

<b>Tender Touch Health Care Servs. Inc. v Tnuzeg LLC</b>
2021 NY Slip Op 32555(U)
December 3, 2021
Supreme Court, New York County
Docket Number: Index No. 653544/2021
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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TENDER TOUCH HEALTH CARE SERVICES INC., TENDER TOUCH REHAB SERVICES LLC,	<b>INDEX NO.</b>	<u>653544/2021</u>
Petitioners,	<b>MOTION DATE</b>	<u>06/03/2021</u>
- v -	<b>MOTION SEQ. NO.</b>	<u>001</u>
TNUZEG LLC, 300 BROADWAY HEALTHCARE LLC, VISTACARE, LLC	<b>DECISION + ORDER ON MOTION</b>	
Respondents.		

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HON. JOEL COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 10, 11, 12, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44

were read on this Petition to CONFIRM ARBITRATION AWARD/CROSS-MOTION TO DISMISS.

This is a special proceeding under CPLR Article 75 to confirm an arbitration award. The award at issue was entered on February 9, 2021 by a Rabbinical Court (the “Beth Din”) composed of a panel of three rabbis chosen by Petitioners and Respondents Tnuzeg LLC (“Tnuzeg”) and 300 Broadway Healthcare LLC d/b/a New Vista Nursing and Rehab Center (“New Vista”). The award directed that those Respondents pay \$710,000 to Petitioners to resolve “all the claims and grievances between them” arising out of a contract to provide services at Respondents’ skilled nursing facility and that such payment was to be made “no later than thirty days from [February 9, 2021]” (NYSCEF Doc. No. 2) (the “Award”).

In addition to confirming the Award against Tnuzeg and New Vista, Petitioners seek to hold Respondent Vistacare, LLC (“Vistacare”) liable for the amount of the Award under New York Debtor and Creditor Law on the ground that it “was a transferee of the assets of Tnuzeg

and/or New Vista, without fair consideration, at a time when Tnuzeg and New Vista were defendants in the arbitration” (NYSCEF Doc. No. 1 (“Verified Petition”), ¶ 2).

Respondents oppose the Petition and cross-move to vacate the Award on three grounds: (i) “corruption, fraud or misconduct” by the panel; (ii) the “partiality of an arbitrator appointed as a neutral”; and (iii) the arbitrator “exceeded his power or so imperfectly executed it” (NYSCEF Doc. No. 25 at 20). Respondents also cross-moved to dismiss the Petition on the independent ground that there is a prior-filed action in New Jersey addressing the same claims. The latter argument is now moot, as the New Jersey court has dismissed and/or stayed the overlapping claims in deference to this action (NYSCEF Doc. No. 44).

### **Discussion**

#### **A. The Award is Confirmed**

The Court's role in reviewing an arbitration award is tightly constrained. As the Court of Appeals has held: “It is well settled that judicial review of arbitration awards is extremely limited. An arbitration award must be upheld when the arbitrator ‘offer[s] even a barely colorable justification for the outcome reached.’ Indeed, we have stated time and again that an arbitrator's 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 & Malkin LLP, v Helmsley-Spear, Inc.*, 6 NY3d 471, 479-80 [2006]). “[A]n arbitrator's rulings, unlike a trial court's, are largely unreviewable” (*In re Falzone (New York Cent. Mut. Fire Ins. Co.)*, 15 NY3d 530, 534 [2010]).

Respondents’ arguments in opposition to confirmation (and in support of vacating the Award) are unavailing. Their complaints about the operation of the Beth Din and its purported unwillingness to accommodate the COVID-related concerns of Respondents’ expert witnesses to

testify live (though their reports were presented) are insufficient. To be sure, some aspects of the procedure might be unusual to those used to litigating in state or federal court, but that is the forum the parties chose to resolve their dispute. The Court sees nothing in the record to suggest the panel was corrupt, fraudulent, irrational or impartial. This was a business dispute and they reached a decision based upon a process to which the parties freely agreed.<sup>1</sup>

The question of whether Vistacare is liable for payment of the Award is not so easily resolved. The parties' contentions raise factual disputes that cannot be resolved on the record presented. That said, the facts concerning the transfer of New Vista's assets to Vistacare for \$10, together with the remaining Respondents' apparent claim that they cannot satisfy the Award, are sufficiently concerning that pending the determination as to Vistacare's liability the Court will grant Petitioner's application for preliminary injunctive relief enjoining Vistacare from transferring assets outside the ordinary course of its business. The Court will accept proposed orders from the parties setting forth an appropriate undertaking as a condition for the imposition of the injunction.

It is, therefore

**ORDERED** that the Petition is granted insofar as the arbitration award is confirmed as against Respondents Tnuzeg and New Vista, with further proceedings required to determine whether the Award is binding upon Vistacare, LLC; it is further

**ORDERED** that the cross-motion to vacate the Award and dismiss the Petition is denied; it is further

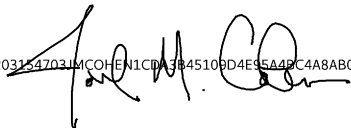
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<sup>1</sup> In view of this conclusion, the Court need not reach Petitioner's alternative contention that Respondent's cross-motion to vacate the Award was untimely.

**ORDERED** that Respondent Vistacare, LLC is enjoined, pending further order of the Court, from transferring asserts outside the ordinary course of business; and it is further

**ORDERED** that the parties submit proposed orders setting forth the conditions of the preliminary injunction within 7 days of this Decision and Order, and that the parties appear for a Preliminary Conference on **December 21, 2021 at 11:30 a.m.**

This constitutes the decision and order of the Court.

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**JOEL M. COHEN, J.S.C.**

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**12/3/2021**  
**DATE**

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE