SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: ALICE SCHLESINGER PART ~~IA~~ PART 16
Justice

Index Number : 155030/2012
REUVEN ENTERPRISES
vs.
SYNERGY INVESTMENT GROUP, LLC
SEQUENCE NUMBER : 001
VACATE OR MODIFY AWARD

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____
Answering Affidavits — Exhibits _____ No(s). _____
Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that this ~~motion is~~ Article 75 petition and cross-petition are determined in accordance with the accompanying memorandum decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

MAR 27 2013
Dated: _____

Alice Schlesinger, J.S.C.
ALICE SCHLESINGER

1. CHECK ONE: ..... ☒ CASE DISPOSED ☐ NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: .....MOTION IS: ☐ GRANTED ☐ DENIED ☒ GRANTED IN PART ☐ OTHER
3. CHECK IF APPROPRIATE: ..... ☒ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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REUVEN ENTERPRISES SECURITIES DIVISION, LLC.,

Petitioner,

Index No. 155030/12
Mot Seq. No. 001

-against-

SYNERGY INVESTMENT GROUP, LLC, GAURAV LALL, TAMIR SHABAT and DANNY Z. SPIEGEL,

Respondents.

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SCHLESINGER, J.:

Petitioner Reuven Enterprises Securities Division, LLC., commenced this proceeding pursuant to CPLR Article 75 to vacate in part the May 21, 2012 Award issued by an Arbitration Panel on behalf of the Financial Industry Regulatory Authority (FINRA). (Petition, Exh F). Specifically, petitioner seeks to vacate that part of the Award which directs the payment to the respondents of $100,000.00 for punitive damages and $50,000.00 for attorney's fees, alleging that the punitive damages are grossly excessive and irrational and that the Panel exceeded its authority when awarding attorney's fees. Respondents have filed a cross-petition seeking to confirm the Award in its entirety, alleging that the Award was proper in all respects and accusing petitioner of bad faith.

Background Facts

Petitioner Reuven Enterprises Securities Division, LLC. (Reuven Enterprises) is an investment management firm founded by Yaron "Ron" Reuven in 2006 and registered with the Securities & Exchange Commission. Before that time, respondents Gaurav Lall and Tamir Shabat had been working with Mr. Reuven as independent contractors at another firm. In 2006, they joined Reuven Enterprises, and respondent Danny Z. Spiegel joined as well, each intending to work as a FINRA-licensed securities broker.

On varying dates in 2006, each broker executed an Independent Contractor Agreement that governed the terms of their affiliation with Reuven Enterprises for a period of five years. (Petition, Exhs A, B and C). Each Agreement entitled the broker to utilize the facilities, resources and services of Reuven Enterprises for a certain fee, and the company would pay commissions to each broker for new client accounts registered with the firm. The company was also obligated to reimburse the brokers for any fees incurred to maintain their status as "registered representatives." Each Agreement further provided that Reuven Enterprises had the right to withhold any monies allegedly owed to the broker should the firm have reason to believe that the broker had "engaged in deceptive practices, acted fraudulently or committed any ethical or legal violation" (¶13). Additionally, each Agreement contained a broad arbitration provision, a non-solicitation clause, and a confidentiality provision.

The parties proceeded uneventfully pursuant to the terms of their Agreements for about three years, with business and commissions increasing during that time. Then, in 2009, Reuven presented the brokers with revised agreements proposing a new commission structure. The parties were unable to agree upon terms and no new agreements were signed, but the brokers continued to work pursuant to their existing Agreements and the fees necessary to maintain their licenses for the upcoming year 2010 were paid. However, unbeknownst to Reuven, the brokers were simultaneously pursuing employment opportunities with Synergy Investment Group, LLC (Synergy), another respondent in this proceeding, and on or about December 9, 2009, each broker resigned from Reuven Enterprises.

Upon their resignation, the brokers registered with Synergy and formed "SLS Wealth Management, LLC" and began soliciting and servicing clients, many of whom

had been clients of Reuven Enterprises. Reuven contends that the brokers gave misinformation to clients, suggesting that Reuven was going out of business, which caused about 200 clients to move from Reuven Enterprises to Synergy, at a loss to Reuven of about 70% of its revenue.

After the resignations, the brokers sought reimbursement from Reuven Enterprises for their 2010 registrations fees. Reuven declined to pay, contending that no law compelled the payment and that the brokers' breach of the Agreements relieved Reuven of any contractual obligation to pay. In response, the brokers commenced the subject arbitration proceedings, requesting compensatory damages in the amount of $5,687 for the fees paid. Reuven asserted counterclaims in excess of ten million dollars for raiding, unfair business competition, loss of business, defamation, loss of revenues, breach of confidentiality and intellectual property, misappropriation and breach of contract, and also requested punitive damages and an award of attorneys' fees. (Exh1,2, Aff in Opp). Reuven further asserted a third-party claim against Synergy alleging the same causes of action. Synergy in response demanded an award of attorneys' fees, as did the three individual brokers. (Exh 3).

A hearing was held before a Panel of three arbitrators on three days in January 2012, with the final session on April 11. Various witnesses testified and documents were admitted into evidence. The Panel issued its Award on May 21, 2012 (Exh F). The Panel directed Reuven Enterprises to repay the brokers the full $5687.00 demanded ($2143 to Lall, $1376 to Spiegel and $2168 to Shabat). Additionally, the Panel ordered Reuven Enterprises to pay the brokers and Synergy a sum total of $100,000.00 "based upon the frivolous Counterclaim and Third-Party claim brought by the Respondent [Reuven Enterprises] ... [and] due to Respondent's failure to maintain discovery

evidence and deletion of relevant computer records." Lastly, the Panel found Reuven Enterprises liable to the brokers and Synergy for attorneys' fees in the amount of $50,000.00.

Discussion

As petitioner Reuven Enterprises correctly asserts in its papers, a court reviewing an arbitration award such as the one at issue here is not limited to the grounds set forth in CPLR §7511. Since the arbitration of disputes concerning employment in the securities industry is governed by the Federal Arbitration Act (FAA), "a court may vacate an arbitration award either on the grounds set forth is section 10(a) of the FAA or on one of the several judicially recognized 'nonstatutory' grounds, such as irrationality ..."*Sawtelle v Waddell & Reed,* 304 AD2d 103,107-08 (1st Dep't 2003) (citations omitted).

The First Department further indicated in *Sawtelle* (at 108-09) that a court reviewing an award of punitive damages may apply the three factors set forth in *BMW of N. Am., Inc. v Gore,* 517 US 559 (1996) to determine whether the award is "grossly excessive" or irrational; namely, "(1) a comparison of the amount of the punitive damages award with the amount of the 'civil or criminal penalties that could be imposed for comparable misconduct' ...; (2) a comparison of the amount of punitive damages 'to the actual harm inflicted on the plaintiff' ...; and (3) 'the degree of reprehensibility of the defendant's conduct' ..."(citations omitted).

Applying these standards, this Court finds that the award of punitive damages in this case is grossly excessive and irrational. As noted above, the Panel awarded the three brokers and Synergy a sum total of $100,000 for punitive damages "based upon the frivolous Counterclaim and Third-Party claim brought by the Respondent [Reuven

Enterprises] ... [and] due to Respondent's failure to maintain discovery evidence and deletion of relevant computer records." The $100,000 is grossly excessive and irrational when compared to the "actual harm" and "degree of reprehensibility" at issue in the case; that is, Reuven's failure and refusal to reimburse the three brokers for a total of $5,687.00 they paid to maintain their licenses.

While the Panel was within its rights to determine that Reuven violated the parties' Agreements when it refused to pay the money, the breach of contract was not so reprehensible that it justified such a large award of punitive damages, particularly considering that the Agreements expressly allowed Reuven to withhold any monies allegedly owed to the brokers if they had engaged in wrongful conduct. Here, Reuven contended that the brokers had made misrepresentations to clients that caused those clients to leave Reuven and form a relationship with the brokers' new company Synergy. The dispute is a private contract dispute; as it does not constitute an independent tort or conduct that is part of a pattern directed at the public generally, no basis exists for an award of punitive damages. *Fekete v GA Ins. Co. of N.Y.*, 279 AD2d 300 (1st Dep't 2001). In any event, since Reuven's failure to reimburse the brokers was a "one-time incident" with limited impact, an award of $100,000.00 for punitive damages is excessive and irrational. *Sawtelle, supra* at 111, citing *Gore.*

The award is further irrational in that, by its own terms, it is designed to sanction Reuven for its litigation conduct, as opposed to the conduct that formed the basis for the dispute between the parties. Respondents have not cited a comparable case to support an award of significant punitive damages under the circumstances. Typically, attorney's fees are awarded to sanction litigation conduct, and that was done separately here, as discussed below. An additional assessment of $100,000.00 was irrational and unjustified.

The second basis cited by the Panel for the punitive damages award relates to the alleged spoliation of evidence in the form of some computer records. First, as with the litigation conduct, spoliation of evidence may be sanctionable but it typically does not form a basis for punitive damages, absent some proof of willful and wanton conduct. What is more, Reuven asserts that it ultimately found the records and was prepared to produce them, but the brokers had produced them first, making Reuven's production superfluous. Respondents do not dispute that point. Thus, no real harm was done, and the $100.000.00 punitive damages penalty assessed is wholly out of proportion to the conduct it was intended to punish.

For these reasons, Reuven is entitled to the vacatur of the punitive damages award. In contrast, Reuven's challenge to the award of attorneys' fees must fail. Although attorneys' fees are not typically awarded in arbitration proceedings, an award may be made if both parties request fees in the proceeding. *Emery Roth & Sons v M&B Oxford 41,* 298 AD2d 320 (1st Dep't 2002), *lv denied* 99 NY2d 509 (2003). The record here demonstrates that both parties requested fees, and the $50,000.00 award was reasonably based on the bills for services rendered submitted by respondents' attorneys. Reuven's reliance on *Matter of Matza v Oshman, Helfenstein & Matza,* 33 AD3d 493 (1st Dep't 2006) is misplaced because the evidence there consisted of little more than boilerplate pleadings and the arbitrator's conclusion. Here, in contrast, the record contains repeated requests for fees by Reuven. Thus, the award is justified.

However, respondents' request for an additional $12,000.00 in attorneys' fees pursuant to Judiciary Law § 487 is denied. That statute is directed to attorney misconduct that borders on criminality. No basis exists for such an award here.

Accordingly, it is hereby

ADJUDGED that the petition to vacate the May 21, 2012 Arbitration Award is granted to the extent of vacating the award of punitive damages and is otherwise denied. Either party may settle a judgment on notice in favor of the respondents for the $50,000.00 award for attorneys' fees by submission to room 119.

Dated: March 27, 2013

MAR 27 2013

J.S.C.

ALICE SCHLESINGER