

Nissanoff v New York Diamond Dealers Club

2024 NY Slip Op 32512(U)

July 12, 2024

Supreme Court, New York County

Docket Number: Index No. 652400/2023

Judge: Louis L. Nock

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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. LOUIS L. NOCK **PART** **38M**

Justice

-----X

ITZHAK NISSANOFF and NISSANOFF ITZHAK, INC.,

Plaintiffs,

- v -

NEW YORK DIAMOND DEALERS CLUB, WILLIAM ZEV
LERNER, and SUHAIL GAYAL,

Defendants.

-----X

INDEX NO. 652400/2023

MOTION DATE 08/01/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27

were read on this motion to

DISMISS

LOUIS L. NOCK, J.S.C.

Upon the foregoing documents, the motion of defendants New York Diamond Dealers Club (“DDC”) and William Israel Lerner, sued incorrectly herein as William Zev Lerner,¹ to dismiss the complaint pursuant to CPLR 3211 is granted, for the reasons set forth in the moving and reply papers (NSYCEF Doc. Nos. 4, 5, 26) and the exhibits attached thereto, in which the court concurs, as summarized herein.

This action arises out of an arbitration before the DDC in which plaintiffs were parties. Defendant Lerner is the DDC’s former general counsel. Plaintiffs allege that the DDC and Lerner engaged in various acts demonstrating impropriety and bias against plaintiffs in the underlying arbitration. The prevailing parties at the arbitration, nonparties Umesh Shah and Khushi Diamonds, moved to confirm the arbitration award in the proceeding captioned *Khushi Diamonds v Itzhak Nissanoff, et al.*, bearing Index No. 714392/2017, then pending in the

¹ Defendant Suhail Gayal has not appeared in the action.

Supreme Court of the State of New York, Queens County, before the Hon. Marguerite A. Grays. On May 29, 2020, Justice Grays granted Khushi Diamonds' motion to confirm the arbitration award, and denied the cross-motion of plaintiffs' herein to vacate the award (short form order, NYSCEF Doc. No. 12). Justice Grays noted that plaintiffs herein had argued that "the arbitrator was coerced into making findings against them, the arbitrators, the arbitrators promoted arguments for [Khushi Diamonds] to the Nissanoff defendants' detriment, and the arbitrators were biased and engaged in various types of misconduct and violation of the By-laws of the [DDC]" (*id.* at 2). The court was not persuaded by these arguments, finding that "[d]efendants have failed to show by clear and convincing evidence a sufficient basis for vacating the award" and that the defendants' remaining contentions were "without merit" (*id.* at 4).

Plaintiffs herein now seek damages against DDC and Lerner for their conduct during the arbitration, raising the same claims of bias and impropriety that have previously been heard and rejected. "The doctrine of collateral estoppel precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the tribunals or causes of action are the same" (*Martinez v New York City Tr. Auth.*, 203 AD3d 87, 91 [1st Dept 2022]). "The doctrine applies if the issue in the second action is identical to an issue which was raised, necessarily decided and material in the first action, and the plaintiff had a full and fair opportunity to litigate the issue in an earlier action" (*id.*). The issue of arbitral bias or impropriety was clearly raised, decided against plaintiffs, and material in the proceeding to confirm the award, and plaintiffs are barred from relitigating it here (*see John St. Leasehold, L.L.C. v Brunjes*, 234 AD2d 26, 26 [1st Dept 1996] ["In any event, the District Court judgment confirming the results of arbitration is res judicata on the issues of arbitrator bias and misconduct that plaintiff seeks to raise herein"]). To

the extent that plaintiffs asserted at oral argument that certain of their allegations were not placed before the court on the cross-motion to vacate (transcript of proceedings, NYSCEF Doc. No. 27 at 12), plaintiffs cannot establish that they lacked a full and fair opportunity to litigate the issue.

Even were collateral estoppel not an issue, the allegations against DDC and Lerner implicate conduct that took place during a pending arbitration. As plaintiffs concede, acts by defendants in the context of an arbitration proceeding, or in Lerner's case, his participation therein, are not subject to suit (*Dowlah v American Arbitration Assn.*, 221 AD3d 426, 427 [1st Dept 2023], *lv to appeal denied sub nom. Dowlah v American Arbitration Association (AAA)*, 2024 NY Slip Op 69730 [Ct App June 20, 2024]; *Austern v Chicago Bd. Options Exch., Inc.*, 898 F2d 882, 886 [2d Cir 1990] ["Accordingly, we hold that arbitrators in contractually agreed upon arbitration proceedings are absolutely immune from liability in damages for all acts within the scope of the arbitral process"]). While plaintiffs assert that defendants' obvious bias should preclude a claim of immunity, the cases they rely upon concern bias as a ground for vacating an award, not for a damages suit (*see, e.g. J. P. Stevens & Co., Inc. v Rytex Corp.*, 34 NY2d 123, 125 [1974] ["We agree and hold that the failure of an arbitrator to disclose facts which reasonably may support an inference of bias is grounds to vacate the award under CPLR 7511"]; *Matter of Seligman v Allstate Ins. Co.*, 195 Misc 2d 553, 557 [Sup Ct, Nassau County 2003] ["An arbitrator's failure to disclose any information that may reasonably support an inference of bias may be grounds to vacate the arbitration award so long as the relationship was not a trivial one"]). Plaintiffs fail to provide any authority to support an exception to arbitral immunity for claims of bias.

Accordingly, it is hereby

ORDERED that the motion is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of defendants New York Diamond Dealers Club and William Israel Lerner, incorrectly sued herein as William Zev Lerner, dismissing the action against said defendants with prejudice, with costs and disbursements to said defendants upon submission of an appropriate bill of costs; and it is further

ORDERED that the action is severed and continued as against defendant Suhail Gayal.

This constitutes the decision and order of the court.

ENTER:



<u>7/12/2024</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
DATE				
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE