At an IAS Term, Part 5J of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 19th day of December, 2018.

PRESENT:

HON. THERESA M. CICCOTTO
Acting Justice

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RIVKY ROKEACH,
a/k/a REBECCA ROKEACH
a/k/a RIVKAH ROKEACH SALAMON,

Petitioner,

Index No. 513762/2018
Mot. Seq. # 1

-against-

DECISION /ORDER

BARRY J. SALAMON,

Respondent.

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RECITATION, AS REQUIRED BY CPLR 2219(a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION.

PAPERS	NUMBERED
NOTICE OF MOTION AND AFFIDAVITS ANNEXED	
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED	
ANSWERING AFFIDAVITS	3-4
REPLY AFFIDAVITS	
NOTICE OF PETITION	1-2
OTHER Memos of Law	5-6

UPON THE FOREGOING CITED PAPERS, AND AFTER ORAL ARGUMENT, THE COURT FINDS AS FOLLOWS:

Petitioner moves for an Order pursuant to CPLR §7510 to confirm an arbitration award. Respondent cross-moves to vacate or modify the arbitral decision. These papers were randomly re-assigned to this Court on December 3, 2018 from Supreme Court, Civil Term. On that day, the

Court heard oral argument from both sides and took said papers on submission.

Factual Background:

It is undisputed that the parties were married in an Orthodox Jewish ceremony solemnized by an Orthodox Rabbi in May 2012. This was Petitioner's second marriage and Respondent's fourth marriage. During the ceremony, Petitioner received a "Ketuba," a Jewish contract of marriage. It is undisputed that the parties were never married civilly in accordance with the secular laws of New York State. On September 11, 2011, prior to the religious ceremony, the parties entered into a Pre-Nuptial Agreement (hereinafter, "Pre-Nup"), in contemplation of their upcoming religious marriage. The intended purpose of the Pre-Nup was to "safeguard all of the parties' respective separate property interests, set a method for determining [Respondent's] final maintenance obligations upon divorce, and to maintain the marital standard of living in accordance with Jewish Halachic Law" (Cross-Motion p.4, ¶4).

Respondent explains that according to Jewish Halachic Law, a husband is required to provide sustenance and support to his wife, as long as she resides with him. Respondent asserts that pursuant to section 5(c) of the Pre-Nup, he agreed to pay petitioner the sum of $10,000.00 for each year they were married, with the amount being capped at $100,00,000. This pertinent portion states:

> "(c) Notwithstanding the foregoing provisions, in the event that the parties divorce, BARRY agrees to pay RIVKAH Ten Thousand Dollars ($10,000) for each year that they were married to each other. The aforesaid payment, however, shall be 'capped' at One Hundred Thousand Dollars ($100,000)."

Additionally, Paragraph 6(a) also indicates that Respondent agrees to pay for Petitioner's "food, reasonable household administrative costs and living expenses" during the marriage. Respondent asserts that he agreed to pay Petitioner a $500.00 week allowance, wherein a portion was

to be utilized as payment for medical insurance. Respondent asserts that Petitioner's entitlement to this weekly allowance was contingent upon the performance of her religious duties, specifically that she reside in the marital residence, contribute to the marital home and engage in an "affectionate relationship."

Respondent asserts that the parties maintained a workable, if not a typically affectionate marriage. He also asserts that in August 2012, Petitioner suddenly abandoned the marriage by spending at least 90% of her time away from the marital residence, presumably at her parent's home. She allegedly utilized the marital home merely to store her belongings, and occasionally returned to retrieve same. Respondent also asserts that Petitioner never revealed her whereabouts, thereby straining the marital relationship further and causing a distraught Respondent to seek guidance from three therapists as well as a Rabbi. Respondent continued to reside in the marital residence by himself and continued to pay the weekly allowance to Petitioner.

