Yonthan & Ethan LLC v Zahabian
2026 NY Slip Op 31795(U)
April 24, 2026
Supreme Court, New York County
Docket Number: Index No. 650760/2024
Judge: Nicholas W. Moyne
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41M

----------X

YONTHAN & ETHAN LLC

Petitioner,

- v -

DAVID ZAHABIAN,

Respondent.

INDEX NO. 650760/2024

MOTION DATE 07/30/2025

MOTION SEQ. NO. 002

DECISION + ORDER ON MOTION

----------X

HON. NICHOLAS W. MOYNE:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44

were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

Upon the foregoing documents, it is

Before the Court is a verified petition filed by Yonthan & Ethan LLC pursuant to CPLR § 7510, seeking to confirm a final and binding arbitration award dated June 4, 2025, issued by the Bais HaVaad Rabbinical Court of Lakewood, New Jersey (the "Bais Din"). The respondent, David Zahabian, opposes the petition and cross-moves pursuant to CPLR § 7511 to vacate or, in the alternative, modify the arbitration award. The petitioner further requests the imposition of sanctions against the respondent pursuant to CPLR 8303-a and 22 NYCRR 130-1.1 for frivolous conduct.

For the reasons set forth below, the petitioner's motion to confirm the arbitration award is granted, the respondent's cross-motion to vacate or modify is denied, and the petitioner's request for sanctions is denied.

This dispute arises from a commercial lease agreement entered into in 2009 for the premises located at 86 Orchard Street, New York, New York, between the petitioner, as landlord, and Compas Group New York LLC, as tenant. Following a dispute over alleged rent arrears, the parties reached a settlement in 2016, pursuant to which the tenant agreed to pay arrears in the amount of $450,000, which was to be paid in monthly supplemental installments. The respondent allegedly executed a personal guaranty. The tenant allegedly ceased making payments in 2019. On

February 13, 2024, the petitioner commenced a plenary action seeking to recover over $1 million in alleged rent arrears and to enforce the personal guaranty allegedly executed by the respondent.

On April 10, 2024, the respondent filed a sworn affirmation seeking to compel mediation pursuant to a dispute resolution clause in the sublease. In that affirmation, the respondent expressly stated that he signed and executed the guaranty annexed to the sublease. On May 30, 2024, the parties entered into a stipulation staying the litigation and allowing the parties to pursue mediation and ultimately arbitration before a rabbinical tribunal. The stipulation was so-ordered by the Honorable Louis J. Nock, the justice presiding over the plenary action.

The parties executed a formal arbitration agreement on August 19, 2024, and participated in hearings before a three-member panel of the Bais Din in August and October of 2024. During the arbitration, the respondent presented a defense that the personal guaranty was a forgery and argued that the remaining balance of the 2016 settlement should be canceled under a religious law doctrine known as *Shemitta*. On June 4, 2025, the Bais Din issued a written final arbitration award (NYSCEF Doc. No. 28). The arbitrators evaluated the forgery defense but found the evidence not conclusive and the claim of fraudulence to be "halachically tenuous" because the underlying lease expressly required a personal guaranty. The panel also evaluated the rent reduction claims, ultimately rejecting the *Shemitta* defense on the grounds that *Shemitta* applies to lending debt rather than compensation for rent, and because the debt was a corporate obligation. The Bais Din did, however, strike down the petitioner's claims for holdover premiums, late penalties, and interest, finding them violative of the religious laws of *ribbis* (prohibited interest). The Bais Din issued an award in favor of the petitioner in the amount of $1,035,638.34, holding the respondent personally liable on the guaranty.

The respondent now cross-moves to vacate the award, submitting a forensic expert report by Khody R. Detwiler (NYSCEF Doc. No. 40), which concludes to a reasonable degree of professional certainty that the signature on the guaranty is a "cut-and-paste" simulation created by copying a genuine signature from a 2009 lease rider. The respondent asserts that the Bais Din irrationally enforced a forged document, exceeded its authority by refusing to mandate the production of the original guaranty, and improperly ignored the contractual rent reductions from the 2016 settlement by conflating them with religious laws and/or doctrine.

This Court must confirm the final award unless the party seeking vacatur meets the high standard of establishing one of the grounds set forth under CPLR § 7511(b)(1) (*see Am. Intl. Specialty Lines Ins. Co. v Allied Capital Corp*., 35 NY3d 64, 70 [2020] [“CPLR article 75 codifies a limited role for the judiciary in

arbitration…an application to vacate an arbitration award may be granted in narrow circumstances"]). "Consistent with the public policy in favor of arbitration, the grounds for vacating an arbitrator's award as set forth in CPLR 7511(b) are few in number and are narrowly applied" (*Azrielant v Azrielant*, 301 AD2d 269, 275 [1st Dept 2002] [internal quotations omitted]). The party seeking to set aside an award on any of the grounds under CPLR § 7511 has a heavy burden to meet (*see Greenky v Aytes*, 138 AD3d 460 [1st Dept 2016], *citing Muriel Siebert & Co., Inc. v Ponmany*, 190 AD2d 544, 544 [1st Dept 1993]). Once a dispute is properly before an arbitrator, questions of law and fact merge into the award, and it is not within the judiciary's power to resolve them *(see North Syracuse Central School Dist. v. North Syracuse Educ. Assn*., 45 NY2d 195 [1978], *quoting Binghamton Civil Service Forum v City of Binghamton*, 44 NY2d 23 [1978]).

An arbitrator's award will not be vacated unless it is violative of a strong public policy, is totally irrational, or exceeds a specifically enumerated limitation on his power (*see Matter of Silverman [Benmor Coats*], 61 NY2d 299, 308 [1984]). Courts may not reweigh evidence, second-guess the credibility determinations of the arbitrators, or substitute their own judgment for that of the arbitral panel, even if the arbitrator makes errors of law or fact (*see Wien & Malkin LLP v. Helmsley-Spear, Inc.*, 6 NY3d 471 [2006]; *Matter of Falzone*, 15 NY3d 530 [2010]).

The threshold issue before this Court is whether the respondent is judicially estopped from asserting that the personal guaranty allegedly signed by the respondent is a forgery. The doctrine of judicial estoppel precludes a party who assumed a certain position in a prior legal proceeding and who secured a judgment in his or her favor from assuming a contrary position in another action simply because his or her interests have changed (*see MPEG LA, LLC v. Samsung Elecs. Co., Ltd*., 166 AD3d 13, 21[1st Dept. 2018], *lv denied* 32 N.Y.3d 912 [2018], *quoting Wells Fargo Bank N.A. v. Webster Bus. Credit Corp*., 113 AD3d 513, 516 [1st Dept. 2014], *lv denied* 23 NY3d 902 [2014]). The primary purpose of the doctrine is to protect the integrity of the judicial process and prevent litigants from playing fast and loose with the courts (*see Bihn v Connelly*, 162 AD3d 626, 628 [2d Dept 2018]).

The petitioner correctly points out that in an April 10, 2024 affirmation (NYSCEF Doc. No. 15) filed in this very action, the respondent swore under oath that he executed the guaranty. The respondent seemingly concedes this but then argues that judicial estoppel does not apply because purportedly inconsistent affidavits do not judicially estopp a litigant but rather are merely additional information to be weighed by the trier of fact. The respondent relies on *Baje*

Realty Corp. v Cutler, 32 AD3d 307 [1st Dept 2006] That case held that purportedly inconsistent affidavits are merely evidence to be weighed by a trier of fact and the doctrine of judicial estoppel does not apply unless a formal grant of relief was secured based specifically on the prior inconsistent statement. (*see Baje*, 32 AD3d at 310; *see also Carr v Caputo*, 114 AD3d 62, 71 [1st Dept 2013] [doctrine inapplicable where party did not "secure" favorable judgment on issues raised in a summary judgment motion]; *Van Kipnis v Van Kipnis*, 8 AD3d 94 [1st Dept 2004] [doctrine inapplicable where party never prevailed in any judicial proceeding based on positions incompatible with a new defense]).

Respondent misconstrues the scope of the doctrine of judicial estoppel and his reliance on *Baje* is therefore unavailing. The First Department has held that the absence of a formal judgment does not preclude the application of judicial estoppel (*see Fein v Langer*, 233 AD3d 79, 90 [1st Dept 2024]; *D & L Holdings v RCG Goldman Co., LLC*, 287 AD2d 65, 71-72 [1st Dept 2001] ["This policy (to prevent abuses of the judicial system by which a party obtains a relief by maintaining one position, and later, in a different action, a contrary position) would not be served by limiting its application to cases where the legal position at issue was ruled upon in the context of a judgment"]). The question is did the respondent utilize the prior admission to prevail on a claim or derive a benefit in the prior proceeding (*see Fein*, 233 AD3d at 90)? The answer is clearly yes. This admission allowed the respondent to invoke the dispute resolution clause, successfully procuring a stay of the litigation and compelling the matter into arbitration via the May 30, 2024 So-Ordered Stipulation (NYSCEF Doc. No. 22) The respondent vigorously adopted the position that he executed the relevant agreements with the clear intent of securing a specific procedural benefit of a court-ordered stay and mandatory arbitration. Having achieved that precise relief from this Court, he cannot now adopt the diametrically opposite position, that the instrument he previously relied upon is a total fabrication, simply because the arbitral forum he demanded returned an unfavorable result, Accordingly, the respondent is judicially estopped from raising the forgery defense to vacate the award.

