

**Matter of 331 Knickerbocker Ave. LLC v Sholom &
Zuckerbrot Realty LLC**

2020 NY Slip Op 33460(U)

October 21, 2020

Supreme Court, Kings County

Docket Number: 513536/2020

Judge: Leon Ruchelsman

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM: COMMERCIAL 8
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In the Matter of the Arbitration of
Certain Controversies Between

331 KNICKERBOCKER AVENUE LLC,
Petitioner, Decision and Order

-against-

Index No. 513536/2020

SHOLOM & ZUCKERBROT REALTY LLC,
THE MORRIS MIZRAHI DISCLAIMER TRUST,
THE ESTATE OF MORRIS MIZRAHI, RUTH MIZRAHI,
RUTH MIZRAHI, in her capacity as the
Executrix of the Estate of Morris Mizrahi,
STEVEN a/k/a STEVE a/l da SOLOMON
MIZRAHI, JOSEPH a/l da JOEY MIZRAHI,
Respondents,

October 21, 2020

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PRESENT: HON. LEON RUCHELSMAN

The petitioner has moved seeking to stay arbitration. The respondent Sholom and Zuckerbrot Realty LLC [hereinafter 'Realty'] opposes the motion. Papers were submitted by the parties and arguments held. After reviewing all the arguments this court now makes the following determination.

On July 24, 2018 the petitioner and Realty entered into a brokerage agreement. The petitioner 331 Knickerbocker LLC owns the property located at 331 Knickerbocker Avenue in Kings County. Morris Mizrahi and Reuven Salman were the co-owners of the petitioner until 2014 when Morris passed away. Morris' interest was replaced by the Morris Mizrahi Disclaimer Trust. The trustees of the trust included Ruth Mizrahi, the wife of Morris and Steven Mizrahi the son of Morris. Thus, the petitioner entered into an

agreement with Realty wherein Realty was hired as a real estate broker to secure rental tenants for the property. The agreement was first negotiated by Salman and ultimately executed by Steven Mizrahi. A tenant called Kidz Joyful Palace was secured and a lease was entered into between the petitioner and Kidz. A dispute arose between the members of the petitioner and in March 2019 an action was brought by Salman against Kidz and the Mizrahis seeking among other things to void the lease. That litigation was ultimately settled and now Realty seeks their fee pursuant to the brokerage agreement. Indeed, Realty seeks to proceed to arbitration pursuant to the brokerage agreement. Petitioner opposes the motion on the grounds Steven Mizrahi never had the authority to bind the petitioner. Specifically, petitioner argues that upon the death of Morris Mizrahi the remaining member Salman was required to vote for the substitution of Ruth and Steven Mizrahi and since no substitution was ever voted they have no authority to bind the petitioner thus there is no basis to proceed to arbitration.

Conclusions of Law

There can be little dispute that Salman was aware of the brokerage agreement executed between Realty and Mizrahi and even ratified the agreement in deed and word. Thus, on July 23, 2018 Robert Elbaz representative of Realty emailed Salman indicating that

he would be sending over a new draft of the agreement. The next day the executed agreement was forwarded by Mizrahi to both Elbaz and Salman. Further, on September 5, 2018 Elbaz forwarded to Salman letters of intent from potential tenants and Salman even met one of the tenants. Further, on November 2, 2019 Salman reached out to Elbaz about the various potential tenants under consideration. Moreover, on February 4, 2019 Elbaz emailed Salman informing him the brokerage agreement had expired and an extension was necessary. Salman responded the next day "good morning Robert. I am with you on this. Please tell Steve to bring it to his mother to sign the extension" (Email dated February 5, 2019 10:23 AM, sent by Reuven Salman to Robert Elbaz). It is true that a few weeks later on February 27, 2019 Salman emailed Mizrahi informing him a lease sought to be entered into was not valid because it was done without Salman's authority, such email does not mention the brokerage agreement at all. Thus, while Salman may have not approved of the tenants found by Realty or desired by Mizrahi those disputes have no bearing upon the relationship between Realty and the petitioner.

These facts conclusively establish that Realty surely had the reasonable understanding that an agreement existed based upon the execution by Mizrahi with the understanding of Salman and the continued involvement, input and participation of Salman. Thus, notwithstanding any failure to comply with Limited Liability Corporation Law §603 or §608 as between Realty and the petitioner

there can be no question the agreement is binding. Consequently, there is no basis upon which to stay arbitration and the motion seeking to stay such arbitration is denied.

So ordered.

ENTER:

DATED: October 21, 2020
Brooklyn N.Y.



Hon. Leon Ruchelsman
JSC