

Aegis Capital Corp. v Seoane

2023 NY Slip Op 33149(U)

September 11, 2023

Supreme Court, New York County

Docket Number: Index No. 651502/2023

Judge: Shahabuddeen Abid Ally

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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:	<u>HON. SHAHABUDDEN ABID ALLY</u>	PART	16TR
	<i>Justice</i>		
-----X		INDEX NO.	<u>651502/2023</u>
AEGIS CAPITAL CORP.,		MOTION DATE	_____
Petitioner,		MOTION SEQ. NO.	<u>001</u>
- v -			
JUAN ANGEL SEOANE,		DECISION + ORDER ON MOTION	
Respondent.			
-----X			

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1-17, 20, 22-24 were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Petitioner moves pursuant to CPLR § 7511 for an order vacating the award rendered on February 21, 2023 in an arbitration conducted before the Financial Industry Regulatory Authority, Inc. (FINRA) under Case No. 20-03946. Respondent has filed written opposition. Upon the above cited papers, the petition is denied, the arbitration award is confirmed, and judgment is directed as set forth in the arbitration award.

Background

Respondent entered into a Registered Representative Agreement in April 2020 (petitioner’s ex 4). Contemporaneous with the execution of the Representative Agreement, the parties executed a Term Sheet (petitioner’s ex 5) and a Note (petitioner’s ex 6), which by its own terms served as a material inducement for the borrower (respondent) to enter into the Agreement with petitioner. Pursuant to the Note, petitioner was to advance the sum of \$160,000.00 over six equal installments to respondent for respondent to leave his then-employer and work for petitioner. The Note further provided that the loan would be forgiven on a pro-rata basis upon the

greater of \$4,000,000.00 in gross production or forty-eight months so long as respondent remained associated with petitioner throughout.

Respondent left his then-employer and joined petitioner. Petitioner made one payment of \$26,666.67 to respondent but made no further payments. Respondent thereafter brought the subject arbitration seeking to recover the remaining payments under the Note. Petitioner terminated its association with respondent shortly thereafter.

After a four-day hearing and argument before the arbitration panel, an award delivered February 22, 2023 (“Award”) granted to respondent: (a) compensatory damages in the amount of \$133,333.33; (b) interest on the damages amount at the rate of nine percent per annum from October 15, 2020 through and included the date the award is paid in full; and (c) \$53,333.33 in attorneys’ fees “pursuant to the terms of the promissory note.” The Award also denied petitioner’s counterclaim for repayment of the sums loaned to respondent and assessed all FINRA fees against petitioner.

Petitioner subsequently commenced the instant proceeding. Petitioner contends that the arbitrators’ finding that petitioner was liable under the Note was irrational and issued in “manifest disregard of the law and evidence.” In opposition, respondent argues that petitioner has failed to establish any of the enumerated bases for vacatur under Article 75 and that the petitioner should therefore be denied. Respondent also seeks attorneys’ fees incurred in the instant action.

Discussion

“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” (*Matter of Falzone [New York Cent Mut Fire Ins Co]*, 15 NY3d 530, 534

[2010]). Such enumerated limitations are set forth in CPLR § 7511, which provides that an arbitration award may be vacated upon a finding that the rights of a party were prejudiced by (1) corruption, fraud, or misconduct in procuring the award; (2) the partiality of an arbitrator; (3) the arbitrator having exceeded their power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made; or (4) failure to follow the procedures set forth in Article 75 of the CPLR (CPLR § 7511[b][1][i]-[iv]). A party seeking to vacate an arbitration award bears a heavy burden, as “[a]n arbitration award must be upheld when the arbitrator ‘offer[s] even a barely colorable justification for the outcome reached’” (*Wien & Malkin, LLP v Helmsley-Spear Inc*, 6 NY3d 471, 479 [2006])[citing *Matter of Andros Compania Maritima, S.A. [Marc Rich & Co. A.G.]*, 579 F2d 691, 704 [2d Cir 1978]].

Apart from these grounds above, some courts have also recognized a basis to vacate an arbitration award where it exhibits a “manifest disregard of the law” (*Goldman v Architectural Iron Co.*, 306 F3d 1214, 1216 [2d Cir 2002], internal quotations omitted); however, such review “is highly deferential and such relief is appropriately rare” (*Porzig v Dresdner, Kleinwort, Benson, North America LLC*, 497 F3d 133, 139 [2d Cir 2007], internal quotations omitted).

Based upon the papers submitted, which included transcripts of the hearing and argument before the arbitration panel, the Court does not find that the Award was irrational or otherwise falls within the narrow bases enumerated in CPLR § 7511. Nor do the submissions establish that the Award was issued in manifest disregard of the law and evidence; as the arbitrators did not state their reasoning, the Court cannot make a finding “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”
(*Porzig*, 497 F3d at 139 [2d Cir 2007], internal quotation marks omitted).

Where an application to vacate or modify an arbitration award is denied, CPLR § 7511(e) mandates that the reviewing court confirm the award (*Blumenkopf v Proskauer Rose LLP*, 95 AD3d 647, 648 [1st Dept 2012]). The award is therefore confirmed.

Respondent’s request for attorneys’ fees incurred in the instant proceeding is denied. Accordingly, it is hereby:


ORDERED and **ADJUDGED**, that the application to vacate the arbitration award is denied and the petition dismissed; and it is further

ORDERED and **ADJUDGED**, that the award is confirmed; and it is further

ORDERED that the Clerk of the Court shall enter judgment in accordance with the arbitration award; and it is further

ORDERED that any requested relief not expressly addressed herein has been considered and is denied.

This constitutes the decision and order of the Court.

<u>9/11/2023</u> DATE	 SHAH ABUDDEEN ABID ALLEY, A.J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> REFERENCE