Firescu v Diamond
2025 NY Slip Op 34852(U)
December 12, 2025
Supreme Court, New York County
Docket Number: Index No. 650301/2021
Judge: Andrew Borrok

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. ANDREW BORROK** **PART** 53

Justice

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DRAGOS ADRIAN FIRESCU

INDEX NO. 650301/2021

Plaintiff,

- v -

POST TRIAL
DECISION AND ORDER

WARREN DIAMOND,

Defendant.

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This case was tried without a jury for a total of four days, beginning December 3, 2025, and ending December 8, 2025.

The following issues were presented for trial:

1. Whether Defendant Warren Diamond is liable to Plaintiff Dragos Adrian Firescu for breaching (i) a certain Indemnification and Hold Harmless Agreement (the **June 2016 Indemnification Agreement**; PX 5), dated June 15, 2016, and (ii) a certain Purchase Agreement (the **October 2016 Agreement**; PX 1), dated October 11, 2016, and if so, the amount by which he is liable in damages to Adrian Firescu?

2. Whether Warren Diamond has met his burden of proving his entitlement to the $521,663.20 in the capital/loan account of Jerome JSD Holdings LLC (**Holdings**) (PX 247 at 1)?[1]

[1] During trial, Warren Diamond withdrew his claim that the amount set forth in Holdings' capital/loan account was in fact a loan and not a capital contribution account based on *Mahoney-Buntzman v Buntzman*, 12 NY3d 415 (2009).

OTHER ORDER – NON-MOTION

At trial, Adrian Firescu, David S. Tannenbaum, and Warren Diamond testified.

Following trial, the Court makes the following findings of fact and comes to the following conclusions of law:

1. On August 15, 2011, Warren Diamond, Scott Diamond, Adrian Firescu, David Brown, Richard Monteforte, and Matthew Mongelli formed Holdings as a limited liability company in New York (PX 289 at 30, 40, 45, 50, 55, 60, 65).

2. Adrian Firescu was a member with a 25% membership interest in Holdings (*id.* at 50).

3. Warren Diamond was a member with a 25% membership interest in Holdings (*id.* at 40).

4. Scott Diamond, the son of Warren Diamond, was a member with a 21% membership interest in Holdings (*id.* at 45).

5. David Brown was a member with a 25% membership interest in Holdings (*id.* at 55).

6. Richard Monteforte was a member with a 3% membership interest in Holdings (*id.* at 60).

7. Matthew Mongelli was a member with a 1% membership interest in Holdings (*id.* at 65).

8. Holdings was the sole member of Jerome Avenue Storage Associates, LLC (**Associates;** Holdings and Associates, hereinafter collectively, the **Jerome Entities**), a New York limited liability company (VEC Doc. No. 373 ¶ 3).

9. Nacirema Management Associates, LLC (**Nacirema**), a New Jersey limited liability company, owned or controlled by Scott Diamond, had a management agreement (the **Nacirema Management Agreement**) with Associates (*tr.* 73:1-8).

10. Warren Diamond served as Holdings' Tax Matters Partner from 2011 through 2013 (PX 289 at 8; PX 290 at 10; PX 291 at 10).

11. Scott Diamond served as Holdings' Tax Matters Partner in 2014 (PX 292 at 10).

12. The parties represented on Holdings' tax returns that the amounts in the capital/loan accounts were capital contributions, not loans (PX 289 at 21; PX 290 at 23; PX 291 at 24; PX 292 at 25).

13. As such, Scott Diamond's $521,663.20 capital account balance was a capital contribution, not a loan (*see Mahoney-Buntzman*, 12 NY3d at 422 ["A party to litigation may not take a position contrary to a position taken in an income tax return"]).

14. In 2016, Adrian Firescu approached the other members of Holdings (including Scott Diamond) about potentially buying them out (VEC Doc. No. 373 ¶ 4).

15. At that time, Scott Diamond did not sell his interest in Holdings to Adrian Firescu.

16. In June 2016, Adrian Firescu purchased Warren Diamond's 25% interest for $3,641,000 and Richard Monteforte's 3% interest for $350,000 (the **June 2016 Transaction**), increasing Adrian Firescu's ownership in Holdings to 53% and making him the majority owner and sole manager (*id.* ¶¶ 6, 9).

17. Per the terms of the agreement between Adrian Firescu and Warren Diamond, Adrian Firescu paid a portion of the $3,641,000 price in cash and the balance in installments pursuant to the terms of a promissory note (the **June Note**) in the amount of $2,912,800, plus interest (*id.* ¶ 7).

18. As part of the June 2016 Transaction, the parties adopted amendments to the Jerome Entities' operating agreements (the **June Amendments**), which June Amendments permitted Warren Diamond and Richard Monteforte to sell their membership interests without the consent of the other members (*id.* ¶ 5) and otherwise provided for the termination of the Nacirema Management Agreement (*tr.* 44:22-24).

19. As part of the June 2016 Transaction, Warren Diamond agreed, pursuant to the June 2016 Indemnification Agreement, to a broad indemnification provision obligating himself to indemnify Adrian Firescu for any and all claims, costs, and expenses arising out of or in connection with the June 2016 Transaction, including, to the extent permissible by

applicable law, any such claims, costs, or expenses resulting from any act, omission, fault, or negligence of Adrian Firescu:

> It is hereby agreed that Warren Diamond ("Diamond") shall defend, indemnify and hold harmless Dragos Adrian Firescu ("Firescu"), his heirs, successors, and assigns, from any and all claims, actions, losses, costs, liability, damages and expenses (including, but not limited to, reasonable attorneys' fees) arising out of or in connection with any claim or action brought by Scott Diamond against Diamond, Jerome JSD Holdings, LLC ("the Company"), Jerome Avenue Storage Associates, LLC, and/or Dragos Adrian Firescu in connection with any monies allegedly owed to American Cali Mgmt., LLC or Nacirema Management Associates LLC; or solely in connection with the Purchase of Shares Agreement between Diamond and Firescu dated June 15, 2016. To the fullest extent permitted by applicable law, the foregoing indemnity and hold harmless shall apply regardless of an act, omission, fault, or the negligence of Firescu.

(PX 5 at 1).

20. In October 2016, Warren Diamond approached Adrian Firescu about purchasing Scott Diamond's 21% membership interest in Holdings, which Warren Diamond represented that he had acquired (VEC Doc. No. 373 ¶ 12).

21. To wit, Warren Diamond represented he had a right to sell Scott Diamond's interest based on Scott Diamond's alleged breach of an agreement between Warren Diamond and Scott Diamond (the **August 2011 Forgery**; PX 3), dated August 16, 2011.

22. More specifically, Warren Diamond represented that Scott Diamond had failed to repay certain amounts allegedly owed to Warren Diamond by September 30, 2016, and that, as a result, Scott Diamond's interest in Holdings had automatically transferred to Warren

Diamond (*id.*). However, it has already been determined in other proceedings that the August 2011 Forgery was a forgery.

23. Based on Warren Diamond's representations, on October 11, 2016, Warren Diamond purported to sell Scott Diamond's 21% interest to Adrian Firescu (the **October 2016 Transaction**) pursuant to the October 2016 Agreement (PX 1), which transaction also provided for a cash portion in the amount of $400,000 and installment payments pursuant to a promissory note (the **October Note**) in the amount of $1,078,336.80 plus 6% per annum for a five year term beginning November 11, 2016 in the amount of $11,971.75 per month and with a balloon payment at maturity (*id.*).

24. The October 2016 Agreement also reflects that Warren Diamond asserted that he had a right to sell the 21% membership interest and that he had ownership of the $521,663.20 that was in Scott Diamond's capital account:

> WHEREAS, Warren has asserted that his agreement with Scott, as well as his ownership of the 21% Membership Interest of JSD also entitles him to ownership of the $521,663.20 which Warren had advanced to Scott to finance the purchase of the 21% Membership Interest which monies had been posted as a loan on the books and records of JSD…

(*id.*). In other words, the parties understood and provided for a sale of the 21% membership interest and the capital account appurtenant to that interest. Ultimately, and as discussed below, because Warren Diamond's assertion was based on a forgery, Scott Diamond was awarded (and Warren Diamond paid) conversion damages which included a nominal value for the 21% interest and the $521,663.20 in the 2017 Arbitration so that this transaction contemplated by the October 2016 Agreement could be consummated

between Warren Diamond and Adrian Firescu pursuant to which Adrian Firescu would pay $2,000,000 for what was Scott Diamond's interest (as he had agreed to) – *i.e.*, $1,478,336.80 plus the $521,663.20 in the capital account.

