Goldstein v Weinberger
2025 NY Slip Op 35423(U)
March 14, 2025
Supreme Court, Rockland County
Docket Number: Index No. 036602/2023
Judge: Larry J. Schwartz
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To commence the 30-day statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND
---X
MICHAEL GOLDSTEIN,

Petitioner,

-against-

AHARON WEINBERGER,

Respondent.
---X

DECISION AND ORDER
Index No.: 036602/2023

Mot. Seq. Nos. 003 & 004

SCHWARTZ, J.

The following papers designated by NYSCEF as documents 37 through 63 were read and considered in connection with (1) Petitioner Michael Goldstein ("Goldstein")'s motion to compel Respondent Weinberger to appear before Arbitrator Moshe Shlomo Gobieff (the "Arbitrator") for further proceedings relating to the arbitration award, confirmed by this Court on January 24, 2024 (the "Initial Award") (Mot. Seq. No. 003); and (2) Respondent Aharon Weinberger ("Weinberger")'s cross-motion for an award of sanctions and fees in favor of Weinberger as against Goldstein pursuant to 22 NYCRR § 130-1.1[a] (Mot Seq. No. 004).

Upon the Court's review and consideration of the foregoing papers, and after due deliberation being had thereon, the motions are consolidated for the purposes of decision and are determined as follows:

The Initial Award was issued to the parties on December 6, 2023. Goldstein commenced this special proceeding to confirm and enforce the Initial Award, which was in fact confirmed by this Court on January 24, 2024 (Doc. 9). Following confirmation of the Initial Award, Goldstein moved this Court to issue an order, compelling Weinberger to comply with the Award and a supplemental award, which was issued by the Arbitrator on June 17, 2024 (the "Supplemental Award"). By Decision & Order, dated November 21, 2024, this Court (D'Alessio, J.) denied Goldstein's motion in its entirety, finding that the Supplemental Award substantively affected the rights of the parties, and the Arbitrator acted outside the boundaries contemplated by CPLR 7509 (Doc. 35).

In a separate special proceeding, Weinberger petitioned the Court to vacate the Supplemental Award, and the Court, over Goldstein's opposition, granted the petition by Decision and Order dated November 26, 2024, finding that the arbitrator "exceeded his authority by rendering the Supplemental Award" (Doc. 54). Thus, the Initial Award is the sole remaining arbitration award governing the parties, and its confirmation remains undisturbed.

Twenty-three (23) days later, Goldstein moved "to compel Weinberger to comply with the [Initial] Award by appearing before the Arbitrator. . . for further proceedings to bring any open matters under the Award to a full and final resolution" (Doc. 38 ¶ 16). Goldstein claims that the lack of clarity he has concerning "Weinberger's current position," *to wit*, "what amount Weinberger believes is due under the [Initial] Award and the calculation for such amounts" is an "open matter" to be brought back to the Arbitrator (Doc. 38 ¶ 15). Goldstein further claims that Weinberger has said that "he will not provide documentation that confirms that liens held on the properties subject to the Award have been paid and satisfied" (Doc. 38 ¶ 14). It is, however, undisputed that, at the time this motion was filed, Goldstein still owes $973,000.00 to Weinberger under the Initial Award (Doc. 38 ¶ 13; Doc. 51, pp. 6-7).

Weinberger opposes the motion to compel, arguing that this Court's prior holdings in this action and the related special proceeding to vacate the Supplemental Award reinforce that the Arbitrator is without jurisdiction greater than mere ministerial matters, such as calculating interest. Weinberger further cross-moves for sanctions against Goldstein, arguing that Goldstein's motion is frivolous because it is the second motion to compel filed by Goldstein despite Weinberger's caution that he would seek sanctions for frivolous motion practice. Weinberger avers that this motion practice is not only without merit, but also a delay tactic on Goldstein's part to avoid paying the undisputed outstanding sum due.

