Nyppex, LLC v Orr
2025 NY Slip Op 35444(U)
January 9, 2025
Supreme Court, Nassau County
Docket Number: Index No. 613222/2023
Judge: Francis Ricigliano
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU - IAS PART 23

Present: HON. FRANCIS RICIGLIANO
Justice of the Supreme Court

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NYPPEX, LLC, LAURENCE GEOFFREY ALLEN,
and MICHAEL JOSEPH SCHUNK,

Petitioners,

-against-

MICHAEL ORR,

Respondent.

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DECISION AND ORDER

INDEX NO.: 613222/2023

Motion Seq. No. 1, 2

The following e-filed documents were reviewed in the consideration of this motion:

Notice of Petition, Affirmations, Exhibits, etc. .... 6 - 12, 14 - 15;

Notice of Cross-Petition, Affirmations, Exhibits, etc. .... 1 - 5, 16 - 17.

By Notice of Petition pursuant to CPLR 7510 and 7514, *i.e.*, Motion Seq. No. 1, respondent Michael Orr seeks an order confirming a Final Arbitration Award rendered by Financial Industry Regulatory Authority ("FINRA") Dispute Resolution Services on May 18, 2023, and permitting entry of a judgment based upon the same. By Notice of Cross-Petition, *i.e.*, Motion Seq. No. 2, petitioners Nyppex, LLC, Laurence Geoffrey Allen, and Michael Joseph Schunk, seek an order vacating the same award.

The arbitration at issue resolved claims by the respondent against the petitioners based upon their failure to pay his final two months of salary from December 16, 2016 to February 15, 2017. Respondent was employed at Nyppex, and submitted a letter of resignation on December 30, 2016, wherein he specified that his last date of employment would be February 15, 2017. The petitioners accepted the letter, and as per the findings of the Arbitrator, they thereafter failed to pay Orr for his final two months of work. Respondent thereafter commenced the arbitration proceeding based on the fact FINRA has jurisdiction over the dispute pursuant to FINRA's Code of Arbitration because the dispute was between a FINRA member broker-dealer and a person who was associated with the member broker-dealer as a former broker. Respondent's claims at arbitration sounded in failure to treat him in a lawful or equitable manner, failure to uphold New York State labor laws, failure to follow and uphold FINRA rules of conduct, and breach of contract. The petitioners opposed respondent's claims, and in turn asserted various affirmative defenses and counterclaims, including counterclaims for malicious prosecution and abuse of process. On May 18, 2023, the arbitrator issued an award that granted respondent $20,000.00 in compensatory damages plus interest at the rate of 9% per annum between December 16, 2016, and May 15, 2023, and $600.00 to reimburse the respondent for the arbitration filing fee, and otherwise denied respondent's request for punitive damages and attorneys' fees and the counterclaims.

CPLR 7510 provides that a court shall confirm an arbitration award upon an application of a party made within one year of its delivery to them, unless the award is vacated or modified upon a ground specified in section CPLR 7511. In turn, CPLR 7511 provides that an arbitration award may be vacated for the following reasons:

> (b) Grounds for vacating.
>
> 1. The award shall be vacated on the application of a party who either participated in the arbitration or was served with a notice of intention to arbitrate if the court finds that the rights of that party 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.

In addition to the four grounds provided for by CPLR 7511 (b), an arbitration award may also be vacated under federal law if it exhibits a "manifest disregard of law." *Wien & Malkin, LLP v. Helmsley-Spear, Inc.*, 6 NY3d 471 (2006).

In support of their position that the arbitration award herein should be vacated, the petitioners argue the arbitrator in this instance was partial and exceeded his powers, and that the arbitrator manifestly disregarded the law. More specifically, petitioners argue the same is evidenced by the fact the arbitrator did not render the award solely on the pleadings and materials submitted at the arbitration, but also based on legal cases and legal arguments that were not raised in the pleadings or other materials submitted by the parties, and that were not addressed by the parties, and that the same was in contravention of FINRA Rule 13800, which provides that the arbitrator was required to render his award solely "based on the pleadings and other materials submitted by the parties." Petitioners also argue the arbitrator was not allowed to perform his own legal research or advocate for the pro se respondent, and that the arbitrator did both. In addition, petitioners argue the respondent previously arbitrated claims for unpaid compensation and never raised the alleged unpaid compensation that is the subject of the present case at the prior arbitration, and that the arbitrator in this case should have found respondent's claims at arbitration were barred by *res judicata*.