25. The plain language of the previously executed October 2016 Agreement is however facially ambiguous as to the total price that Warren Diamond and Adrian Firescu agreed on for the 21% interest.

26. More specifically, Section 2 of the October 2016 Agreement provides:

> Purchase Price. The aggregate consideration to be paid by Purchaser for the Membership Interest at closing shall be $1,478,336.80, payable as follows:
>
> a. $400,000 to be paid to Seller via confirmed wire or personal check at Closing.
>
> b. A Promissory Note, ("Note") in the form annexed hereto, executed by the Purchaser in the amount of $1,078,336.80, with interest computed at a rate of 6% per annum, for a term of five years, amortized over a ten year period, with monthly payment beginning November 11, 2016 of $11,971.75 per month, with a balloon payment of all unpaid interest and principal on October 11, 2021, with no penalty for prepayment. As added security, the Company shall guarantee when the Note shall be due.

(PX 1 § 2).

Section 6(f) of the October 2016 Agreement provides:

> … In connection with the foregoing, the parties agree that the $521,336.20 currently in Scott's loan account (which Warren claims should be transferred to Warren due to Scott's default under the August 16, 2011 Agreement) shall remain in said account, pending an agreement between Scott and Warren, or Court Order, both of which shall in no way violate or cause any breach of the Company's Operating Agreement dated August 16, 2011, and all amendments thereto….

(*id.* § 6[f]).[2]

In other words, the language of the October 2016 Agreement has an ambiguity as to whether the deal was for $2,000,000 or $1,478,336.80.

27. At trial, Adrian Firescu cleared up the apparent ambiguity by admitting that the agreement was for $2,000,000, not $1,478,336.80, and that the $521,663.20 portion of the purchase price attributed to the capital account balance was held back solely to address his concerns about litigation between Scott Diamond and Warren Diamond (*tr.* 250:25-251:2).[3] As such, and to address this concern, the parties agreed that disbursement would only occur upon agreement between Scott Diamond and Warren Diamond or by court order as the language of Section 6(f) otherwise indicates (PX 1 § 6[f]). Additionally, the parties agreed that in the event of any such disputes, Warren Diamond broadly indemnified Adrian Firescu from any claims or costs in connection with the acquisition.

[2] The amount of $521,336.20 stated as currently being in Scott Diamond's capital/loan account appears to be a typo. This was not explored at trial, but the court concludes that the amount is in fact $521,663.20 as set forth in the recitals because Associates' Account QuickReport indicates that Scott Diamond's capital contributions totaled $521,663.20 (PX 247, at 1), Adrian Firescu testified that the total amount of Scott's capital contributions was $521,663.20, and the Arbitration Award (hereinafter defined) states that the amount in Scott Diamond's capital account was $521,663.20 (PX 111, at 9).

[3] Adrian Firescu admitted in his post-arbitration memorandum that the transaction was for $2,000,000 (DX 38, at 25 ["… Firescu and Warren agreed to $2 million for Scott's 21% interest, which price included $521,000 for the capital account that had been designated in Jerome's books and records as Scott's."]). This understanding is consistent with prior purchases of membership interests between the parties. When Warren Diamond sold his 25% interest in Holdings, the parties agreed that acquisition of interest in Holdings required payment for the capital account balance. Additionally, the 2017 Arbitration (hereinafter defined) panel assumed a price of $2,000,000 inclusive of the capital account balance (PX 111, at 9 ["On October 11, 2016, Firescu and Warren agreed on a purchase price of $2,000,000.00 for Scott's interest inclusive of his capital account."]) and the Appellate Division confirmed that the Arbitration Award (hereinafter defined) awarded conversion damages to Scott Diamond (DX 38, at 2 ["… Petitioner was also aware from Scott's pre-hearing briefing that Scott would be seeking damages for the conversion, rather than reinstatement of his interest."]) (discussed below).

28. As discussed below, Adrian Firescu has not yet paid $2,000,000 for the 21% membership interest he acquired as he agreed he had to and Warren Diamond has not received $2,000,000 for the 21% interest and capital account balance for which he paid conversion damages which included paying for the $521,663.20 amount in the capital account. Adrian Firescu has only paid $1,478,336.80 and the $521,663.20 held back amount has not been disbursed to Warren Diamond or Scott Diamond as the October 2016 Agreement contemplates.