ANALYSIS

Goldstein's Motion to Compel

As a threshold matter, the Court observes that a judgment was not entered by the parties following the confirmation of the arbitration award, as provided for under CPLR § 7514 ("a judgment shall be entered upon the confirmation of an award") and this Court's January 24, 2024 Order (Doc. 9 ["Ordered that, judgment may be entered on any and all relief provided for in the

Award"])[1]. Nevertheless, the Court finds that the confirmed Initial Award is entitled to the same preclusive effect and authority over the parties' disputes even if the award was not reduced to a judgment (*Matter of New York Cen Mut Fire Ins Co v Reinhardt*, 27 A.D.3d 751 [2d Dept 2006] [an arbitration award may be entitled to preclusive effect even if it was not confirmed and reduced to a judgment, and such preclusive effect is to be determined by the Court, not the arbitrator]; *Matter of Aetna Cas & Sur Co v Bonilla*, 219 AD2d 708 [2d Dept 1995] [where the judgment confirming an arbitration award was vacated for procedural reasons, an unimpeached arbitration award enjoys res judicata effect on any subsequent, successive arbitration proceedings between the same parties and concerning identical circumstances as those reviewed in the prior arbitration]); *Katz v Kar*, 192 AD2d 695 [2d Dept 1993] [the Beth Din's arbitration award precluded the plaintiff from bringing a separate action based on the same claim]; *Hilowitz v Hilowitz*, 85 AD2d 621 [2d Dept 1981] [res judicata and collateral estoppel are available to those issues resolved by arbitration where there has been a final determination on the merits, notwithstanding the lack of confirmation of the award]; *County of Rockland v Aetna Cas & Sur Co*, 129 AD2d 606 [2d Dept 1987]).

Equally important to the Court's analysis of the issues presented in Petitioner's motion are the following facts gleaned from the parties' submissions: neither party disputes the validity of the Initial Award; neither party disputes the finality of the Initial Award in light of this Court's (D'Alessio, J.) vacatur of the Supplemental Award; neither party timely sought to modify or vacate the Initial Award pursuant to CPLR § 7511; and, finally, neither party sought a timely appeal of this Court's prior decisions[2].

Given that there is an undisturbed, final, and confirmed arbitration award, which has not been stayed pending appeal as neither party timely appealed the Confirmation Order, the enforcement of the Initial Award rests within the jurisdiction of this Court, not the Arbitrator (*Pine Street Associates, LP*, 107 AD3d at 100-101 [a Court may review the text of the arbitrator's award and should adopt the most reasonable meaning of the text by avoiding any potential interpretations of the award that would render it superfluous or absurd]). The Court is "not empowered to remit the matter to the arbitrator for clarification" on the confirmed Initial Award (*Pine Street Associates,*

[1] Upon entry of a judgment on a confirmed arbitration award, the parties would be armed with those enforcement devices provided for under Article 52 of the CPLR.

[2] These decisions, in fact, reinforced not only the finality of the Initial Award, but also the guardrails within which the Arbitrator may modify the Initial Award consistent with CPLR § 7509.

LP v Southridge Partners, LP, 107 AD3d 95, 100 [1st Dept 2013] *citing Matter of Plein [Charcat]*, 53 Misc2d 162, 164-165 [NY Cty Supr Ct 1966] [holding that if a dispute arises concerning the meaning of an arbitration award that has been confirmed as a judgment, the court must ascertain and declare the arbitrator's intent]; *Bornstein v Steinberg*, 175 AD3d 605 [2d Dept 2019] [given that the arbitration award resolved the underlying controversy between the parties, the rabbinical court's award was "final and definite for purposes of Article 75"]). Rather, it is the function of the courts to enforce the judgment, not of the arbitrators to enforce their award, and if a party is "not satisfied with the present state of affairs, he has a complete remedy through the courts, but not in further arbitration proceedings" (*Plein*, 53 Misc2d at 165). "The orderly administration of justice requires, and the court so holds, that it is always the function of the court, and not the arbitrator, to enforce the award by or through the entry of judgment" (*Matter of Kaplan*, 1973 WL 17026 [NY Cty, Special Term Part I, June 12, 1973] *citing Plein*, supra). Accordingly, the Court hereby denies any request by Goldstein to compel Weinberger to submit to further arbitration proceedings.

Turning now to whether the issues presented warrant the Court's enforcement of the Initial Award, the Court observes that the issue, as presented, is premature, insomuch as Goldstein is required to remit an additional $973,000.00 to Weinberger before any act is required of Weinberger. The Court gleans from the Initial Award and the parties' submissions that, upon receipt of the outstanding sum due to him, Weinberger shall be required to cooperate with the exchange of lien documents, where necessary. However, the Court recognizes that Goldstein's payment of the outstanding sum is a prerequisite for any act to be ultimately undertaken by Weinberger in the future (*see generally Park Knoll Owners, Inc v Park Knoll Associates*, 175 AD3d 1410 [2d Dept 2019] [since PKA had not yet performed its obligations as directing by the order confirming the arbitration award, PKO was not in violation of that order]). The Court finds that the allegations set forth in counsel's affirmation, as to what Weinberger has said indicating his anticipatory noncompliance with the exchange of lien documents, constitutes nothing more than inadmissible hearsay and lacks probative value to demonstrate an anticipatory breach of the Initial Award (Doc. 38 ¶ 14). Consequently, the Court hereby denies any request for relief by way of enforcement of the Initial Award as against Weinberger as premature.

Weinberger's Cross-Motion for Sanctions

Turning now to Weinberger's cross-motion for sanctions pursuant to the Rules of the Chief Administrator of the Courts (22 NYCRR) § 130–1.1, a court may impose discretionary costs or sanctions against a party who engages in "frivolous conduct" (Rules of Chief Admin of Cts [22 NYCRR] §§ 130–1.1[a], [b]). Conduct will be deemed frivolous if "(1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or (3) it asserts material factual statements that are false" (Rules of Chief Admin of Cts [22 NYCRR] § 130–1.1[c]). In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues, (1) the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct; and (2) whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party (*Id.* at § 130-1.1[c][3]).

The Court finds that Weinberger has demonstrated that Goldstein's conduct in these proceedings has been frivolous, warranting the imposition of sanctions upon him. Specifically, the Court finds that this latest motion to compel – after the first motion to compel was denied (Doc. 35) – was "undertaken primarily to delay or prolong the resolution of the litigation" between the parties. It is undisputed that Goldstein owes an outstanding sum of money to Weinberger under the Initial Award that remains unpaid. According to the Arbitrator's December 2023 award, the payments due thereunder were to be made to Weinberger no later than March 2024. What transpired between March 2024 through present – March 2025 – is motion practice brought about by Goldstein and a related special proceeding commenced by Weinberger in response to Goldstein's unilateral reengagement of the Arbitrator shortly after the award was confirmed (*Panagoulopoulos v Carlos Ortiz Jr MD, PC*, 194 AD3d 728 [2d Dept 2021] [after successive motions were denied, plaintiff was sanctioned for filing a further motion for the same relief sought]; *Scialdone v Stepping Stones Associates, LP*, 148 AD3d 955, 957 [2d Dept 2017] [finding the plaintiff's motion was one in a series that were completely lacking in merit and were designed to harass and delay]). In bringing this motion to compel, Goldstein admits that he owes monies to Weinberger, but relies upon bald hearsay assertions of Weinberger's potential noncompliance as the basis to compel further arbitration proceedings. Bluntly, the Court finds that Goldstein failed to demonstrate a factual or legal basis to bring this motion to compel where there has not been an iota of admissible evidence to support that Weinberger is somehow noncompliant with the Initial Award. Weinberger's counsel cautioned Goldstein's counsel that another motion to compel would invite Weinberger's instant cross-motion for sanctions (Doc. 51, p. 14). Despite this caution, Goldstein moved to compel Weinberger to further arbitration proceedings for, as the Court sees it, no other reason sounding in fact or law, but to delay and prolong his payment of the outstanding balance sum to Weinberger.

Accordingly, based on the foregoing, it is

ORDERED, that Petitioner's motion to compel the Respondent to submit to the Arbitrator for further proceedings is denied in its entirety; and it is further

ORDERED, that Respondent's cross-motion for sanctions against Petitioner is granted in part, to the extent that within fourteen (14) days of the date of this Order, Respondent's counsel shall submit an affirmation of legal fees, costs, and disbursements to the Court solely as to those fees and costs incurred relating to the instant motion practice (Mot. Seq. Nos. 003 and 004) and a proposed Order for the Court's review and further determination on submission only.

The Clerk of the Court is respectfully directed to terminate Motion Sequence No. 003 (*DENIED*) and Motion Sequence No. 004 (*GRANTED IN PART*).

This constitutes the Decision and Order of this Court.

Dated: New City, New York
March 14, 2025

HON. LARRY J. SCHWARTZ, J.S.C.