

Al-Boro Natl. v Ray Bldrs., Inc.

2023 NY Slip Op 31736(U)

May 22, 2023

Supreme Court, New York County

Docket Number: Index No. 650128/2023

Judge: Sabrina Kraus

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS PART 57TR

Justice

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AL-BORO NATIONAL

Petitioner,

- v -

RAY BUILDERS, INC.,

Respondent.

-----X

INDEX NO. 650128/2023

MOTION DATE 04/26/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 7, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25

were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT

BACKGROUND

Petitioner Al-Boro National, a security services company, commenced an arbitration proceeding against Respondent Ray Builders, Inc. for outstanding monies in an amount in excess of \$185,000.00, for security work performed at two different construction projects pursuant to two written agreements, and for which Petitioner alleges Respondent has refused to remit payment.

In February 2022, with leave granted by the arbitrator, Petitioner moved the arbitration proceedings for summary judgment. Respondent opposed summary judgment and Petitioner was provided an opportunity to reply to Respondents opposition. Thereafter, the arbitrator conducted a telephonic hearing on Petitioner's motion for summary judgment.

On June 10, 2022, the arbitrator issued a written decision awarding summary judgment to Petitioner and awarding Petitioner \$186,127.49 in fees for services rendered. Specifically, the arbitrator found:

Claimant successfully met its initial burden to prove that it is entitled to payment by showing that there were two (2) valid contracts between Claimant and Respondent and that Claimant provided satisfactory services and timely billed Respondent pursuant to each of Contracts #1 and #2. As follows, the burden shifted to Respondent to show a genuine issue of material fact.

Respondent points to the Owner's pattern of practice and possible oral agreement as the genuine issues of material fact to rebut Claimants application. However, even if Respondents allegations are taken as true, it is clear that the Owner's established pattern of practice and/or oral agreement to pay Claimant directly did not absolve Respondent from its obligations to pay Claimant under Contracts #1 and #2.

As for Respondents allegation that Claimant is not a legal entity with standing to bring the instant Arbitration, the undersigned finds that this was a clerical error that can be resolved by a simple modification of the caption in this proceeding. Respondent does not allege that Claimant had no legal capacity to enter into Contracts #1 or #2 or that Claimant is not the same entity as that which is listed as a party under Contracts #1 and #2.

THE PETITION

On February 22, 2023, Petitioner moved for an order pursuant to CPLR §7510 confirming the arbitration award upon the grounds that the award was duly rendered and delivered to the petitioner less than one year prior to the commencement of this proceeding and has not been vacated or modified pursuant to CPLR §7511 and directing judgment to be entered on the award pursuant to CPLR §7514.

On March 22, 2023, Respondent cross moved for an order, pursuant to CPLR § 7510 and §7511 vacating the Arbitration Award. The motions were fully briefed and on April 26, 2023, the court reserved decision.

As held by the Court of Appeals:

In circumstances when the parties agree to submit their dispute to an arbitrator, courts generally play a limited role. Courts are bound by an arbitrator's factual findings, interpretation of the contract and judgment concerning remedies. 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 (*see, Matter of Sprinzen [Nomberg]*, 46 N.Y.2d 623, 629–631, 415 N.Y.S.2d 974, 389 N.E.2d 456; *see also, United Paperworkers Intl. Union v. Misco, Inc.*, 484 U.S. 29, 38, 108 S.Ct. 364, 98 L.Ed.2d 286; *International Bhd. of Elec. Workers v. Niagara Mohawk Power Corp.*, 2nd Cir., 143 F.3d 704, 714).

Despite this deference, courts may vacate arbitral awards in some limited circumstances. A court may vacate an award when it violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on an arbitrator's power under CPLR 7511(b)(1) (*Matter of Board of Educ. v. Arlington Teachers Assn.*, 78 N.Y.2d 33, 37, 571 N.Y.S.2d 425, 574 N.E.2d 1031).

Matter of New York State Correctional Officers and Police Benevolent Association, Inc. v. State of New York, 94 N.Y.2d 321, 326 (1999).

Respondent contends that the arbitrator showed a manifest disregard of the law in awarding Petitioner summary judgment.

However, manifest disregard of law is a “severely limited” doctrine (*Matter of Arbitration No. AAA13-161-0511-85 Under Grain Arbitration Rules*, 867 F.2d 130, 133 [2d Cir.1989]). “[M]ore than a simple error in law or a failure by the arbitrators to understand or apply it; and, it is more than an erroneous interpretation of the law” (*Duferco Intl. Steel Trading v. T. Klaveness Shipping A/S*, 333 F.3d 383, 388 [2d Cir.2003]; *Goldman v. Architectural Iron Co.*, 306 F.3d 1214, 1216 [2d Cir.2002], citing *DiRussa v. Dean Witter Reynolds Inc.*, 121 F.3d 818, 821 [2d Cir.1997]).

“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” *Wien & Malkin LLP v. Helmsley-Spear, Inc.*, 6 N.Y.3d 471, 481, 813 N.Y.S.2d 691, 846 N.E.2d 1201 [2006], *cert dismissed* 548 U.S. 940, 127 S.Ct. 34, 165

L.Ed.2d 1012 [2006]; *Matter of Daesang Corp. v. NutraSweet Co.*, 167 A.D.3d 1, 15–16, 85 N.Y.S.3d 6 [1st Dept. 2018], *lv denied* 32 N.Y.3d 915, 2019 WL 690307 [2019]) citing *Wallace v. Buttar*, 378 F.3d 182, 189 [2d Cir.2004], quoting *Banco de Seguros del Estado v. Mutual Mar. Off., Inc.*, 344 F.3d 255, 263 [2d Cir.2003].

Respondent argues the Arbitrator demonstrated a manifest disregard of contract law and the applicable agreements by ignoring the legal principles of interpreting the language of a contract and compare it to the conduct of the parties. However, in reviewing the Arbitrator’s decision, this court finds that the Arbitrator provided a detailed basis for the award that was neither arbitrary nor capricious and that the Arbitrator reviewed Respondent’s evidence and determined it was insufficient to establish genuine issues of material facts that would rebut Petitioner’s claim. Specifically, the Arbitrator found, “even if Respondents allegations are taken as true, it is clear that the Owner's established pattern of practice and/or oral agreement to pay Claimant directly did not absolve Respondent from its obligations to pay Claimant under Contracts #1 and #2.”

The court has considered Respondent’s remaining arguments and finds them unavailing.

Wherefore, it is hereby

ORDERED that the petition is granted in its entirety, and the award of the Arbitrator, is confirmed; and it is further

ORDERED that the cross petition is denied; and it is further

ADJUDGED that Petitioner AL-BORO NATIONAL, having an address at 3602 East Tremont Avenue, Bronx, New York , do recover from Respondent Ray Builders Inc, having an address at 1270 Broadway, Suite 606, New York, New York, the amount of \$186,127.49, plus interest at the rate of 9% per annum from the date of January 9, 2023, as computed by the Clerk

in the amount of \$ _____ , together with costs and disbursements in the amount of \$ _____ as taxed by the Clerk, for the total amount of \$ _____ , and that the Respondents have execution therefor; and it is further

ORDERED that, within 20 days from entry of this order, Petitioner shall serve a copy of this order with notice of entry on Respondent, and on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the court.

5/22/2023
DATE



SABRINA KRAUS, J.S.C.

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