

Oxford Capital Third Ave. LLC v 554-556 Mgr., LLC

2026 NY Slip Op 31492(U)

April 9, 2026

Supreme Court, New York County

Docket Number: Index No. 650244/2026

Judge: Anar R. Patel

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 45

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OXFORD CAPITAL THIRD AVENUE LLC,
INDIVIDUALLY AND DERIVATIVELY ON
BEHALF OF 554-556 THIRD AVENUE LLC,

Petitioner,

- v -

554-556 MANAGER, LLC, MITCHEL A.
MAIDMAN, 554 PREFERRED LLC, 554 OWNER
LLC, 554 EUO LLC, 554 EUO MEMBER LLC, 554
EUO MANAGER CORP., 554 R&D LLC, 554 FWR
LLC, 556 CONDO HOLDING CORP., 556 PHG
LLC, R&D MAIDMAN FAMILY L.P., BRONX
VIII, LLC, 554-556 THIRD AVENUE LLC

Respondents.

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HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1–22 were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

This is a special proceeding, pursuant to CPLR Article 75, commenced by Petitioner Oxford Capital Third Avenue LLC (“Petitioner”) by filing its petition for confirmation of arbitration award on January 13, 2026. NYSCEF Doc. No. 1. Petitioner moves for an order confirming the December 23, 2025 final arbitration award (“Award”) signed by Arbitrator, Hon. Stephen G. Crane (Ret.) (the “Arbitrator”) and directing judgment thereto. NYSCEF Doc. No. 3. Respondents 554-556 Manager, LLC (“Manager”), Mitchel A. Maidman (“Mitchel”), 554 Preferred LLC, 554 Owner LLC, 554 EUO LLC, 554 EUO Member LLC, 554 EUO Manager Corp., 554 R&D LLC, 554 FWR LLC, 556 Condo Holding Corp., 556 PHG LLC, R&D Maidman Family L.P., Bronx VIII, LLC, and 554-556 Third Avenue LLC (“Company”) (collectively, “Respondents”) oppose confirmation and cross-move to vacate the Award, or, in the alternative, remand for clarification of total damages. NYSCEF Doc. No. 8. For the reasons as set forth below, Petitioner’s Motion to Confirm the Award is granted and Respondents’ Cross-Motion to Vacate/Modify the Award is denied.

INDEX NO. 650244/2026

MOTION DATE 01/13/2026

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

Relevant Factual and Procedural Background

The Court incorporates, by reference, the factual and procedural summaries as set forth in the Award. NYSCEF Doc. No. 3 at 2–21.

On December 27, 2024, Petitioner moved to preclude Respondents from introducing testimony that conflicted with information recorded in the Company’s federal tax returns as of December 31, 2009. NYSCEF Doc. No. 14 at 6–7 (Pl.’s Mem. of L.). On January 13, 2025, the Arbitrator granted Petitioner’s motion, and, on that basis, struck and otherwise excluded certain testimony of Fariza Ebtacagfer (“Ebtacagfer”)—an accountant who prepared the financial documents and tax returns for the Company—which conflicted with sworn declarations on such tax returns. NYSCEF Doc. No. 11 (“Order No. 5”).

On December 23, 2025, the Arbitrator issued the Award which granted damages on four claims brought to arbitration:

1. Breach of Fiduciary Duty (Count I) in the amount of (i) \$2,791,773.38 plus 9% interest per annum from August 19, 2010 until fully paid, and (ii) \$802,744.12 plus 9% interest per annum from March 31, 2017 until fully paid, each against Respondent Manager in favor of Petitioner;
2. Breach of Fiduciary Duty (Count II) in the amount of (i) \$7,444,729.00 plus 9% interest per annum from August 19, 2010 until fully paid, and (ii) \$2,140,651.00 plus 9% interest per annum from March 31, 2017 until fully paid, each against Respondent Manager and Mitchel in favor of Company;
3. Aiding and Abetting Breach of Fiduciary Duty (Count III) in the amount of \$7,444,729.00 plus 9% interest per annum from August 19, 2010 until fully paid, against Respondent 556 Condo Holding Corp. in favor of Company; and
4. Breach of Contract (Count V) in the amount of \$802,744.12 plus 9% interest per annum from March 31, 2017 until fully paid, against Respondent Manager in favor of Petitioner.

