

Kevin O'Sullivan & Assoc. LLC v Peconic Sunset LLC

2025 NY Slip Op 35064(U)

December 29, 2025

Supreme Court, New York County

Docket Number: Index No. 655680/2024

Judge: Judy H. Kim

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JUDY H. KIM PART 04

Justice

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KEVIN O'SULLIVAN & ASSOCIATES LLC,

Petitioner,

- v -

PECONIC SUNSET LLC, SETH MILLER and JENNIFER MILLER,

Respondents.

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INDEX NO. 655680/2024

MOTION DATE 10/25/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38

were read on this motion to CONFIRM AWARD.

Upon the foregoing documents, the petition to confirm the arbitration award issued by the American Arbitration Association in *Kevin O'Sullivan + Associates LLC vs Peconic Sunset LLC; Jennifer Miller; Seth Miller*, Case No. 02-23-0001-6283 (the "Award") is confirmed and respondents' cross-petition to vacate the Award is denied.

Petitioner Kevin O'Sullivan & Associates LLC, an architectural design firm, entered into an American Institute of Architects standard agreement with respondents Peconic Sunset LLC and its members, Seth and Jennifer Miller, for the design and construction of a single-family home and swimming pool at 35 Clearview Drive, Sag Harbor, New York (the "Agreement") (NYSCEF Doc No. 2, agreement). On April 7, 2023, petitioner commenced an arbitration against respondents before the American Arbitration Association for amounts allegedly owed under the Agreement. Respondents participated in the arbitration.

On October 15, 2024, Arbitrator Eli Goldstein issued an award in favor of petitioner in the amount of \$789,471.43, reflecting the total outstanding amount owed by respondents as well as interest and attorneys' fees (NYSCEF Doc No. 3, award).

Petitioner now moves, pursuant to CPLR 7510, to confirm the Award. Respondents oppose and cross-move to vacate the Award. Respondents argue that the Award violated public policy and was issued in manifest disregard of the law because petitioner, as an unlicensed architect, was prohibited under Education Law §7302 from entering into a contract to perform architectural services. Respondents further argue that the arbitration was fundamentally unfair, insofar as certain evidentiary rulings by the Arbitrator demonstrated his bias against respondents. Finally, respondents argues that the Arbitrator erred in awarding petitioner attorney's fees under the Contract.

Petitioner opposes the cross-petition, asserting that the Arbitrator did not manifestly disregard the law because recovery is permitted where, as here, all relevant architectural work was performed by a licensed architect, and that attorney's fees were appropriately awarded under section 12.4 of the Contract. Petitioner also maintains that each of the Arbitrator's ruling with which respondents were appropriate and, in any event, did not prejudice respondents.

DISCUSSION

CPLR 7510¹ provides that a court “shall confirm an award upon application of a party made within one year after its delivery to them, unless the award is vacated or modified upon a

¹ The Court disagrees with respondents' contention that the Federal Arbitration Act governs here. Section 10.1 of the Agreement provides that “[t]his Agreement shall be governed by the laws of the State of New York. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.” As section 8.3 addresses arbitration, “[t]he provisions of CPLR article 75, and not the Federal Arbitration Act, are applicable, because the parties' contract provided that the dispute would be governed by New York law, except with respect to arbitrability, which is not an issue here” (*Geo-Group Communications, Inc. v Jaina Sys. Network, Inc.*, 144 AD3d 598, 598 [1st Dept 2016] [internal citations omitted]). Ultimately, this is a distinction without a difference as “[t]he grounds for vacatur at 9 USC § 10(a), as relevant here, are analogous to those specified in CPLR 7511(b)(1)” (*Pezhman v Bloomingdales, Inc.*, 215 AD3d 603 [1st Dept 2023], *lv to appeal denied*, 40 NY3d 905 [2023], and *cert*

ground specified in section 7511” (CPLR 7510), though an award may also be vacated where it is “totally irrational” (*Elul Diamonds Co. Ltd. v Z Kor Diamonds, Inc.*, 50 AD3d 293, 293 [1st Dept 2008] [internal citations omitted]).

CPLR 7511 provides for vacatur where the rights of a party to the arbitration 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

(CPLR 7511[b][1]). None of these categories apply—contrary to respondents’ claims, there is no evidence that the Arbitrator exhibited partiality, exceeded his power, or acted in manifest disregard of the law.

The Arbitrator’s evidentiary rulings cited by respondents do not establish that the Arbitrator was biased. “[A] party seeking to set aside an arbitration award for alleged bias of an arbitrator must establish its claim by ‘clear and convincing proof’” (*Matter of Infosafe Sys. v Int’l. Dev. Partner*, 228 AD2d 272, 272-273 [1st Dept 1996] [internal citations omitted]). “[M]erely pointing to an adverse ruling does not support a claim of bias because that is nothing more than an example of the hearing officer doing exactly what he is supposed to do in rendering a decision” (*Matter of Moro v Mills*, 70 AD3d 1269 [3d Dept 2010]).

In this case, all of the Arbitrator’s evidentiary rulings had at least a “colorable” basis in the record (*HFZ Bryant Park Owner LLC v S. BP Assoc., LLC*, 2019 NY Slip Op 30577[U], 7 [Sup Ct, NY County 2019] citing *Rai v. Barclays Capital, Inc.*, 739 F Supp 2d 364, 373 [SDNY 2010])

denied sub nom. Pezhman v Bloomingdale’s, Inc., 144 S Ct 822 [2024]) and respondents has not established grounds for vacatur under either standard.

and respondents “failed to meet their burden of showing, with clear and convincing proof” that the Arbitrator’s evidentiary rulings “constituted misconduct by preventing them from eliciting pertinent and material testimony in this hearing” (*Kaminsky v Segura*, 26 AD3d 188, 189 [1st Dept 2006]).

The Arbitrator’s award of attorneys’ fees does not support vacatur. The Arbitrator already rejected respondents’ argument that section 8.3.2 of the Agreement precludes such an Award, and even if the Arbitrator’s interpretation of the Agreement was erroneous (which the Court does not believe), the Court could not substitute its own interpretation of the Agreement (*see Graniteville Co. v First Nat. Trading Co., Inc.*, 179 AD2d 467, 468-69 [1st Dept 1992]).

Neither can the Court conclude that the Award violated public policy. To make such a determination, a court “must be able to examine an arbitration agreement or an award on its face, without engaging in extended factfinding or legal analysis, and conclude that public policy precludes its enforcement” (*McIver-Morgan, Inc. v Dal Piaz*, 108 AD3d 47, 51 [1st Dept 2013] [internal citations and quotations omitted], *affd*, 22 NY3d 1104 [2014]). The Court cannot do so here, as the question of “whether an unlicensed entity offering services regulated by the Education Law may enforce its contract” presents a fact-intensive inquiry that “must be decided on a case by case basis” and therefore remains within the exclusive remit of the Arbitrator (*id.* at 54).

Neither was the Arbitrator’s conclusion on this point reached in manifest disregard of the law. Vacatur on this basis requires that “(1) the arbitrators knew of a governing legal principle yet refused to apply it or ignored it altogether, and (2) the law ignored by the arbitrators was well defined, explicit, and clearly applicable to the case” (*Wien & Malkin LLP v Helmsley-Spear, Inc.*, 6 NY3d 471, 481 [2006] [internal citations and quotations omitted]) and requires “more than [the]

error or misunderstanding of the applicable law” (*Transparent Value, L.L.C. v Johnson*, 93 AD3d 599, 601 [1st Dept 2012] [internal citations omitted]) that respondents assert here.

Accordingly, it is

ORDERED and **ADJUDGED** that the petition to confirm the Arbitration Award dated October 15, 2024 (the “Award”) rendered in AAA Case No. 02-23- 0001-6283 is granted; and it is further

ORDERED that respondents’ cross-petition to vacate the Award is denied; and it is further

ORDERED and **ADJUDGED** that petitioner Kevin O Sullivan & Associates LLC shall have judgment against respondents Peconic Sunset LLC, Seth Miller, and Jennifer Miller, jointly and severally, in the amount of \$789,471.43, with interest accruing on the amount of \$300,299.55 from October 31, 2024 at the rate of ten percent per annum as calculated by the Clerk of the Court; and it is further

ORDERED that petitioner shall, within fifteen days of the date of this decision and order, serve a copy of same with notice of entry on respondents and the Clerk of the Court; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the decision, order, and judgment of the Court.



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12/29/2025

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

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<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

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

APPLICATION:

CHECK IF APPROPRIATE: