SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 32

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In the Matter of the Arbitration of Certain Controversies between

NRT NEW YORK LLC., d/b/a, CITIHABITATS,

Petitioner,

-against-

SUZY SPELL and CHARLES SPELL,

Respondents.

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Index No. 652641/2017
Motion Seq: 001

DECISION

HON. ARLENE P. BLUTH

The petition to vacate an arbitral award issued in favor of respondents is granted. Petitioner is directed to submit a proposed order and judgment directly to the courtroom on or before February 28, 2018.

Background

This proceeding arises out of an apartment located at 400 East 67th Street in Manhattan. Respondents used to own and reside in the apartment until 2012, when they hired petitioner to locate a tenant for the premises. The agreement between petitioner and respondents provided that the petitioner was entitled to a six percent commission if the tenant found by petitioner purchased the apartment within six months after the lease expired (or within six months after the expiration of any extension of the lease).

Petitioner procured tenants for apartment– their lease began on July 15, 2012 and ended on July 14, 2013. These tenants continued to live in the apartment after reaching an oral arrangement with respondents until July 10, 2014 when they bought the apartment for $3.05

million. Petitioner demanded a commission for the sale of the home and respondents refused to pay.

The parties proceeded to arbitration, as provided for in their agreement. The arbitrator found that petitioner was not entitled to a commission.

Petitioner now seeks to vacate the arbitrator's decision and to recoup the $183,000 commission it claims it is owed. Petitioner insists that the terms of the agreement are clear and that the arbitrator violated public policy by denying petitioner's claim for a commission. Petitioner insists that it procured the buyers of the apartment and that it does not matter that it had no active role in the sale negotiations.

In opposition, respondents argue that petitioner signed a contract with only Suzy Spell and not with Charles Spell (the sole owner of the apartment). Respondents also insist that petitioner did not procure the tenants– the tenants/purchasers contacted respondents without petitioner's involvement. Respondents also maintain that the sale occurred a year after the expiration of the lease term. Respondents emphasize that the tenants never signed an extension of the lease– apparently, there was a conversation between Charles Spell and Elias Farhat (one of the tenants) in which they agreed to an amount for rent but not a term. The tenants continued to live in the apartment under this arrangement until they purchased the premises.

Discussion

"Courts may vacate an arbitrator's award only on the ground stated in CPLR 7511(b)" (*New York City Tr. Auth. v Transport Workers' Union of America, Local 100, AFL-CIO*, 6 NY3d 332, 336, 812 NYS2d 413 [2005]). The claim that an arbitrator exceeded his or her power "occurs only where the arbitrator's award violates a strong public policy, is irrational or clearly

exceeds a specifically enumerated limitation on the arbitrator's power. Moreover, courts are obligated to give deference to the decision of the arbitrator" (*id.*).

The agreement between the parties states that:

> "An Exclusive Agency to Lease means that during the Term of this Agreement only you and the Broker can rent the Premises. During the Term of this Agreement you agree to refer to Broker all inquiries, proposals and offers received by you from other Brokers, and you agree to conduct all such negotiations solely and exclusively through Broker. Nothing in this Agreement shall preclude you from leasing the Premises on your own, provided, however, you may not utilize the services of a Broker other than Citi Habitats to rent your apartment. You agree that when and if a lease of the property is fully executed, we will seek and be paid our commission and compensation for services rendered only from the tenant, at a rate of fifteen percent (15%) of the first year's rent, provided that we are the procuring Broker for the deal."
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> "If the premises is sold during the Term of this Agreement, of it a tenant procured by Broker, or such tenant's affiliate, enters into a sales contract to purchase the Premises within 6 months after the expiration of the lease term or extension thereof you agree to pay Broker a commission of 6% of the sales price, payable in full at closing of title. If you retain a purchase deposit, you agree to pay Broker a commission of 6% of the amount retained. This provision shall survive termination of this Agreement" (NYSCEF Doc. No. 3, ¶¶ 6-7).

When considering the above agreement, the arbitrator noted that he was "surprised that the Spells, despite the fact that Mrs. Spell was not an owner of the apartment, did not attempt to challenge the validity of the brokerage agreement unlike what many other persons might well do in similar circumstances. In fact, even counsel for [petitioner] stated that he believed that the Spells were honest people" (NYSCEF Doc. No. 6 at 2). And so in an odd way, the arbitrator acknowledged that less honest people might try to invalidate the agreement claiming the wife did not have authority to sign it, but the Spells did not make such a claim.

The arbitrator concluded that "when Mrs. Spell signed the agreement instead of her husband, the owner, she did not understand, focus on, or later remember the issue of the 6% sales

commission. Mr. Spell was not present at the signing of the brokerage agreement and was reportedly unaware of the sales brokerage commission issue. The amount of the claim would be a steep price to pay for such a failure to understand and the lack of any meeting of the minds on this issue; particularly when the precise terms outlined in the agreement were not met in the specific situation described in this instance and no value was provided by the Claimant during the sales process" (*id.*). The arbitrator also recommended that petitioner should revise its brokerage agreement to include the specific situation present here (*id.*).

The Court finds that the arbitrator's decision must be vacated because it is irrational and violates a strong public policy. The basis for the arbitrator's decision is that Mrs. Spell did not understand, focus on, or remember the sales commission component of the brokerage agreement with petitioner. That is not a valid basis to void a clear and obvious written provision (*see Martin v Citibank, N.A.*, 64 AD3d 477, 477, 883 NYS2d 483 [1st Dept 2009] [holding that a party to an agreement is not relieved from his or her obligations by claiming that he or she did not read the agreement]). The arbitrator did not find that Mrs. Spell was incapable of understanding the provisions in the contract. The arbitrator did not find that the brokerage agreement was procured by fraud. The arbitrator did not find that Mrs. Spell lacked authority to enter the contract. Instead, and again, oddly, the arbitrator gives great weight to the fact that Mr. Spell was not present when the agreement was signed. So what if he was not present? No one challenged her authority to sign it or her capacity to understand it when she signed this two and a half page brokerage agreement, in which the key provision (paragraph 7) is clear. This is not a case where a signatory is bound by an obscure provision buried in an endless stack of a paperwork.

With respect to the status of the tenants after the expiration of the initial lease (from July 2012 to July 2013), the Court finds that respondents and the tenants entered into a month-to-month lease (*see* Real Property Law § 232-c). Although the arbitrator did not make a specific finding about this purported oral agreement, the fact that the initial lease expired does not absolve respondents of their obligation to pay a commission. The purpose of the brokerage agreement is clear– if petitioner found the tenants and those tenants ended up buying the home within six months of the termination of the lease (and any extension of said lease), then petitioner would be entitled to a commission from the sale. The arbitrator provided no reason why a month-to-month lease should not be considered an extension of the initial lease. The renters, originally procured by petitioner, continued to live in the apartment. The brokerage agreement does not specify that the extension needs to be a written agreement or that it must be for a particular term. It encompasses any extension.

The arbitrator's suggestion (stressed by respondents in this proceeding) that petitioner did not provide anything of value in connection with the sale of the apartment misses the point. Of course, if the parties did not want to alert petitioner of the sale, then it makes perfect sense that petitioner would have no active role in the negotiations. Besides, the terms of the brokerage agreement do not require petitioner to provide any services to receive a commission for the sale of the apartment as long as the tenants procured by petitioner buy the premises within 6 months after the expiration of the lease. That happened here– the tenants bought the apartment while still in a month-to-month agreement with respondents.

Respondents' claim that petitioner did not procure the tenants in July 2012 is belied by the arbitrator's finding and respondents' acknowledgment that petitioner received a 15%

commission from the initial lease. As stated above, petitioner was only entitled to that commission if it procured the tenants (*see* NYSCEF Doc. No. 3, ¶ 6). Respondents cannot now claim that petitioner did nothing to procure the tenants, especially because the arbitrator found that petitioner was already paid a commission worth over $18,000 for procuring the tenants.

Summary

The Court recognizes that it must give deference to an arbitrator's decision. But, here, that determination is wholly irrational because it ignores a clear and obvious agreement. Parties may not avoid their obligations under a contract because they claim that they forget about them or think the other party does not deserve compensation. If such reasons could be the basis to ignore a contract, then there would be little significance to written agreements. And this Court declines to require, as suggested by the arbitrator, petitioner to include every possible type of lease extension in its brokerage agreement. That is how agreements become needlessly lengthy and confusing.

Whether Mrs. Spell understood the agreement or not, she signed a contract with petitioner and neither of the Spells claimed she lacked the authority to sign it. The arbitrator's insistence that paying a $183,000 commission is too "steep" a consequence for respondents under these circumstances misses a crucial point– petitioner is losing out on a significant commission to which it is entitled. The arbitrator's insinuation that Mrs. Spell did not understand and that Mr. Spell was unaware of the brokerage agreement makes no sense. Such a conclusion completely ignores the facts that (1) the Spells do not claim that Mrs. Spell lacked authority, (2) the broker received a commission for procuring the tenants/buyers, (3) the tenants lived in the apartment until they bought it for over $3 million. The arbitrator's decision also ignores the law that you

are deemed to have read what you signed, and here, what Mrs. Spell signed, was short and simple.

The petition is granted and petitioner is directed to e-file and submit a hard copy of a proposed order and judgment directly to the courtroom (Room 432 at 60 Centre Street) on or before February 28, 2018.

Dated: January 29, 2018
New York, New York

HON. ARLENE P. BLUTH, JSC