

Matter of Hyman v John Family Trust of 1997

2020 NY Slip Op 32166(U)

June 27, 2020

Supreme Court, New York County

Docket Number: 657183-2019

Judge: Arthur F. Engoron

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 37

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In the Matter of the Application of

MITCHEL HYMAN; individually and derivatively on
behalf of Ramones Productions, Inc.,

Petitioner,

For a Judgment Pursuant to CPLR Article 75
to Confirm an Arbitration Award

Index No.: 657183-2019
DECISION/ORDER

-against-

JOHN FAMILY TRUST OF 1997, u/d/t 2/12/97,
LINDA CUMMINGS, LINDA CUMMINGS-
RAMONE LIVING TRUST AND SURVIVORS
TRUST, LINDA RAMONE a/k/a LINDA CUMMINGS-
RAMONE, individually and derivatively on behalf of
RAMONES PRODUCTIONS INC.,

Respondents.

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HON. ARTHUR F. ENGORON, J.S.C.:

In this CPLR Article 75 proceeding, petitioner Mitchel Hyman, individually and
derivatively on behalf of Ramones Productions, Inc., seeks to confirm an arbitrator’s award
(motion sequence number 001). Respondents do not oppose confirmation but seek to limit what
is being confirmed. For the reasons set forth herein, the petition is granted to the extent that the
award is hereby confirmed, but only to the extent that it resolves the parties’ dispute.

BACKGROUND

Petitioner Mitchel “Mikey” Hyman is the brother of the late Jeffrey Hyman, p/k/a “Joey
Ramone,” who was the vocalist of the immensely influential “punk rock” music group The
Ramones (hereinafter “Mikey Ramone”). *See* Verified Petition, ¶ 10. Respondent Linda
Cummings-Ramone is the widow of the also-deceased John Cummings, p/k/a “Johnny Ramone,”

the Ramones' guitarist (hereinafter "Linda Ramone"). *Id.*, ¶¶ 5-8. While they were alive, considerable and well-documented animosity developed between Joey and Johnny Ramone, which culminated in their refusing to speak to, or even acknowledge, each other for many years, even as the Ramones continued to record and perform music. Sadly, their passing does not seem to have ended the vitriol.

Ramones Productions, Inc. is a closely held New York corporation which merchandizes, licenses, and produces Ramones memorabilia and musical-related products. *See Verified Petition*, ¶ 11. Mikey Ramone and Linda Ramone each own 50% of Ramones Productions, Inc. *Id.* Disputes stemming from their respective decedents' antipathy arose and persisted between them, which they eventually agreed to submit to arbitration. *Id.*, ¶¶ 12-16. On May 28, 2019, Arbitrator Bob Donnelly of the American Arbitration Association's Commercial Arbitration Tribunal rendered a final award, which disposed of all of the claims that the parties had submitted ("the Final Award"). *Id.*, ¶ 20; exhibit 1. On December 2, 2019, counsel for Mikey Ramone filed the instant verified petition and motion pursuant to CPLR 7510 to confirm the Final Award (motion sequence number 001). Counsel for Linda Ramone filed a post-RJI notice of appearance on December 20, 2019, along with a responsive memorandum.

DISCUSSION

CPLR 7510 provides that: "[t]he court shall confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in section 7511." CPLR 7511 (c) provides that:

The court shall modify the award if:

1. there was a miscalculation of figures or a mistake in the description of any person, thing or property referred to in the award; or

2. the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
3. the award is imperfect in a matter of form, not affecting the merits of the controversy.

In response to the petition, counsel for Linda Ramone avers that:

... given the partisan and incomplete nature of the Verified Petition, Respondents respectfully request that the Court confirm the terms of the Final Award as articulated by the Arbitrator and not as self-servingly interpreted and characterized by Petitioner. Accordingly, Respondents ask the Court to incorporate in its judgment only those portions of the Final Award constituting the Arbitrator's actual award, as set forth on pages 42-43 of the Arbitrator's ruling.

See Respondents' Memo of Law, at 2. Counsel for Mikey Ramone states that this request does not state any of the grounds listed in CPLR 7511 (c) upon which a court may modify an arbitrator's award. See Winner Reply Affirmation, ¶ 2. However, an arbitrator may not award upon a matter not submitted to him or her. CPLR 7511(c)(2). The portion of the Final Award that counsel for Linda Ramone objects to is contained between pages 37 and 42, in a section which Arbitrator Donnelly entitled "suggestions." See Verified Petition, Exhibit 1. In this section, Arbitrator Donnelly, who is evidently an ardent fan of both popular music in general and the Ramones in particular, included a heartfelt plea for the respective parties to put Joey and Johnny Ramone's animosity behind them and attempt to get along in their co-management of Ramones Productions, Inc. He also suggested a list of instances in which he hoped they might do so. *Id.* At the end of the section, the arbitrator was careful to state the following:

I hope the parties will view this Comment as it is intended – to offer changes which are in the best interests of the Ramones. Although this section of the Award contains *suggestions* rather than *orders*, it is my sincere hope that the parties will seriously consider their implementation. *For the record, I have not billed for the time that was spent drafting the Comment section of this Final Award.*

Id. (emphasis added). The arbitrator's commentary is commendable, rather than objectionable, but it addresses matters not submitted to him, and is not part of the award per se.

CONCLUSION

Thus, for the reasons set forth herein, the petition of Mitchel Hyman, individually and derivatively on behalf of Ramones Productions, is granted to the extent that the decretal section, i.e. the actual award, found on pages 42-43 of the subject arbitration award, dated May 28, 2019, is hereby confirmed. The clerk is hereby directed to enter judgment accordingly, including a money judgment in the amount of \$4,475.00, plus interest from May 28, 2019, plus costs and disbursements, in favor of petitioner Mitchel Hyman; p/k/a Mickey Leigh, having an address at 150 Burns St., 1-D, Forest Hills, N.Y. 11375, and against respondent Linda Cummings, a/k/a Linda Cummings-Ramone, having an address at 3737 Deervale Drive, Sherman Oaks, CA. 91403.



6/27/2020
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE