SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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ACE GROUP INTERNATIONAL, LLC, ACE GROUP BOWERY LLC,

Petitioners,

- v -

225 BOWERY LLC,

Respondent.

INDEX NO. 653631/2022

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 22, 24, 25, 26, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39

were read on this motion to CONFIRM ARBITRATION AWARD.

Upon the foregoing documents, and for the reasons stated on the record following oral argument on October 20, 2022, the Petition by Ace Group International LLC and Ace Group Bowery LLC to Confirm an Arbitration Award is **granted**.

"It is well settled that a court may vacate an arbitration award only if it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power" (*In re Falzone (New York Cent. Mut. Fire Ins. Co.)*, 15 NY3d 530, 534 [2010] [citations omitted]). "Moreover, courts are obligated to give deference to the decision of the arbitrator. This is true even if the arbitrator misapplied the substantive law in the area of the contract" (*New York City Transit Auth v Transp. Workers' Union of Am., Local 100, AFL-CIO*, 6 NY3d 332, 336 [2005] [citations and quotations omitted]. "[A]n arbitrator's rulings, unlike a trial court's, are largely unreviewable" (*Falzone*, 15 NY3d at 534).

Under federal law, an arbitration award may be vacated in the event of fraud, corruption, or misconduct of the arbitrators, or if the award exhibits a manifest disregard of the law (*Wien & Malkin LLP. v Helmsley-Spear, Inc.*, 6 NY3d 471, 480 [2006]. "To modify or vacate an award on the ground of manifest disregard of the law, a court must find 'both that (1) the arbitrators knew of a governing legal principle yet refused to apply it or ignored it altogether, and (2) the law ignored by the arbitrators was well defined, explicit, and clearly applicable to the case.'" (*Id*. at 481 [citations omitted]). The "'manifest disregard' standard rarely results in vacatur because it is limited to those 'rare occurrences of apparent 'egregious impropriety' on the part of the arbitrators,' which requires 'more than a simple error in law or failure by the arbitrators to understand or apply it;' in other words, it must be 'more than an erroneous interpretation of the law'" (*Cheng v Oxford Health Plans Inc.*, 45 AD3d 356, 357 [1st Dept 2007] [citations omitted]). Notably, "[m]anifest disregard of the facts is not a permissible ground for vacatur of an award" (*id*. at 483).

In sum, under New York and federal law, "'[a] party moving to vacate an arbitration award has the burden of proof, and the showing required to avoid confirmation is very high'" (*U.S. Elecs., Inc. v Sirius Satellite Radio, Inc.*, 17 NY3d 912, 915 [2011] [citation omitted]).

Respondent has not satisfied its burden of demonstrating that the Arbitration Tribunal acted irrationally in rendering its Final Decision and Arbitration Award. While Respondent argues that the Tribunal irrationally interpreted and applied Sections 2.4(n), (u), and 16.15 of the parties' agreement, the Tribunal's detailed 107-page Decision (NYSCEF 3) clearly addressed those provisions and rejected Respondent's arguments. Even if this Court disagreed with the Tribunal's interpretation, "[a] court cannot examine the merits of an arbitration award and

substitute its judgment for that of the arbitrator simply because it believes its interpretation would be the better one. Indeed, even in circumstances where an arbitrator makes errors of law or fact, courts will not assume the role of overseers to conform the award to their sense of justice" (*Matter of United Fed. of Teachers, Local 2, AFT, AFL-CIO v Bd. of Educ. of City School Dist. of City of New York*, 1 NY3d 72, 83 [2003]; *see also Transparent Value, L.L.C. v Johnson*, 93 AD3d 599, 601 [1st Dept 2012] ["[I]t is not for the courts to interpret the substantive conditions of the contract or to determine the merits of the dispute . . . .This is true even where the apparent, or even the plain, meaning of the words of the contract has been disregarded"]).

Accordingly, Petitioner's timely application (*see* CPLR 7510) to confirm the Final Decision and Arbitration Award is granted. Ace's requests to be awarded pre-judgment interest pursuant to CPLR 5001 from October 1, 2022 at the statutory rate, post-judgment interest pursuant to CPLR 5003 at the statutory rate, and Ace's costs in this proceeding, is also granted (*In re Gruberg (Cortell Group, Inc.),* 143 AD2d 39, 40 [1st Dept 1988]; *Matter of Meehan v Nassau Community Coll.*, 242 AD2d 155, 159 [2d Dept 1998]; *Matter of Perskin v Bassaragh*, 73 AD3d 1073 [2d Dept 2010]).

Finally, the Court finds that the temporary restraining order entered in this action on October 6, 2022 (NYSCEF 25), based on CPLR 5229 with the *Arbitration Award* as the applicable "decision," has been superseded by this decision and order. Petitioner soon will have a judgment in this action that will, in turn, trigger enforcement rights and obligations beyond those set forth in CPLR 5229. In addition, as discussed at oral argument, the temporary restraining order arguably conflicts with a pre-existing stipulation and order in two related cases before this Court that already governs Respondent's cash flow and assets. Therefore, for the

reasons stated on the record, the temporary restraining order is dissolved, without prejudice to Petitioner seeking relief in an appropriate proceeding to enforce or safeguard the judgment to be entered in this action.[1]

Accordingly, it is

ORDERED that Petitioners Ace Group International LLC and Ace Group Bowery LLC's Petition is **granted** and the Arbitration Award is confirmed in its entirety; it is further

ORDERED that the temporary restraining order executed on October 6, 2022 (NYSCEF 25) is hereby dissolved, without prejudice to Petitioner seeking relief in an appropriate proceeding to enforce or safeguard the judgment entered in this action; and it is further

ORDERED that upon entry of judgment, the County Clerk is directed to mark this action as disposed.

This constitutes the Decision and Order of the Court.

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10/21/2022
DATE

JOEL M. COHEN, J.S.C.

CHECK ONE:	X	CASE DISPOSED		NON-FINAL DISPOSITION			
	X	GRANTED	DENIED	GRANTED IN PART		OTHER	
APPLICATION:		SETTLE ORDER		SUBMIT ORDER			
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT		REFERENCE	

[1] Petitioner has submitted a proposed judgment (NYSCEF 30), to which Respondent did not express objections (as to form) during oral argument.