29. As discussed below, Scott Diamond no longer owns the 21% membership interest and no longer has any right, title, or interest in the $521,663.20 capital account appurtenant to such 21% membership interest as he was awarded conversion damages for such 21% membership interest and capital account, and Warren Diamond has in fact paid for such 21% membership interest and capital account. Adrian Firescu never had entitlement to such $521,663.20 and he never anticipated or expected that he would have entitlement to such amount.

30. As discussed above, to induce Adrian Firescu to purchase the 21% membership interest ***from Warren Diamond*** and as part of the October 2016 Transaction, Warren Diamond also agreed pursuant to section 6(f) of the October 2016 Agreement (the **October 2016 Indemnification Agreement**) to broadly indemnify Adrian Firescu for any and all claims, costs, and expenses arising out of or in connection with the August 2011 Forgery and the October 2016 Transaction:

> Seller hereby indemnifies Purchaser and the Company from and against any causes of action, which may be brought against the Purchaser and/or

> the Company by Scott, as a result of the aforesaid August 16, 2011 Agreement between Scott and Warren and the transfer of the 21% membership interest to Warren due to Scott's non-payment. Warren will engage and pay counsel on behalf of the Purchaser and the Company in connection with any such action. In connection with the foregoing, the parties agree that the $521,336.20 currently in Scott's loan account (which Warren claims should be transferred to Warren due to Scott's default under the August 16, 2011 Agreement) shall remain in said account, pending an agreement between Scott and Warren, or Court order, both of which shall in no way violate or cause any breach of the Company's Operating Agreement dated August 16, 2011, and all amendments thereto….

(PX 1 § 6[f]).[4]

31. Thus, pursuant to the June 2016 Indemnification Agreement and the October 2016 Indemnification Agreement (collectively, the **Indemnification Agreements**), the parties allocated to Warren Diamond the risks associated with the transfers of his 25% interest and the 21% interest (PX 5 at 1; PX 1 § 6[f]).[5]

32. In December 2016, Scott commenced an arbitration with the American Arbitration Association (**AAA**) against Adrian Firescu, Warren Diamond, and Richard Monteforte, asserting claims based on alleged wrongdoing related to both the June 2016 Transaction and the October 2016 Transaction (the **2016 Arbitration**) (VEC Doc. No. 373 ¶ 27).

33. Because another arbitration between Warren Diamond and Scott Diamond was already pending, the parties stipulated to dismiss the 2016 Arbitration without prejudice in the

[4] Per the above, as a factual matter, the court finds that the amount in Scott Diamond's capital/loan account was $521,663.20 and not $521,336.20.
[5] Warren Diamond conceded that the indemnities were broad and covered the legal fees at issue. He only contested the reasonableness of the fees themselves (*tr.* 265:2-7).

hope that the other arbitration would resolve all claims between the parties that were the subject of this 2016 Arbitration (*id.* ¶¶ 31-32).

34. In December 2017, Scott Diamond, individually and on behalf of Nacirema and American Cali Associates LLC (**American Cali**), commenced a second arbitration (the **2017 Arbitration**) against Adrian Firescu, Warren Diamond, and Richard Monteforte, and named the Jerome Entities as primary respondents (*id.* ¶ 35).

35. Although initially Scott Diamond sought to unwind the 2016 Transaction, he ultimately decided to change his prayer for relief to money damages.

36. On July 15, 2019, the panel in the 2017 Arbitration (the **Arbitration Panel**) issued an Award (the **Arbitration Award**; PX 111) which provided:

> AWARD
>
> 1. Within thirty (30) days from the date of transmittal of this Final Award to the parties, Warren Diamond shall pay to Scott Diamond the sum of $2,831,663.20 (TWO MILLION EIGHT HUNDRED THIRTY-ONE THOUSAND SIX HUNDRED SIXTY-THREE DOLLARS AND TWENTY CENTS), together with simple interest at the New York statutory rate of 9% running from October 11, 2016, through the date of this Award, in the amount of $703,105.85.
>
> 2. Within thirty (30) days from the date of transmittal of this Final Award to the parties, Scott Diamond shall pay the Jerome Entities the sum of $63,197.67 (SIXTY-THREE THOUSAND ONE HUNDRED NINETY SEVEN DOLLARS AND SIXTY-SEVEN CENTS) together with simple interest at the statutory rate of 9% running from November 27, 2013, through the date of this Award, in the amount of $32,038.62.
>
> 3. This Award shall be binding against David Brown.

> 4. In the event that PryorCashman seeks to collect the outstanding balance due for services related to JSD, Scott Diamond shall be solely responsible for said balance due.
>
> 5. The administrative fees and expenses of the American Arbitration Association totaling $55,720.00 shall be borne equally by (i) Claimants, (ii) Respondent Warren, and (iii) Respondents Firescu, Monteforte, and Nominal Respondents Jerome JSD Holdings, LLC, and Jerome Avenue Storage Associates, LLC; and the compensation and expenses of the arbitrators totaling $162,437.50 shall be borne equally, in the same manner among the amount of $3,623.86, and Respondents Firescu, Monteforte, and Nominal Respondents Jerome JSD Holdings, LLC, and Jerome Avenue Storage Associates, LLC shall pay Claimants an amount of $671.22, representing that portion of said fees and expenses in excess of the apportioned costs previously incurred by Claimants.
>
> 6. This award is in full settlement of all claims, counterclaims, and cross-claims submitted to this Arbitration. All claims not expressly granted herein are hereby, denied.

(PX 111 at 10).

37. As relevant, the Arbitration Panel awarded conversion damages to Scott Diamond:

> Having concluded that Warren wrongfully converted Scott's 21% interest and capital account, Warren is liable for damages to remedy his wrongful conduct.
>
> Rule 47(a) of the Association's Commercial Rules provides that "The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties."
>
> Warren and Firescu object to awarding Scott money damages, claiming prejudice on the ground that until pre-hearing briefs were filed on the eve of the hearing, Scott had sought only the unwinding of the Amendments, causing the return of his interest and reinstatement of the Nacirema Agreement. Scott now seeks $2,310,000.00, for his 21% interest, plus $521,663.20 for his loan/capital account and damages relating to Nacirema, which are denied).
>
> Reinstating Scott's interest would surely spawn further complications and ill-will, if not litigation, among the parties. Moreover, this is not a case where damages are uncertain or where Respondents would have needed

> any further discovery to flesh out the damages claim. Rather, calculating the value of Scott's interest is straightforward: in June, 2016, Firescu offered Scott (and Warren, Brown, Monteforte, and Mongelli) $110,000.00 per percentage point. Using that valuation would amount to $2,310,000.00 for Scott's interest, plus his capital account balance of $521,663.20. (Scott rejected the offer because he wanted additional compensation for Nacirema; Mongelli also tried to obtain more but ended up taking less.) Firescu paid Warren $3,641,000.00, for Warren's interest inclusive of the $890,000.00 in Warren's capital account, which also works out to $110,000.00 per point for Warren's 25% Interest. (WD exh. 68).
>
> On October 11, 2016, Firescu and Warren agreed on a purchase price of $2,000,000.00 for Scott's interest inclusive of his capital account. That purchase price equates to roughly $70,000.00 per point. The explanations given for why Warren accepted a lower purchase price for Scott's interest were unconvincing. The Panel is persuaded that the most accurate reflection of the value of Scott's interest is the $110,000.00 per percentage point which Firescu had been willing to pay for it, and which he re-offered to Brown after purchasing Scott's interest from Warren. (T 725-26). That said, the evidence did not support a finding that Firescu had actual knowledge that the August 16, 2011, agreement, underlying Warren's asserted right to sell Scott's interest, was a forgery; Firescu knew only that litigation would surely follow and sought to protect himself accordingly. Therefore, we conclude that Firescu is not liable to Scott.
>
> Warren shall pay to Scott the sum of $2,310,000.00, plus $521,663.20, together with pre-
> judgment interest from October 11, 2016, through the date of this Award.

(*id.* at 9).

38. Indeed, the Arbitration Panel awarded Scott Diamond conversion damages, treating the October 2016 Agreement as a valid purchase agreement for Scott Diamond's interest (*id.* at 9).

39. To wit, Adrian Firescu was permitted to purchase Scott Diamond's interest on the payment schedule provided in the October 2016 Agreement.

40. But inasmuch as Scott Diamond was not a party to the October 2016 Agreement, the Arbitration Panel required Warren Diamond to pay Scott Diamond the purchase price immediately, including the $521,663.20 capital account balance, together with statutory interest of 9% from the date of the October 2016 Agreement (*id.* at 10).

41. Put another way, by virtue of satisfying the Arbitration Award, Warren Diamond succeeded to Scott Diamond's interest in its entirety, including Scott Diamond's capital account balance, because he paid for it.[6]

42. Thus, having paid Scott Diamond in full, Warren Diamond is entitled to a court order directing that the $521,663.20 capital account be distributed to him, so that the total consideration for the purchase of Scott Diamond's interest is properly allocated, and Warren Diamond may submit such order to satisfy the requirements of Section 6(f).

43. Subsequently, Warren Diamond brought a lawsuit in the New York State Supreme Court seeking to vacate or modify the Arbitration Award. The trial court (Hon. Eddie J. McShan, J.S.C.) remanded a portion of the 2017 Arbitration to a different panel so that Warren Diamond could submit evidence as to the appropriate amount of damages, but otherwise held that (i) the June 2016 Transaction was valid in its entirety, (ii) Adrian Firescu had no liability to Scott Diamond arising from the October 2016 Transaction, and

[6] For the avoidance of doubt, to the extent that Adrian Firescu tries to avoid this result based on the manner in which the case was pled, the argument fails. The proof beyond doubt confirm that Warren Diamond is entitled to the $521,663.20 in the capital account and an order (as contemplated by the October 2016 Agreement) from the Court effectuating this result. To the extent necessary, the court conforms the pleadings to the proof.

(iii) Nacirema and American Cali were not limited to recovering damages solely from the Jerome Entities or Adrian Firescu (*Diamond v Diamond et al.*, Sup Ct, Bronx County, July 14, 2020, McShan, J., Index No. 29528/2019E).

44. On appeal, the Appellate Division reversed holding that:

> Order and judgment (one paper), Supreme Court, Bronx County (Eddie J. McShan, J.), entered July 28, 2020, which, to the extent appealed from as limited by the briefs, vacated paragraphs one and six of the arbitral award dated July 15, 2019, and remanded the matter to a different arbitral panel for proceedings on respondent Scott Diamond's (Scott) claim for damages for the sale of his 21% interest in nominal respondent Jerome JSD Holdings, LLC (JSD), unanimously reversed, on the law, with costs, and the arbitration award reinstated in full. The Clerk is directed to enter judgment confirming the award.
>
> The arbitration clause in JSD's operating agreement was broad, and clearly encompassed the parties' dispute over the sale of Scott's ownership interest therein. Petitioner's due process rights were not violated by the panel's consideration of Scott's claim for damages arising from the sale of his interest. To the contrary, petitioner had notice of Scott's claim and ample opportunity to be heard (*see Matter of Beckman v. Greentree Sec., Inc.*, 87 N.Y.2d 566, 570, 640 N.Y.S.2d 845, 663 N.E.2d 886 [1996]; *Matter of Brito v. Walcott*, 115 A.D.3d 544, 545, 982 N.Y.S.2d 105 [1st Dept. 2014]). Petitioner was necessarily aware from the inception of the arbitration proceedings of Scott's claim that petitioner had converted Scott's ownership interest by use of a forged instrument. The panel was then free to fashion a suitable remedy based on the evidence adduced before it (*see Matter of SCM Corp. [Fisher Park Lane Co.]*, 40 N.Y.2d 788, 793, 390 N.Y.S.2d 398, 358 N.E.2d 1024 [1976]; *Chef Chloe, LLC v. Wasser*, 168 A.D.3d 610, 93 N.Y.S.3d 15 [1st Dept. 2019]).
>
> Petitioner was also aware from Scott's pre-hearing briefing that Scott would be seeking damages for the conversion, rather than reinstatement of his interest. Towards the close of the evidentiary hearing, the panel heard petitioner's objection to Scott's pursuit of damages, on similar grounds that he pursues on appeal. The panel advised petitioner to brief the issue post-hearing, and the parties did so. Moreover, the evidence relied on by the panel to determine the value of Scott's interest, namely the quanta of repeated arm's length offers and transactions immediately before and after the challenged sale of Scott's interest, was more than adequate to support the panel's determination. Thus, the determination was rationally

> supported by the evidence adduced at the hearing (*see Matter of Travelers Ins. Co. v. Job*, 239 A.D.2d 289, 292, 658 N.Y.S.2d 585 [1st Dept. 1997]).
>
> Petitioner's reliance on a December 2019 Federal District Court ruling in Florida that Scott had spoliated evidence is unavailing. That ruling cannot have preclusive effect on the arbitral panel's ruling, which was first in time (*see Feinberg v. Boros*, 99 A.D.3d 219, 226, 951 N.Y.S.2d 110 [1st Dept. 2012], *lv denied* 21 N.Y.3d 851, 2013 WL 1299736 [2013]). In any event, the fact that another tribunal hearing the same discovery matters as the arbitral panel here came to a different conclusion is no basis for vacatur of the award.

(PX 118).

45. On January 18, 2017, Adrian Firescu hired Stern Tannenbaum & Bell LLP (**STB**) to represent him in the 2016 Arbitration (PX 7).

46. STB was formed by former big law firm lawyers to offer the same quality of services that they provided when they were at big law firms at lower rates because STB does not have to address the large overhead costs that big law firms have (*tr.* 340:7-18).

47. The credible testimony demonstrated that Warren Diamond directed the manner in which Adrian Firescu employed his lawyers (*tr.* 58:22-59:4) and directed the representation that the lawyers rendered. By way of example, the retainer agreement between STB and Adrian Firescu provides for a retainer of $15,000 (PX 7, at 3). In fact, STB wanted a retainer in the amount of $20,000, but Warren Diamond told Adrian Firescu that the retainer should not be more than $15,000 (PX 17; *tr.* 59:15-20). Thus, Adrian Firescu crossed out the $20,000 amount and inserted by hand $15,000 (PX 7 at 3; *tr.* 61:7-12).

48. Although the retainer agreement for Holdings was not adduced in the record, David Tannenbaum said that it was exactly the same (*tr.* 356:1-357:13) and the billings reflect that the terms and conditions extended to Holdings were in fact exactly the same as the terms and conditions extended to Adrian Firescu.

49. In support of his application for damages, Adrian Firescu adduces, among other things, that the bills from STB were split between Holdings and himself (*tr.* 114:20-116:4).

50. The matter was staffed leanly.

51. The rates that each lawyer at STB charged were $590 per hour for David Tannenbaum, $510 per for Rosemary Halligan, and $350 per hour for Stefanie Miller (PX 7 at 1).

52. The matters for which Adrian Firescu claims reimbursement were solely caused by issues between Scott Diamond and Warren Diamond.

53. Adrian Firescu contemporaneously provided Warren Diamond with copies of all of the invoices for the attorneys' fees and expenses that he incurred in defending against the claims brought by Scott Diamond, Nacirema, and American Cali (PX 29; *tr.* 106:7-15).

54. In the summer of 2017, Warren Diamond asked Adrian Firescu to stop sending him the invoices because he was having financial difficulties and was no longer able to pay Adrian Firescu back (*tr.* 106:13-107:15).

55. In February 2017, Warren Diamond instructed Adrian Firescu to take an offset against amounts due from Warren Diamond pursuant to the October Note (PX 18; *tr.* 60:10-15).

56. There came a time when Warren Diamond told Adrian Firescu that he should stop paying his attorneys' fees to let the amount accumulate and so that if there was a big balance due the lawyers, they could negotiate it down because if the lawyers were paid, there would be no incentive for them to negotiate (*tr.* 17:10-17; *tr.* 125:2-9).

57. Warren Diamond made his last payment to Adrian Firescu in April 2019, which did not cover all outstanding legal bills, costs, and expenses incurred up to that date (*tr.* 120:18-25).

58. On September 4, 2018, Warren Diamond confirmed by text message to Adrian Firescu, "You are going to get paid. Every cent you laid out." (PX 42 at 34).

59. There remains in the IOLA account $11,804.50 from the initial retainer (PX 288; *tr.* 354:20-22).

60. The unpaid bills amount to $835,393.43 (PX 40; *tr.* 122:24-123:1).

61. STB never increased its rates, it provided Adrian Firescu with six substantial courtesy discounts, and STB provided him with at least another $25,000 worth of discounts (PX 7; *tr.* 289:6-8, PX 40; *tr.* 345:16-23).