In opposition, respondent argues petitioners have failed to demonstrate the arbitration should be vacated and that the arbitration award should thus be confirmed. Among other things, respondent argues petitioners obfuscate FINRA Rule 13800, as it does not require an arbitrator to render an award based solely upon the pleadings and other submissions by the parties, but that the rule simply provides that, absent a request for a hearing, the arguments and facts presented will be limited to the pleadings and exhibits. They also argue there is nothing in the rule or otherwise that precludes an arbitrator from conducting legal research. In addition, respondent argues a party seeking to vacate an arbitration award on the grounds the arbitrator was not impartial bears a heavy burden and must demonstrate the same by clearing and convincing evidence, and that there is no evidence that the arbitrator in this case that the arbitrator failed to act impartially. Finally, respondent also argues petitioners have failed to demonstrate the arbitration award was in manifest disregard of the law.

Preliminarily, it is well settled that a petition to confirm an arbitration award should be granted absent grounds for vacatur (or modification) of the award. See e.g. *Bernstein Fam.*

Ltd. P'ship v. Sovereign Partners, L.P., 66 AD3d 1 (1st Dept 2009). This is so because a petition to vacate an arbitration award is not the same as an appeal of the award or an opportunity to relitigate the award, and an arbitrator's determination as to the law and facts should be deemed conclusive absent one of the grounds for vacatur set forth by statute. *Flotill Prod., Inc. v. Buitoni Foods Corp.*, 14 AD2d 328 (1st Dept 1961). Moreover, it should be noted that an arbitrator is not bound to abide by "principles of substantive law or rules or procedure which govern the traditional litigation process" absent a contrary provision in the arbitration agreement. *Sprinzen v. Nomberg*, 46 NY2d 623, 629 (1979). Thus, even errors of judgment as to the law or the facts will not warrant vacatur of an award absent a statutory ground for vacatur. *Flotill Prod., Inc.*, 14 AD2d 334. Instead, an arbitration award should be confirmed as long as there is a "barely colorable justification" for the award. *Roffler v. Spear, Leeds & Kellogg*, 13 AD3d 308, 309 (1st Dept 2004).

Applying these principles to the facts and contentions set forth above, the Court finds petitioners have failed to establish that arbitrator in this case was not impartial, that he exceeded his powers, or that he demonstrated a manifest disregard for the law, and that the award should thus be confirmed. More specifically, the Court is not convinced the arbitrator in this case was precluded from performing his own legal research by FINRA Rule 13800 or anything else. In addition, there is no evidence to support petitioners' contention that arbitrator in this case failed to act impartially, let alone clear and convincing evidence that the arbitrator's impartiality prejudiced the petitioners' rights or impaired the integrity of the arbitration process. See *Matter of Barrella v. State of New York Office of Mental Health*, 175 AD3d 495 (2d Dept 2019). To the extent petitioners contend the arbitrator acted in manifest disregard for the law because he did not rule that respondent should have raised the alleged unpaid compensation in this case during prior arbitration, and that respondent's claim should have thus been barred by the doctrine of *res judicata*, the Court finds that not only does that contention fail to establish that the arbitrator acted in manifest disregard of the law (or that he exceeded his authority or imperfectly executed it) but that petitioners are incorrect in their assertion with regard to the doctrine, as the respondent's claim for the alleged unpaid compensation in this case was not litigated in any prior proceeding, and there doesn't seem to be any grounds – or any argument by petitioners – that the respondent was required to raise the current claim in any prior proceeding.

Accordingly, it is hereby:

ORDERED, that the Petition for an order confirming the final arbitration award of the Financial Industry Regulatory Authority ("FINRA") Dispute Resolution Services on May 18, 2023, *i.e.*, Motion Seq. No. 1, is GRANTED, and the arbitration award is hereby confirmed; and it is further

ORDERED, that the Cross-Petition for an order vacating the final arbitration award of the Financial Industry Regulatory Authority ("FINRA") Dispute Resolution Services on May 18, 2023, *i.e.*, Motion Seq. No. 1, is DENIED.

The foregoing constitutes the Decision and Order of this Court. Any relief not specifically addressed herein is denied.

Dated: January 9, 2025

ENTER:

HON. FRANCIS RICIGLIANO, J.S.C.

ENTERED
Jan 17 2025
NASSAU COUNTY
COUNTY CLERK'S OFFICE