Furthermore, even if judicial estoppel did not apply, the respondent's motion to vacate the award based on the Detwiler Report (NYSCEF Doc. No. 40) should not be granted. The respondent fully participated in the arbitration and presented this exact forgery defense, and the accompanying claims regarding the lack of original documents, directly to the Bais Din. The Bais Din explicitly considered the respondent's defense that he had no record of such a document and no recollection of signing one but ultimately concluded that the evidence supporting the forgery claim was not conclusive. (NYSCEF Doc. No. 28, pg. 3). The arbitrators reasoned that the claim of fraudulence was "halachically tenuous"

because the underlying lease expressly stipulated that a personal guaranty was a material condition of the agreement. The respondent's cross-motion essentially asks this Court to review the Detwiler Report de novo and substitute the Court's judgment for the evidentiary determinations made by the Bais Din. Under the strict constraints of CPLR § 7511, this Court is expressly prohibited from reweighing the evidence or disturbing the Bais Din's findings regarding the validity of the Guaranty and the credibility of the forgery allegations (*see Falzone*, 15 NY3d at 534).

The respondent further argues that the Bais Din exceeded its authority by ignoring the independent, contractual rent reductions agreed upon in the 2016 settlement, alleging that the arbitrators improperly conflated these contractual defenses with the religious law of *Shemitta*. A review of the Final Arbitration Award (NYSCEF Doc. No. 28) belies this assertion. The Bais Din directly acknowledged the 2016 settlement for $450,000, noted the respondent's payments toward the settlement up to early 2019, and expressly analyzed the outstanding balance. The panel issued a reasoned determination that the outstanding rent should not be deducted on account of *Shemitta* because the debt was primarily owed by a corporate entity rather than constituting a personal loan. Furthermore, the Bais Din actively modified the damages calculation by eliminating the petitioner's claims for holdover rent, late penalties, and interest because they violated the religious laws of *ribbis*.

Because the Bais Din addressed the damages, considered the 2016 settlement, and issued a final and definite award upon the subject matter submitted, there is no basis under CPLR §7511(b)(1)(iii) to vacate or modify the award based on how the arbitrators interpreted the facts or applied the relevant laws to the damages calculation.

Finally, the petitioner requests the imposition of sanctions against the respondent under CPLR 8303-a and 22 NYCRR 130-1.1, arguing that the cross-motion is frivolous and interposed solely for delay. While respondent is judicially estopped from denying the guaranty, his cross-motion was supported by a detailed, 22-page forensic expert report by a professional document examiner, which unequivocally concluded to a reasonable degree of professional certainty that the signature in question was a "cut-and-paste" simulation. Given the presentation of formal expert analysis challenging the authenticity of the underlying document imposing over $1 million in personal liability, the Court finds that the cross-motion was not completely without merit in law or fact, nor was it undertaken primarily to harass or maliciously injure another. Therefore, Petitioner's request for sanctions is denied.

III. CONCLUSION

Accordingly, it is hereby

ORDERED that Petitioner Yonthan & Ethan LLC's Petition to confirm the June 4, 2025 arbitration award is GRANTED; and it is further

ORDERED that Respondent David Zahabian's Cross-Motion to vacate or modify the arbitration award is DENIED in its entirety; and it is further

ORDERED that Petitioner's request for sanctions pursuant to 22 NYCRR 130-1.1 and CPLR 8303-a is DENIED; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of Petitioner Yonthan & Ethan LLC and against Respondent David Zahabian in the principal amount of $1,035,638.34, together with post-judgment interest at the statutory rate from June 4, 2025, until the date of entry of judgment, as calculated by the Clerk, along with costs and disbursements as taxed by the Clerk upon the submission of an appropriate bill of costs.

This constitutes the Decision and Order of the Court.

4/24/2026
DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE