

Matter of Gibson, Dunn & Crutcher LLP v Johnson

2020 NY Slip Op 34212(U)

December 17, 2020

Supreme Court, New York County

Docket Number: 652705/2020

Judge: Barry Ostrager

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

In the Matter of the Application of

GIBSON, DUNN & CRUTCHER LLP,
Petitioner,

For an Order, Pursuant to Article 75 of the CPLR,
Confirming the Parties' Arbitration Award,

- v -

INDEX NO.	652705/2020
MOTION DATE	
MOTION SEQ. NO.	001 and 003

DECISION + ORDER ON PETITION AND MOTION

SARAH JOHNSON,

Respondent.

HON. BARRY R. OSTRAGER

Before the Court is the petition by the law firm Gibson, Dunn & Crutcher LLP (“Gibson Dunn”) for an order, pursuant to CPLR 7510 and 7514, confirming the December 9, 2019 Final Award issued following an arbitration conducted by Hon. Theodore H. Katz (Ret.) as the Arbitrator (“the Award”, NYSCEF Doc. No. 5) and entering a money judgment in petitioner’s favor against respondent Sarah Johnson based on the Award (mot. seq. 001). In the Award, the Arbitrator held that Gibson Dunn was entitled to *quantum meruit* damages against Sarah Johnson in the amount of \$1,873,886.24 for attorney’s fees plus prejudgment interest based on legal services that Gibson Dunn had rendered to Ms. Johnson when she was a client. Ms. Johnson, who was represented by counsel at the arbitration and is represented here, opposes the petition and moves for an order, pursuant to CPLR 7511, dismissing the petition and vacating the Award or, in the alternative, substantially reducing the amount awarded (mot. seq. 003). For the reasons that follow, the petition is granted, the Award is confirmed, and respondent Johnson’s motion is denied.

In the Verified Petition and supporting papers, Gibson Dunn has presented everything necessary to support an Order confirming the Final Award issued by Judge Katz after the arbitration. Specifically, petitioner has submitted the affidavit of Nancy Hart, a partner at Gibson Dunn, authenticating the Retainer Agreement between Gibson Dunn and Ms. Johnson, which included an express provision for the resolution of disputes via arbitration (NYSCEF Doc. Nos. 4 and 7), the Final Arbitration Award with proof of service (NYSCEF Doc. Nos. 5 and 6), as well as the Arbitration Demand and other correspondence and documents related to the arbitration proceedings (NYSCEF Doc. Nos. 8-11). The 37-page Award rendered by Judge Katz details the facts, the parties' claims, and the relevant law, and Judge Katz presents a thorough and extremely well-reasoned analysis to support his conclusion that Gibson Dunn is entitled to *quantum meruit* damages against Ms. Johnson in the amount of \$1,873,886.24 for attorney's fees plus prejudgment interest based on legal services rendered.

As confirmed in the Award, Ms. Johnson does not dispute that Gibson Dunn's claims are arbitrable, and she voluntarily withdrew any claim of legal malpractice (Award, p. 2). Ms. Johnson nevertheless seeks to vacate the Award pursuant to CPLR 7511(b)(1)(iii), claiming that the Arbitrator "exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made." Citing *Matter of Board of Educ. of Dover Union Free School Dist. v. Dover-Wingdale Teachers' Ass'n*, 61 NY2d 913, 915 (1984), Ms. Johnson's counsel argues the Award can and should be vacated under the above-cited section of the statute because the Award "is violative of strong public policy." Specifically, counsel argues that, "in awarding Gibson fees on a theory of *quantum meruit*, the Arbitrator violated strong New York public policy standing for the proposition that attorneys should not profit from their

misconduct, especially a breach of fiduciary duty to their own clients.” (Memorandum of Law, NYSCEF Doc. 39, p. 5).

Counsel’s argument is strained. Ms. Johnson’s counsel begins by correctly noting that the law provides that an attorney discharged for “cause” based on misconduct or improprieties is not entitled to fees. However, counsel then acknowledges that Ms. Johnson did *not* discharge Gibson Dunn for cause. Rather, Ms. Johnson learned only after the attorney-client relationship had ended that, allegedly, “Gibson [Dunn had] engaged in misconduct that *would have justified* Ms. Johnson discharging [the firm] for cause.” (*Id.* at p. 6, emphasis added). The purported improprieties included alleged misrepresentations about the quality of the associates working on Ms. Johnson’s case and “write-downs” or fee reductions allegedly undisclosed to hide low quality work. Counsel contends the Arbitrator wrongly ignored “indisputable proof” of improprieties, as evidenced by the Arbitrator’s statement, disguised as a credibility determination, that he was “not persuaded that the relevant and credible evidence in the record plausibly establishes that Mr. Snyder [from Gibson Dunn had] ‘lied or knowingly misled’ Ms. Johnson” in connection with these issues (Award, p. 13). Counsel then points to the Arbitrator’s statement that he had not found any case law supporting the claim that a fee reduction may constitute an impropriety. Counsel attacks this statement, arguing that Gibson Dunn “cannot escape the consequences of its conduct simply because the Arbitration presented an issue of first impression.” (Memorandum of Law, p. 10).

In the event the Court declines to vacate the Award as violative of public policy, Ms. Johnson asks the Court to reduce the Award by about \$1M to \$857,996.36. Counsel argues the reduced amount constitutes “reasonable compensation” within the meaning of *In re Freeman's Estate*, 34 NY2d 1, 9 (1974) and its progeny. In the memorandum of law, Ms. Johnson’s counsel

sets forth a detailed explanation of the proposed fee reduction based on alleged: (1) excessive hourly rates for associates and paralegals; (2) the lack of an agreement between Gibson Dunn and Ms. Johnson for the hourly rates of all but a select few lawyers; and (3) block billing.

Gibson Dunn in its reply memorandum effectively counters each and every point raised by Ms. Johnson (NYSCEF Doc. No. 46), and this Court denies Ms. Johnson's motion to vacate the Award or substantially reduce the fees awarded for the following reasons detailed in petitioner's papers. First, the public policy ground for vacating an arbitration award is a narrow exception applicable only when the award presents an "explicit conflict" with settled law or strong and well-defined policy considerations. *Matter of City of Oswego (Oswego City Firefighters Ass'n, Local 2707*, 21 NY3d 880, 882 (2013)). Such is not the case here. Not only did Ms. Johnson withdraw her claim of malpractice, but the Arbitrator reviewed and entirely rejected on the merits Ms. Johnson's claim of "misconduct," finding instead, after a thorough analysis of the evidence, that Gibson Dunn had performed its work with "utmost good faith" and that a "very substantial amount of work" in a "complex and challenging" litigation had been provided on Ms. Johnson's behalf (Award, pp. 13–14, 21-22).

What is more, the Arbitrator heard and conclusively and directly rejected Ms. Johnson's claim that Gibson Dunn's efforts to reduce Ms. Johnson's bills while the litigation was pending somehow constituted "unethical conduct," concluding the argument was "wholly without merit." (Award, p. 14). As noted above, the Arbitrator's 37-page Award was extremely thorough and rationally based on the documentary and testimonial evidence. The Court has no legal basis to "substitute its legal conclusions or factual findings for that of the arbitrat[or]" based either on Ms. Johnson's allegations of misconduct or the amounts the Arbitrator concluded were appropriately billed for the substantial work performed by Gibson Dunn, even if the Arbitrator

had made an error of law, which he did not. *Matter of Falzone (New York Cent. Mut. Fire Ins. Co., 15 NY3d 530, 534–35 (2010).*

In sum, Gibson Dunn has established its right to confirmation of the Final Award, and the motion by Ms. Johnson to vacate the Award or substantially reduce the amount of the Award is without merit.

Accordingly, it is hereby

ORDERED that the petition is granted, the December 9, 2019 Final Award rendered after an arbitration by Hon. Theodore H. Katz (Ret.) is confirmed, and the Clerk is directed to enter judgment based on the Final Award in favor of petitioner Gibson, Dunn & Crutcher LLP against respondent Sarah Johnson in the sum of \$1,873,886.24 plus interest as calculated by the Clerk of the Court at the statutory rate of 9% per annum from December 9, 2019, the date of the Award, through entry of judgment, upon petitioner’s e filing of a Proposed Judgment directed to the County Clerk; and it is further

ORDERED that the motion by respondent Sarah Johnson to vacate the Award or reduce the amount awarded is in all respects denied.

Dated: December 17, 2020


BARRY R. OSTRAGER, J.S.C.

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