

Scarola v Malone

2022 NY Slip Op 34340(U)

December 20, 2022

Supreme Court, New York County

Docket Number: Index No. 652186/2017

Judge: Margaret Chan

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's SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 49M

RICHARD SCAROLA

Petitioner,

- v -

DANIEL MALONE,

Respondent.

INDEX NO. 652186/2017

MOTION DATE 08/09/2022

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

HON. MARGARET CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 54, 55

were read on this motion to/for

JUDGMENT - MONEY

Petitioner moves for the entry of judgment confirming an arbitrator's award and incorporating certain interim awards pursuant to CPLR 7514(a). Respondent opposes the motion.

This special proceeding arises out of an arbitrated dispute between the parties, who were former law partners, and had agreed to mediate and arbitrate any dispute arising out of their partnership agreement under the auspices of the American Arbitration Association (AAA) (NYSCEF # 2 at 15-18). The arbitration before AAA began in March 2014 and ended with May 2017 with the issuance of a final award. The parties selected Michael J. Oberman, Esq. (Arbitrator) as the mediator/arbitrator, and he served in this the role until the final award was issued. The Arbitrator issued five separate written interim and final determinations, culminating in a final award dated May 8, 2017, and including and incorporating by reference the determinations in the Interim Award, dated April 28, 2015, the Second Interim Award, dated July 13, 2016, the Third Interim Award, dated October 26, 2016, and the Partial Final Award, dated February 6, 2017 (together, the Award) (NYSCEF #'s 2-6, 13).

Petitioner moved to confirm the Award, and by Decision and Order issued on August 16, 2017, Hon. Eileen Bransten granted petitioner's motion and confirmed the Award in accordance with her decision on the record, writing:

“ORDERED the petition to confirm the arbitration award (Seq. 001) is GRANTED as stated on the July 6, 2017 record and transcript ... at 21:17-22.”

(NYSCEF # 18 at 1).

The cited portion of the transcript reads:

“The Arbitration Award is hereby confirmed. [Respondent’s] argument against it is denied. However, everything in [petitioner’s] reply affidavit, any of [petitioner’s] conclusions, any of [his] statements, any of [his] figures, they are not part of my decision today. I confirm only the Arbitrator’s award, all right?”

(*id.*, at 7).

Notably, Justice Bransten stated that she would not include as part of her Decision and Order confirming the Award, petitioner’s request in his reply affidavit for an order and judgment based on specified monetary amounts and for post-judgment interest (NYSCEF #15, 16-Petitioner’s Reply Aff. and Exhibit). Petitioner served Justice Bransten’s Decision and Order with notice of entry on August 29, 2017 (NYSCEF # 19).

The parties did not appeal Justice Bransten’s Decision and Order, and the Award was complied with until the fall of 2021 when respondent stopped making payments under the Second Interim Award for his share of monthly financial expenses for the leased space used by the parties’ law practice and rented to third-parties under a lease agreement (hereinafter, Lease) (NYSCEF #34-Second Interim Award, at 83, ¶¶ 9, 10). With respect to these expenses, which consisted of payments for rent shortfalls and the cost of operating the leased space for the balance of the term of the Lease which ended in August 2022, the Arbitrator set a 70/30 allocation, with petitioner paying 70% and respondent paying 30% of these expenses (NYSCEF # 4-Second Interim Award at 20-21).

This dispute arises out of respondent’s position that he should not be required to pay his 30% share because of the significant reduction in petitioner’s rent obligations under the Lease beginning in April 2020. After respondent learned of the reduction, he did not pay his 30% share which petitioner asserts is equal to (i) \$12,241.84 for the months of November and December 2021; and (ii) \$12,447.92 from January-August 2022 (NYSCEF # 32-Pet MOL at 3).

On December 1, 2022, in an effort to enforce respondent’s asserted payment obligations, petitioner efiled a proposed judgment to be so-ordered by the court confirming the Award (NYSCEF #21). Respondent efiled a letter objecting to the

proposed judgment (NYSCEF # 22), which was followed by a letter response by petitioner (NYSCEF # 23) and respondent's further letter response (NYSCEF # 24). Thereafter, petitioner moved, by order to show cause, for the entry of judgment confirming the Award (NYSCEF # 25). The court declined to sign the proposed order show cause without prejudice to renewal by notice of motion (NYSCEF # 30).

Petitioner now moves by notice of motion for the court to enter his proposed judgment confirming the Award, arguing that based on Justice Bransten's Decision and Order, entry of judgment on the Award is required (citing CPLR 7514 [a]). Additionally, petitioner argues that contrary to respondent's position, the Second Interim Award directs respondent to pay a fixed as opposed to a variable amount for rent shortfalls and other expenses related to the leased spaced (citing NYSCEF #4, at 29-30; NYSCEF # 33-Pet Aff., ¶¶ 20-27). In any event, petitioner argues that respondent's sole remedy to alter its financial obligations under the Second Interim Award is to invoke the dispute resolution procedures provided by the Award "upon good cause shown based on materially changed circumstances" (*id.* at 30-31; NYSCEF # 33, ¶¶ 30-31).¹

Respondent opposes the motion, noting that although Justice Bransten confirmed the Award, she did not direct the entry of a money judgment. Moreover, respondent maintains that his obligations to pay expenses under the Second Interim Award should be reduced since petitioner is no longer paying 70% of the expenses under the Lease but rather only 25% (NYSCEF #36-Resp. Aff., ¶¶ 29-33). In support, respondent cites to language in the Award that respondent's payment of 30% of the expenses was conditioned on petitioner's payment of his 70% share of such expenses (*id.*, ¶ 10, citing NYSCEF #4-Second Interim Order at 21 "[t]o be clear, [respondent's] 30% payment obligation is conditioned on [petitioner] paying his allocated 70% share of these expenses"). In addition, respondent contends that through October 2021, before he learned of the rent reduction as of April 2020, he paid petitioner his allocated 30% share of expenses even though petitioner was not paying his 70% share.

In reply, petitioner argues, *inter alia*, that the parties' dispute as to the interpretation of the Second Interim Award is irrelevant to whether a judgment should be entered confirming the Award. Additionally, petitioner asserts that respondent's opposition ignores the reality of that the rent abatement occurred during the pandemic.

¹ Petitioner notes that the Arbitrator found that "because any effort to revisit any issue in the Second Interim Award would unduly create costs and burdens that should lead, at the very least, if good cause for a new determination is not shown, to an award of costs and attorneys' fees in favor of the prevailing party" (NYSCEF # 4 at 31).

CPLR 7514(a) provides that “[a] judgment shall be entered upon confirmation of an award.” In this case, a timely motion to confirm the Award was made and granted by Decision and Order of Justice Bransten. As the Award has been confirmed, petitioner’s motion for entry of judgment confirming it must be granted (CPLR 7514[a]; *ZMK Rhodes Mgt. Co. v Bokhari*, 267 AD2d 391, 392 [1st Dept 1999][“the Supreme Court improvidently exercised its discretion in refusing to entertain submission of a proposed judgment [confirming arbitration award] for signature...”]; *Rhodes Mgt. Co. v Sweeney*, 81 AD2d 547, 548 [1st Dept 1981][court erred in refusing to entered judgment confirming award which was confirmed about a year and a half earlier but for which a proposed judgment was not submitted for signature]).

In reaching this conclusion, the court notes that the proposed judgment confirming the award does not specify monetary amounts, and by entering a judgment, the court does not reach whether respondent is required to pay his 30 % share for the period at issue. In fact, prior to entry of judgment it would be premature for the court to render a determination as to the intent and meaning of the Award (*see Matter of Pine St. Assoc., L.P. v Southridge Partners, L.P.*, 107 AD3d 95, 100 [1st Dept 2013][“w]here a dispute exists as to the meaning of an arbitration award that has been confirmed *in a judgment*, it becomes the Court's function to determine and declare the meaning and intent of the arbitrator[]” [internal citation and quotation omitted][emphasis supplied]).


In view of the above, it is

ORDERED, ADJUDGED and DECREED, that Judgment is entered confirming the Award (including the interim arbitration awards incorporated therein by reference); and it is further

ORDERED that the entry of judgment is without prejudice to the parties seeking further relief from the court, including regarding the meaning and application of the Award; and it is further

ORDERED that the parties shall meet and confer and contact the court in the event they agree to court mediation which mediation shall be without prejudice to any further relief related to the Award.

12/20/2022
DATE


MARGARET CHAN, J.S.C.

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

GRANTED DENIED GRANTED IN PART OTHER

APPLICATION: SETTLE ORDER SUBMIT ORDER