NYSCEF Doc. No. 3 at 103–04.¹

On January 13, 2026, Respondents subsequently filed a letter to the Arbitrator requesting permission pursuant to CPLR § 7509 to reconsider and modify the Award based on the grounds set forth CPLR §§ 7511(c)(1) and (3). NYSCEF Doc. No. 20 at 1. In particular, Respondents contended that certain of the monetary awards are duplicative, creating a risk of double recovery. *Id.* at 3. The Arbitrator denied the proposed motion on February 6, 2026. NYSCEF Doc. No. 21. Respondents now request that this Court reconsider and modify the Award on similar grounds.

¹ While Respondents contend certain monetary awards (as referenced herein) are duplicative (NYSCEF Doc. No. 20 at 2), Petitioner agrees that if Manager and Mitchel pay Company the \$7,444,729 as required by the Final Arbitration Award, there is no need for 556 Condo Holding Corp. to pay the same amount to Company. NYSCEF Doc. No. 22 at 2–3.

Legal Analysis

Petitioner requests that this Court confirm the Award and enter the above referenced judgments. “The 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 ground specified in section [7511].” CPLR § 7510. “The scope of judicial review of an arbitration proceeding is extremely limited.” *Elul Diamonds Co. v. Z Kor Diamonds, Inc.*, 50 A.D.3d 293, 293 (1st Dept. 2008). “An arbitration award must be upheld when the arbitrator offer[s] even a barely colorable justification for the outcome reached and will be vacated only where it is totally irrational or exceeds a specifically enumerated limitation on the arbitrator’s power.” *Id.* (internal citations omitted). Upon review of Petitioner’s submissions, including the Award, and Respondents’ objections, this Court finds Petitioner has established that there is at least a colorable justification for the Award. *See id.* Accordingly, for the reasons discussed herein, this Court confirms the Award.

Respondent’s Cross-Motion to Vacate the Award

Respondents cross-move to vacate the Award on the basis that their rights were prejudiced by “corruption, fraud or misconduct in procuring the award.” CPLR § 7511(b)(1)(i). The moving party seeking to vacate an award on these grounds “bears a heavy burden, and must establish a ground for vacatur by clear and convincing evidence.” *Tantillo v. Nesenger*, 241 A.D.3d 1477, 1478 (2d Dept. 2025); *see also Kaminsky v. Segura*, 26 A.D.3d 188, 189 (1st Dept. 2006). Here, Respondents fail to meet this high standard.

Respondents principally argue that the Arbitrator improperly excluded Ebtehgfar’s testimony. NYSCEF Doc. No. 14 at 5. “A refusal by an arbitrator to hear pertinent material evidence may constitute misconduct under CPLR 7511(b)(1)(i).” *Allstate Ins. Co. v. GEICO*, 955 N.Y.S.2d 100, 102 (2d Dept. 2012) (citing *Professional Staff Congress/City Univ. of New York v. Bd. Of Higher Ed. of City of New York*, 39 N.Y.2d 319, 323 (1976)). However, this is a high burden as the moving party must show that the arbitrator’s decision deprived it of a fundamentally fair hearing. *See Kaminsky*, 26 A.D.3d at 189.

Here, Respondents have failed to demonstrate that the Arbitrator’s preclusion of Ebtehgfar’s testimony constituted misconduct by depriving them of a fundamentally fair hearing. “[A] party to litigation may not take a position contrary to a position taken in an income tax return.” *Mahoney-Buntzman v. Buntzman*, 12 N.Y.3d 415, 422 (2009) (internal citations omitted); *PH-105 Realty Corp. v. Elayaan*, 183 A.D.3d 492, 492–93 (1st Dept. 2020). While Respondents’ tax returns list the Exchange Accounts as an asset, Ebtengfar affirmed the funds in the Exchange Accounts were “used to reduce the cost basis of the building.” NYSCEF Doc. No. 12 at ¶ 37.

Respondents do not dispute that Ebtengfar’s testimony contradicts information provided in the tax returns filed with the IRS, but rather argue that the Arbitrator should have admitted the testimony because it is pertinent and material. NYSCEF Doc. No. 14 at 8–10. Respondents fail to provide an adequate explanation as to why the Arbitrator should not have credited the information in the tax returns, instead merely stating, “the 2006 tax return improperly reflects \$21,616,850 in “Exchanges” as an asset of the Company...that was used to reduce the cost basis of the Building.” NYSCEF Doc. No. 12 at 8 n.1. As the Arbitrator pointed out, this explanation

is highly distinguishable from case law providing for an exception to the tax estoppel doctrine. *See, e.g. Orellana v. 115 Enterprises Group LLC*, 231 A.D.3d 650, 651 (1st Dept. 2023) (finding tax estoppel doctrine did not prevent the court from considering evidence contrary to tax returns showing the plaintiff resided in Bronx County, not Queens County, because the plaintiff did not obtain a tax advantage by using the Queens address). In fact, Respondents fail to address the tax estoppel doctrine on the present motion, instead resorting to an argument that the Arbitrator was not bound by principles of substantive law or by rules of evidence. *Id.* at 14. The Court declines to find that the Arbitrator deprived Respondents of a fundamentally fair hearing because he relied on a well-established evidentiary principle in New York.

Moreover, Etehgafar offered conflicting sworn testimony at the arbitration. In her deposition, Etehgafar testified that the \$10.6 million transaction in the Exchange Accounts was not a 1031 exchange (NYSCEF Doc. No. 19 at 462:11–19), and later testified at the Hearing that it was a 1031 exchange. *Id.* at 460:18–24. Etehgafar offered no colorable explanation as to why her testimony changed stating, “I don’t remember, I just know it was a deferred gain.” *Id.* at 463:5–10. Accordingly, even if the Arbitrator admitted Etehgafar’s testimony, her credibility raises doubts with respect to the pertinence and materiality of said testimony. Therefore, Respondents have failed to meet their burden of showing that Etehgafar’s testimony would have changed the Arbitrator’s Award.

Respondents fail to meet their burden to show that the Arbitrator erred in precluding Etehgafar’s testimony under the tax estoppel doctrine. However, even if this Court disagreed with the Arbitrator’s exclusion of said testimony, such a finding would not mandate a vacatur of the award. An award cannot be “vacated for errors of law and fact committed by the arbitrator.” *Metro. Transp. Auth. v. Westfield Fulton Ctr. LLC*, 228 A.D.3d 435, 436–37 (1st Dept. 2024) (internal citations omitted). Notably, arbitrators are “not bound by the rules of evidence and may admit or deny” evidence as they see fit. *Bernstein v. On-Line Software Int’l, Inc.*, 232 A.D.2d 336, 338 (1st Dept. 1996). In fact, evidentiary rulings are firmly within the arbitrator’s discretion. *See Kaminsky*, 26 A.D.3d at 189. Therefore, this Court must defer to the discretion of the Arbitrator on factual and evidentiary matters.

Respondent’s Cross-Motion to Modify the Award

Respondents cross-move, in the alternative, to modify the Award on the grounds that it is ambiguous and includes repetitive or duplicative damages. Courts may modify an award if “the award is imperfect in a matter of form, not affecting the merits of the controversy.” CPLR § 7511(c)(3). New York courts have “recognized the authority of a court... to remand the matter... when the award is ambiguous and not sufficiently explicit... .” *Hamilton Partners Ltd. v. Singer*, 290 A.D.2d 316, 316 (1st Dept. 2002). Here, Petitioner readily concedes that Respondents are not required to pay the identical amounts to the same injured party. NYSCEF Doc. No. 22 at 6–7. Thus, any ambiguity as to duplicative damages is deemed as moot. Therefore, the Court finds that the Award is not ambiguous and does not include repetitive or duplicative damages. NYSCEF Doc. Nos. 20–21. Accordingly, Respondent’s cross-motion to modify is denied.

Because none of the grounds for vacating the Award, as enumerated in CPLR § 7511(c), are present in the record, and the Arbitrator provided at least a “colorable justification for the outcome reached,” this Court must grant Petitioner’s motion to confirm the Award and deny

Respondents' cross-motions to vacate and modify the Award. *Wein & Malkin*, LLP, 6 N.Y.3d at 479. Accordingly, the Award is confirmed pursuant to CPLR § 7510.

The Court has considered the parties' remaining contentions and finds them to be unavailing.

Accordingly, it is hereby

ORDERED that the Petition to confirm the Award dated December 23, 2025 is GRANTED and the award rendered in favor of Petitioners and against Respondent is confirmed; and it is further

ORDERED that Respondents' Cross-motion to vacate and modify or remand the Award is DENIED; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that the Clerk of the Court mark this case as disposed.

4/9/2026

DATE



ANAR R. PATEL, A.J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART OTHER
SUBMIT ORDER
FIDUCIARY APPOINTMENT REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: