SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

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BMW OF NORTH AMERICA, LLC,

Petitioner,

-against-

IOANNIS LEONIDOU,

Respondent.

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DECISION AND ORDER
Index No.: 656215/2018
Motion Sequence 002

CAROL R. EDMEAD, J.S.C.:

MEMORANDUM DECISION

In this Article 75 Action, BMW of North America, LLC (Petitioner) moves to vacate an arbitration award issued in favor of Ioannis Leonidou (Respondent). In reply, Respondent opposes the motion and cross-moves for an order affirming the award pursuant to CPLR 7510. For the reasons set forth below, the Court denies the petition and grants Respondent's motion in its entirety.

BACKGROUND FACTS

On July 6, 2018, Respondent filed a request for arbitration with the New York State Dispute Resolution Association, pursuant to the Lemon Law Arbitration Program regarding problems he had been having with a 2017 BMW X5 SUV he had recently purchased (NYSCEF doc No. 1, ¶ 1). Respondent contended that he was entitled to a refund under New York General Obligations Law § 198-a (the "New Car Lemon Law") due to various "rattling" and "squeaking" noises he had been experiencing while driving the vehicle (*id.* at ¶ 5). At the arbitration hearing on October 18,

2018, Respondent submitted records of five different service visits he had made to Petitioner's dealership to attempt to fix the noise problem (*id.*). A foreman and technical support engineer for Petitioner also testified regarding the matter, and a road test of the BMW was conducted (*id.* at ¶ 7). By decision dated October 30, 2018, arbitrator Gerald Love found in favor of the Respondent. The "Findings" section of the decision holds that "the problem substantially impaired the value of the vehicle to the consumer, and was not a result of the consumer's abuse, neglect, or unauthorized modification or alteration of the vehicle" (NYSCEF doc No. 2 at 2). The arbitrator also found that there were four or more repair attempts for the same problem, which is a requirement under the Lemon Law for relief to be granted (*id.*). He issued a refund to Respondent.

Petitioner now moves, pursuant to CPLR 7511, to vacate the award on the grounds that the arbitrator's decision was arbitrary and capricious in that it had no rational basis (NYSCEF doc No. 1, ¶ 13). According to Petitioner, no reasonable fact finder would have deemed the noise issue with the car to be a substantial defect impairing the use or value of the vehicle (*id.*). Petitioner also argues that as each of Respondent's service visits pertained to noise coming from different areas of the car, they should not be deemed four or more visits for the "same problem" as required by the Lemon Law (*Id.*). In response, Respondent has filed a cross-motion asking the Court to deny the petition and grant any further relief the Court deems just and proper.

DISCUSSION

An arbitration award may be vacated pursuant to CPLR 7511(b)(1)(iii) where an arbitrator exceeded his or her power, including where the award violates strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power (*see*

Matter of Isernio v Blue Star Jets, LLC, 140 AD3d 480, 480 [1st Dept 2016]). Where, as under the Lemon Law, arbitration is compulsory, "judicial review under CPLR Article 75 is broad, requiring that the award be in accord with due process and supported by adequate evidence in the record .... The award must also be rational and satisfy the arbitrary and capricious standard of CPLR article 78" (*Motor Veh. Mfrs. Ass'n of U.S. v State of New York,* 75 NY2d 175 [1990]). While compulsory arbitration decisions require a stricter scrutiny than consensual ones, courts are still bound by the arbitrator's factual findings, interpretation of relevant documents, and judgment concerning remedies. A court cannot substitute its judgment for that of the arbitrator simply because it believes its interpretation is superior to that of an arbitrator who has made errors of judgment or fact (*Matter of New York State Correctional Officers and Police Benevolent Assn. v. State of New York,* 94 NY2d 321 [1999]).

Awards also are not be vacated even where the error claimed is the incorrect application of a rule of substantive law, unless it is so 'irrational as to require vacatur'" (*Matter of Smith [Firemen's Ins. Co]*, 55 NY2d 224, 232 [1982]). To be upheld, an award in a compulsory arbitration proceeding need only have evidentiary support and cannot be arbitrary and capricious (*see Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 214, 223 [1996]). Even though the decision must have evidentiary support, "[a]ssessment of the evidence presented at an arbitration proceeding is the arbitrator's function rather than that of the court" (*Fitzgerald v Fahnestock & Co., Inc.*, 48 AD3d 246, 247 [1st Dept 2008], *quoting Peckerman v D & D Assocs.*, 165 AD2d 289, 296 [1st Dep't 1991]). "An arbitral award cannot be attacked on the ground that an arbitrator refused to consider, or failed to appreciate, particular evidence or arguments" (*Genger v. Genger*, 87 AD3d 871, 874 n. 2 [1st Dept 2011]).

Here, Petitioner argues that the award was arbitrary and capricious and completely irrational because the arbitrator failed to correctly apply the Lemon Law. Specifically, Petitioner contends that because Respondent was able to keep using his vehicle safely, his noise complaint was not a substantial impairment or defect (NYSCEF doc No. 1, ¶ 32). While a compulsory arbitration under the Lemon Law must be supported by due process and adequate evidence, Petitioner is not attacking the standards the arbitrator followed but rather the very merits of the award itself. The matter of whether the rattling noise substantially impaired the value of the vehicle to the consumer is really a fact-based conclusion that Petitioner argues was incorrect. However, considering the deference that the Court is obliged to give an arbitrator's ruling, this alone does not suffice as grounds for vacatur (*see In Re General Motors Corp (Gurau)*, 33AD3d 1149 [3rd Dept 2006], *citing Matter of Royal Chrysler-Oneonta (Dunhuam),* 243 AD2d 1007, 1008 [3rd Dept 1997]).

A review of the record demonstrates clear evidence that Respondent brought the vehicle in multiple times to alleviate the squeaking and rattling noise. Experts for Petitioner testified that they put felt tape over areas that may be causing the issue (NYSCEF doc No. 3 at 75). Petitioner also offered to replace the vehicle twice prior to the hearing (*id.* at 111). Clearly, Petitioner recognized Respondent was unsatisfied with the vehicle and acted to rectify the situation. Whether Respondent's dissatisfaction constitutes a substantial impairment of the use of the vehicle is another question, but it is one that the arbitrator answered based on the evidence presented. In its argument for vacatur, Petitioner cites to *Saturn Corp v Hulburt*, where the Second Department held that an arbitrator's award based on noise caused by a gas tank was irrational and not supported by adequate evidence (284 AD2 399 [2nd Dept 2001]). However, in

that case there was unrefuted evidence that the noise was part of an "industry-wide characteristic" of the model, and the noise was explicitly not covered by Petitioner's express warranty (*Id.*). Here, while Petitioner argues that SUV vehicles are often noisier than other models (NYSCEF doc No. 3 at 96) and Respondent concedes he knows of others who have had similar issues with the same vehicle (*Id.* at 66), Petitioner made no showing before the arbitrator demonstrating that a rattling, squeaking noise is an inherent characteristic of the car.

Furthermore, the fact that Respondent was able to continue using his car despite the alleged defect does not render the arbitrator's decision completely baseless. Just because a vehicle can still be driven does not mean the value of it has not been substantially impaired (*See Matter of Royal Chrysler-Oneonta* at 1008-1009). As Respondent points out, he essentially has no choice but to continue using the car as he has still been making lease payments, but he does not let his family members use it out of safety concerns (NYSCEF doc No. 16, ¶ 2). It cannot be said that the award is "without basis in reason…or otherwise patently unjust" because the arbitrator, in looking at the facts in the light most favorable to Respondent, concluded that his use of the vehicle had been substantially impaired (*Matter of Royal Chrysler-Oneonta* at 1008-1009). Petitioner's argument that Respondent's multiple service visits were not for the "same problem" because the noise was coming from a different area of the vehicle each time is also without merit, as it is just another example of a factual contention Petitioner has with the arbitration decision. To reiterate, even if the arbitrator did misinterpret the Lemon Law when rendering the decision, "an arbitration award made after all parties have participated…will not be overturned merely because the arbitrator committed an error of fact or of law" (*Motor Veh. Acc. Indem. Corp.*, 89 NY2d at 223). The arbitrator here evaluated the claims from both parties and

rendered his decision based on the evidence presented, and the record leaves the Court unable to conclude that the decision was completely without a rational basis or otherwise arbitrary and capricious.

As Petitioner has failed to meet its heavy burden of establishing grounds for vacatur of the award pursuant to CPLR 7511, the award is confirmed in its entirety.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED and that the petition of BMW of North America, LLC is denied in its entirety; and it is further

ORDERED that Respondent's cross-motion is granted; and it is further

ORDERED that the Clerk shall enter judgment accordingly; and it is further

ORDERED that Respondent shall serve a copy of this order, along with notice of entry, on all parties within 15 days of entry.

Dated: January 29, 2019