Respondent asked Petitioner for a divorce in 2014. From the period of 2014 through December 2016, he offered Petitioner a Get, as an incentive for her to comply with his request. Petitioner persisted in refusing to accept the Get, thereby making it virtually impossible to terminate the marriage in accordance with Jewish Halachic Law. Moreover, Respondent explains that pursuant to Jewish Law, he would be unable to remarry a Jewish woman if Petitioner did not accept a Get. Respondent alleges that Petitioner's adamant refusal to accept the Get was and still is a deliberate attempt to extort even more financial support from him in order to supplement the income she may be receiving from alternate sources. He accuses her of failing to be forthcoming regarding her financial or employment position, and emphasizes that she has frequently spent money on various trips. Consequently, Respondent ceased making the monthly "allowance" to her pursuant to Section

14(a) of the Pre-Nup in addition to Halachic Law.

Said segment of the Pre-Nup states:

> "(a) For the purposes of the agreement, (1) the failure of the parties to reside together for a period of 120 days during any 180 day period (other than as a result of (i) a physical or mental condition requiring institutional or congregate living care, (ii) an agreed separation for reasons other than marital difficulties, or (iii) the abandonment of the marital residence by one spouse solely for the purposes of frustrating the implementation of the Agreement), or (2) the delivery of a get in accordance with Jewish Religious practice, shall be deemed prima facie to be a dissolution of the marital relationship, and shall terminate the obligations of the parties to each other, and any rights of either party as a surviving spouse....."

In response to Respondent's allegations of an abandonment of the marital residence, Petitioner asserts that there were legitimate reasons why she was unable to remain in the marital residence. She claims that an infestation of rats made living there a virtual impossibility. She also claims that extermination was unsuccessful in remedying the recurrent problem, because Respondent failed to comply with the exterminator's recommendations to sufficiently address the problem. To substantiate this allegation, she annexes as Exh. # 2 to her Affidavit in Opposition, a letter from "SURE STRIKE Pest Contol, Inc.", dated January 26, 2016. Said letter indicates in pertinent part that the continuing problem with infestation is a result of the homeowner's failure to "seal any of the home's entry points through which rodents could infest the home" *(id.)*

Furthermore, Petitioner alleges that following Hurricane Sandy, Respondent failed to rectify the additional issue of mold deposits in the marital home despite receiving FEMA funding. Consequently, Petitioner suffered health problems related to exposure to the mold. Finally, she

concedes that she was compelled to absent herself from the marital home in order to spend time with her eighty eight year old father who, in addition to suffering injuries in a car accident, also suffered a severe stroke. As such, he was receiving special care and physical therapy which she was required to monitor. Petitioner also asserts that Respondent continually harassed her into leaving, and provided her with a non working key which forced her to gain access solely when Respondent was home. Some time later, he unilaterally decided to change the locks, preventing any access to the marital home.

It is important to note that in January 2017, the parties attempted to salvage their marriage. Respondent asserts that Petitioner specifically offered to forego all of her financial benefits pursuant to the Pre-Nup, if he allowed her to return to the marriage for a brief trial period. As such, on January 31, 2017, the parties entered what they refer to as a "Settlement Agreement" prepared by Petitioner's attorney. The Court notes that said Stipulation is actually a one page document entitled, "Amendment to the Prenuptial Agreement dated 9/11/11." Said agreement states:

> "The parties hereby amend pursuant to the authority of both parties, to amend the prenuptial agreement dated 9/11/11, said agreement as follows: *[sic]* Barry and Rivky Salamon shall have trial period of six weeks beginning on 1/31/17 (date). Till 3/14/17 (date). *[sic]*
>
> After the completion of the of trial period *[sic]* if either side shall decide to proceed to obtaining a divorce, the other will cooperate fully and promptly. If this happens, the terms of the original pre-nup is nullified and changed so that Barry will owe nothing to Rivky.
>
> If the decision by both of us is to stay married after the full six trial period (date), then the original Pre-nup is valid & in the event of an eventual divorce, Barry must pay Rivky according to the mandate of the Pre-nup from the beginning of their marriage to the event of an eventual divorce.

> More specifically, Rivky shall waive and forego all financial obligations, that Barry has towards her, including but not limited to the obligations set forth in Article Fifth (b)+(c). In the event of a divorce, the parties shall simultaneously issue General Releases in favor of each other. Notice of their intentions regarding the outcome of the "trial period" shall be communicated in writing to each other."

Pursuant to the aforementioned stipulation, the parties participated in a six week trial period wherein they would then decide if marriage could still be a reality. Said agreement clearly provides that Petitioner waives and relinquishes her financial rights addressed by the Pre-Nup in the event the parties are unable to reconcile the marriage upon the expiration of this trial period. The Pre-Nup would be reinstated only if after said period, both parties communicated their intention to remain in the marriage. Unfortunately, Respondent contends that Petitioner left the marital home for long periods and implies that the parties did not engage in any type of intimacy.

After the expiration of the six week trial period, Respondent claims that Petitioner failed to exercise any good faith efforts to restore the marriage. He also claims that over the course of eight months, Petitioner refused to communicate with him and refused his offer of a Get. Respondent further claims that during the trial period and for eight months following, Petitioner never made a demand for monetary support. However, Respondent does concede that on August 21, 2017, the parties entered into an agreement to submit to Arbitration before the Bais Din HaGodol Shomrei Mishpot (hereinafter, "BDHSM").

Positions of the parties:

Respondent claims that after appearing before the BDHSM, he discovered that it is not a licensed tribunal, is not registered, and is not authorized to act as a legitimate arbitrator in New York

State. He also claims that the arbitration proceedings were held in three, swift one to three hour sessions over the course of three days, wherein neither party could submit any formal pleadings or be adequately heard. Additionally, the BDHSM did not request any discovery from either party and Respondent was not afforded an opportunity to present evidence regarding his finances. It is important to note that these allegations are belied by a reading of the Decision to Arbitrate. Neither party was represented by legal counsel, despite the fact that they were permitted to have representation.

BDHSM subsequently issued an arbitral award on November 1, 2017, which Respondent alleges dramatically departed from Jewish Halachic Law. Now, Respondent argues that the arbitration award warrants vacatur because it arbitrarily and capriciously invalidates a binding settlement agreement in contravention of New York Law as well as Authoritative Halachic Law. Specifically, he argues that BDHSM invalidated the Settlement Agreement because it nullified the Pre-Nup and left his assets unprotected. Moreover, it invalidated the language contained in the Settlement Agreement, wherein Petitioner waived all of Respondent's financial obligations.

Respondent also argues that the arbitration award incorrectly invalidates the Settlement Agreement, which is a binding and enforceable contract. More importantly, he argues that the award must be vacated because it directly contravenes this state's strong public policy favoring the enforcement of Settlement Agreements. Furthermore, Respondent argues that BDHSM grossly exceeded its authority by awarding Petitioner a final maintenance award of $150,000.00 and monthly living expenses of $10,000.00. He emphasizes that the express terms of section 14(a)(1) of the Pre-Nup state that his financial obligations terminated upon Petitioner's failure to reside in the marital residence for at least 120 days in any 180 day period. Respondent reminds the Court that the

Settlement Agreement is a binding and enforceable contract, which cannot be lightly cast aside. Lastly, Respondent argues that the arbitration award must be vacated because it is indefinite in that it fails to indicate with any specificity, when Respondent's financial obligations to Petitioner cease.

Petitioner argues that the three members comprising the BDHSM were agreed to by both parties who willingly signed an agreement to submit to arbitration to address all of their marital issues including the disposition of the Pre-Nup. Petitioner also argues that the panel heard all the evidence submitted by the parties, considered their respective arguments and made an award in writing, duly affirmed under Orthodox Jewish Law. Since Respondent has failed to comply with the details of said award, Petitioner seeks an Order to have the arbitration award confirmed, and directing that judgment to be entered from November 1, 2017 for the $150,000.00 payment due as of that date plus $10,00.00 for each and every month that Respondent has failed to issue a Get.

Conclusions of law:

It is well settled that "judicial review of arbitration awards is extremely limited" (*Wien & Malkin LLP v. Helmsley-Spear, Inc.*, 6 N.Y.3d 471, 479 [2006]). "An arbitration award must be upheld when the arbitrator 'offer[s] even a barely colorable justification for the outcome reached'" (*Matter of Allstate Ins. Co. v. GEICO [Govt. Empls. Ins. Co.]*, 100 A.D.3d 878, 878 [2d Dept. 2012]; quoting *Wien & Malkin LLP v. Helmsley-Spear, Inc.*, supra at 479). Moreover, an " arbitrators award should not be vacated for errors of law and fact committed by the arbitrator and the courts should not assume the role of overseers to mold the award to conform to their sense of justice" (*Wien,* supra at 479-480). "An arbitrator is not bound by principles of substantive law or rules of evidence, and may do justice and apply his or her own sense of law and equity to the facts as he or she finds them to be" (*Matter of Erin Constr. & Dev. Co., Inc. v. Meltzer*, 58 A.D.3d 729, 730 [2d Dept. 2009]).

Arbitration awards should also not be vacated even if the court concludes that the arbitrator's interpretation of the agreement misconstrues or disregards its plain meaning or misapplies substantive rules of law, unless it is violative of a strong public policy, is totally irrational, or exceeds a specifically enumerated limitation on his or her power (cf. *Matter of Board of Educ. Of North Babylon Union Free School Dist. v. North Babylon Teachers' Org.*, 104 A.D.2d 594, 596-597[2d Dept.1984]; see also *Matter of Wicks Construction, Inc.*, 295 A.D.2d 527 [2d Dept. 2002]; *Matter of Aftor v. Geico Ins. Co.*, 110 A.D.3d 1062 [2d Dept. 2013]).

Furthermore, pursuant to CPLR § 7511(b)(1)(iii), a court may only vacate an arbitration award if the rights of the party moving to vacate the award were prejudiced by the arbitrator "exceed[ing] his [or her] power or so imperfectly execut[ing] it that a final and definite award upon the subject matter submitted was not made."

In the case at bar, the Court notes that the seventeenth paragraph of the Pre-Nup, states in pertinent part that "[t]he parties agree that any controversy or claim of or relating to this Agreement or the breach thereof....shall be determined and settled, in accordance with Talmudic and Rabbinical Law, by arbitration of the City of New York, before a Bais Din (Rabbinic Tribunal) whose ruling shall be absolute and binding upon the parties...." Additionally, a review of the "AGREEMENT TO SUBMIT TO ARBITRATION," annexed as Exh. A to the Notice of Petition, states in pertinent part that: "[T]he parties agree to faithfully abide by and perform any interim or final award or decision rendered by the arbitrators. The decree of the arbitrators shall be enforceable in the courts in the State of New York and/or New Jersey and/or in any court of competent jurisdiction for any action or proceeding to confirm....." The signatures of both parties appear on said document.

The "Arbitrators Resolution" annexed as Exh. F to Respondent's Cross-Motion promulgates the decision of the arbitrators. Paragraph 2 states: "[S]OME OF BARRY'S CLAIMS WERE AMBIGUOUS AND NOT CLEAR ENOUGH TO BE CONSIDERED ACCORDING TO THE STRICT PARAMETER OF HALACHA, BUT BAIS DIN WAS OF THE OPINION THAT THEY

DID NOT HAVE ENOUGH MERITS *[sic]* TO JUDGE THEM ACCORDING TO PEHSHER AND YOSHER WHICH IS ANOTHER ASPECT OF DIN.....BARRY SALOMON'S ACTION, IN LOCKING AND FORCING HIS WIFE OUT OF THEIR MARITAL RESIDENCE IS NOT SANCTIONED BY HALACHA; LIKEWISE STOPPING ALL OF HER SUPPORT. SO, ALL OF THE MONETARY OBLIGATIONS NUMERATED IN THE PRENUP, THEN AND UNTIL NOW ARE STILL APPLICABLE."

Paragraph 6 states in pertinent part: "[T]HE AGREEMENT TO AMEND THE PRENUP FALLS FAR SHORT OF ITS INTENDED PURPOSE. IT DOES NOT FREE BARRY FROM HIS OBLIGATIONS TOWARD RIVKAH...."

Paragraph 7 states: "[T]HE FINAL DECISION OF THE ARBITRATORS' ARE AS FOLLOWS *[sic]*: BARRY SALOMON OWES HIS WIFE RIVKAH ONE HUNDRED ONE HUNDRED FIFTY THOUSAND DOLLARS. THIS AMOUNT COVERS ALL OF HIS OBLIGATIONS TO HIS WIFE UP AND UNTIL THE DATE OF THIS PSAK."

Paragraph 9 states: "[T]HE ($150,000) WILL BE HELD IN ESCROW BY BAIS DIN UNTIL RIVKAH ACCEPTS THE GET THEREAFTER THE "GET", THE MONEY WILL BE RELEASED TO HER."

Paragraph 11 states:"[B]ASED ON THE PRENUP SIXTH (A) (F) INCLUDING WHAT THE 'KETUBA' OBLIGATES, BARRY HAS TO PROVIDE HOUSING AND SUSTENANCE FOR HIS WIFE ON THE LEVEL OF 'OLEH EMOH' AS PRESCRIBED BY HALACHA, DUE TO THE CIRCUMSTANCES BARRY IS OBLIGATED TO RENT AN UPTODATE *[sic]* 3-4 ROOM MODERN SPACIOUS APARTMENT FOR RIVKAH, WITH HER APPROVAL OF COURSE. SHE CAN FURNISH IT WITH ALL THE AMENITIES AND FURNITURE ETC. THAT SHE HAD BEFORE SHE WAS EVICTED FROM HER RESIDENCE."

Paragraph 12 states: [B]AIS DIN CALCULATED ALL OF THE OBLIGATIONS THAT BARRY HAS ON A MONTHLY BASIS, AND IT ADDED UP TO $10,000. THE TEN

THOUSAND DOLLARS A MONTH IS DUE ON THE FIRST OF THE MONTH. THESE MONIES ARE IN ADDITION TO THE $150.000 THAT BARRY ALREADY OWES RIVKAH. IT SHOULD BE KNOWN THAT THE ARBITRATORS' HANDS WERE TIED SINCE ALL OF THESE OBLIGATIONS WERE INSTITUTED BY BARRY HIMSELF."

The Court acknowledges and appreciates that an arbitrator's decision is rarely disturbed. However, CPLR §7511(b) addresses the various reasons which would permit the vacatur or modification of an arbitration award. CPLR §7511(c)(3) allows a modification "when the award is imperfect in a matter of form, not affecting the merits of the controversy." In the case at bar, the Court is concerned that paragraph 12 does not specifically indicate when Respondent's $10,000 per month payment to Petitioner officially ends. Moreover, the Court cannot determine with any semblance of certainty, how and why the arbitrators' decided on this specific amount. Indeed, in the interest of justice, it would seem necessary to have this designated amount fully explored and explained.

Therefore, in accordance with the foregoing, it is hereby:

ORDERED, that the arbitration award is vacated; and it is further:

ORDERED, that a rehearing and determination of the issue of the monthly $10,000.00 be held before the same arbitrators, the date and time to be decided by the parties and said arbitrators.

This constitutes the decision and order of the Court.

DATED: December 19, 2018

ENTERED:

Theresa M Ciccotto

Hon. Theresa M. Ciccotto
AJSC