standards in mind, Respondents' contentions that the Partial Final Award and Final Award (together, the "Award") are based on an "irrational" reading of the applicable agreements and conflict with Delaware Law are unavailing. Respondents do not contend the Arbitrator added terms to the contract or went beyond the language of the contract in rendering the Award. Rather, Respondents disagree with Arbitrator's interpretation that BNP's books and records rights under the agreements includes the books and records of certain Subsidiaries. However, "[i]n reviewing an award, a court is bound by the arbitrator's factual findings and interpretations of the contract. Furthermore, a court 'cannot examine the merits of an arbitration award and substitute its judgment for that of the arbitrator simply because it believes its interpretation would be the better one'" (*Brown & Williamson Tobacco Corp. v Chesley*, 7 AD3d 368, 372 [1st Dept 2004] [internal citation omitted]). Here, even assuming the Respondents' reading is plausible, the Court does not find grounds to vacate the Arbitrator's contrary reading as irrational.

As to Respondents' argument that the Award conflicts with Section 305 of the Delaware Code, the Arbitrator noted that "[w]hile Respondents' argument might have merit with respect to BNP's rights under Section 305, it is meritless with respect to BN's contractual rights" (NYSCEF 2 ¶75). Thus, the Arbitrator found that BNP had an independent contractual right to the requested books and records (NYSCEF 2 ¶87), and therefore did not need to show a "proper purpose" under Section 305. In any event, the Arbitrator determined that (i) a proper purpose *did* exist under Delaware law; and (ii) the records at issue were related to proper purposes for investigation stated by BNP (NYSCEF 2 at ¶¶49, 52, 60, 62-64, 92-96). As noted, simply disagreeing with the Arbitrator's interpretation is not a proper basis to vacate and arbitral award (*see Metro. Transportation Auth. v Westfield Fulton Ctr., LLC*, 228 AD3d 435, 437 [1st Dept

2024] [“[A]n arbitrator's interpretation of the parties' contract is impervious to judicial challenge even where ‘the apparent, or even the plain, meaning of the words' of the contract has been disregarded”], *lv to appeal denied*, 43 NY3d 907 [2025]).

Respondents' public policy arguments are similarly unpersuasive. Respondents do not cite any particular public policy that counsels or legislates against private parties agreeing to broad access to books and records prevents this court from enforcing an order to produce books and records, nor to Delaware law prohibiting the production of books and records of the type sought by BNP (*cf. Matter of City of Oswego v Oswego City Firefighters Ass'n, Local 2707*, 21 NY3d 880 [2013]; *Fast Care Med. Diagnostics, PLLC/PV v Govt. Employees Ins. Co.*, 161 AD3d 1149 [2d Dept 2018]). Accordingly, the Cross-Petition to vacate is denied in its entirety.

However, Petitioner's request to compel immediate production of the books and records set forth in the Partial Final Award and the Final Award is denied without prejudice. This is effectively a request to *enforce* the arbitral award, which requires that the award first be reduced to a judgment. Only “once a judgment is entered pursuant to CPLR 7514” is the Court “tasked with interpreting and enforcing the Final Award” (*Panzer v Epstein*, 2024 NY Slip Op 32635[U], 6 [Sup Ct, NY County 2024], *affd*, 233 AD3d 546 [1st Dept 2024], *lv to appeal dismissed*, 44 NY3d 996 [2025]; *see also Pine St. Assoc., L.P. v Southridge Partners, L.P.*, 107 AD3d 95, 100 [1st Dept 2013]). Thus, this request is premature.

Petitioner's request to recover fees and costs is denied. “[I]t is up to the arbitrator and not the court to determine what attorneys' fees are authorized by the Agreement between the parties” (*Bowery Residents' Comm., Inc. v Lance Capital LLC*, 2014 WL 3707981 [Sup Ct, NY County 2014]). Here, the Arbitrator denied “BNP's prayer to reserve the right to claim attorneys' fees” (NYSCEF 3 at 15), noting that he was “not aware of any provision of any applicable contract

providing for the award of attorney’s fees” and that “BNP’s determination not to pursue ‘an additional claim for attorney’s fees at this time’ is a waiver of its right to pursue a claim for attorneys’ fees in this arbitration” (NYSCEF 3 at ¶¶26, 38). Therefore, this request is denied (*see Berg v Berg*, 85 AD3d 950, 952 [2d Dept 2011] [“[B]ecause the arbitration agreement failed to provide for an attorney's fee, the Supreme Court erred in awarding an attorney's fee to the defendant”]).

Accordingly, it is

ORDERED that Petitioner’s Motion to Confirm the Arbitration Award is **GRANTED IN PART** insofar as the Partial Final Award and Final Award are hereby **confirmed**; the request to compel compliance with the Award is denied without prejudice as premature and the request for attorney’s fees is **denied**; it is further

ORDERED that Respondents’ Cross-Petition to Vacate the Petition is **DENIED**; it is further

ORDERED that the Clerk is respectfully directed to enter judgment in favor of Petitioner and against Respondents upon submission of a proposed judgment in appropriate form.

This constitutes the Decision and Order of the Court.

12/9/2025
DATE


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JOEL M. COHEN, J.S.C.

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	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	REFERENCE