62. The fees were thus entirely reasonable under the circumstances, and Adrian Firescu is entitled to judgment in the amount of $823,588.93 (the **Indemnification Amount**) equal to $835,393.43 less the $11,804.50 remaining in the IOLA account.

63. For completeness, to the extent that Warren Diamond argued that the bills related to Richard Monteforte were not reasonable, the Court permitted additional briefing.[7]

64. Pursuant to the additional briefing, Adrian Firescu indicated that Warren Diamond (who was paying the bill) told him to have his lawyers represent Richard Monteforte too (*tr.* 360:7-12; *tr.* 415:23-416:12) as a part of their litigation strategy (NYSCEF Doc. No. 169). Warren Diamond did not deny this. He testified at trial that he never specifically said that it was ok for them to bill him for it (*tr.* 393:25-394:4). However, having directed Adrian Firescu to have his lawyer represent Richard Monteforte (*tr.* 360:7-12; *tr.* 415:23-416:12) in connection with the transaction pursuant to which Warren Diamond agreed to indemnify Adrian Firescu, Warren Diamond is responsible for the costs in connection with that representation.

[7] The Court permitted the parties to submit a letter no longer than two pages by December 9, 2025 at 9 a.m. (*tr.* 439:6-15). Adrian Firescu timely submitted a two-page letter inclusive of a chart. Warren Diamond did not. Instead, he untimely submitted a two-page letter (NYSCEF Doc. No. 169) and an additional one-page exhibit (NYSCEF Doc. Nos. 170-171). The additional unauthorized exhibit was not considered as it exceeded the page limit and was filed on NYSCEF after 9 a.m. (*id.*).

65. Even if this was not the case, David Tannenbaum testified that the work related to Richard Monteforte would have been required as part of STB's defense against Scott Diamond's claims seeking to unwind the June 2016 Transaction (*tr.* 416:16-19; *tr.* 417:4-9).

66. In fact, David Tannenbaum testified that the $24,648 of attorneys' fees attributable to time entries for Richard Moneteforte would have been higher had STB not represented Richard Monteforte, as they would have had to deal with other lawyers and subpoena the documents (*tr.* 416:19-417:3; VEC Doc. No. 392).

67. Thus, to the extent that Warren Diamond states that the attorneys' fees attributable to Richard Monteforte is at least 25% of the fees billed by STB, he offers no credible evidence to support this assertion (NYSCEF Doc. No. 169 at 2).

68. Although Adrian Firescu is arguably entitled to statutory interest from the date of each breach of the Indemnification Agreements (*i.e.*, as to each bill that Adrian Firescu forwarded which Warren Diamond refused to pay either through credit of amounts due under the promissory notes or by cash), he nonetheless confirmed that he is only seeking statutory interest from the date he made his final demand on December 8, 2020 (*tr.* 415:8-16).

69. As such, (i) Adrian Firescu is entitled to a judgment that Warren Diamond has breached his obligation to pay Adrian Firescu the Indemnification Amount, together with statutory interest of 9% from December 8, 2020, (ii) Adrian Firescu is ORDERED to pay the $521,663.20 in the capital account to Warren Diamon such that the total consideration paid to Warren Diamond for the 21% interest is $2,000,000 and (iii) Warren Diamond is entitled to a judgment on his counterclaim for the $521,663.20 capital account. Each party may submit order.

Accordingly, it is hereby ORDERED and ADJUDGED that (i) Adrian Firescu shall submit judgment for the Court's signature (sfc-part53@nycourts.gov), and if Warren Diamond disagrees with the proposed judgment, then he may submit a proposed counter-judgment within five days and (ii) Warren Diamond shall submit an order for the payment of the $521,663.20 and a judgment on notice for the Court's signature (sfc-part53@nycourts.gov), and if Adrian Firescu disagrees with the proposed judgment, then he may submit a proposed counter-judgment within five days.

DATE: 12/12/2025 **ANDREW BORROK, JSC**

Check One: [x] **Case Disposed** [ ] **Non-Final Disposition**

Check if Appropriate: [ ] **Other (Specify _____)**