

Matter of Bernstein v Anderson

2024 NY Slip Op 31170(U)

April 3, 2024

Supreme Court, New York County

Docket Number: Index No. 654660/2023

Judge: John J. Kelley

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

PRESENT: HON. JOHN J. KELLEY **PART** **56M**

Justice

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In the Matter of

FRED A. BERNSTEIN,

Petitioner,

- v -

ROHAN ANDERSON and NULOOK BUILDERS, LLC,

Respondents.

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INDEX NO. 654660/2023

MOTION DATE 11/08/2023

MOTION SEQ. NO. 001

**DECISION, ORDER, AND
JUDGMENT**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14

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

Fred A. Bernstein petitions pursuant to CPLR 7510 to confirm an arbitration award dated August 7, 2023, made by an arbitrator acting under the auspices of the American Arbitration Association (AAA). The respondents oppose the petition. The petition is granted, the award is confirmed, and the Clerk of the court is directed to enter a money judgment in favor of Bernstein and against the respondents, jointly and severally, in the sum of \$25,215.00, plus statutory interest from August 7, 2023.

On May 20, 2022, Bernstein entered into a contract with the respondents, pursuant to which the respondents agreed to provide Bernstein with construction services with respect to Bernstein's commercial space at 875 West End Avenue, Apt 1A, New York, New York. The contract contained an arbitration clause. Bernstein alleged that, despite his payment of the contract price to the respondents, they did not perform all of the work that they were obligated to perform under the contract. Sometime in June 2023, Bernstein demanded arbitration of his claims against the respondents with the AAA. In his statement of the claim, Bernstein provided

the AAA with a detailed description of the work that either was not completed properly or not completed at all. The petitioner appeared at the arbitration hearing, but the respondents failed to appear. In an award dated August 7, 2023, the arbitrator concluded that the respondent Rohan Anderson “did not perform most of the work called for by the contract. He was paid \$37,697.00, which after deductions of \$12,482.00 for the work performed leaves a balance of \$25,215.00.” The arbitrator thus awarded the petitioner the sum of \$25,215.00 against both respondents.

Pursuant to CPLR 7510, the court “shall confirm an [arbitration] award upon application of a party made within one year after its delivery to him [or her] unless the award is vacated or modified upon a ground specified in section 7511.” Since the arbitration involved here is consensual, rather than compulsory, the award may only be vacated if the court finds that the rights of a party were prejudiced by:

“(i) corruption, fraud or misconduct in procuring the award; or (ii) partiality of an arbitrator appointed as a neutral, except where the award was by confession; or (iii) an arbitrator, or agency or person making the award exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made; or (iv) failure to follow the procedure of this article, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection”

(CPLR 7511[b][1]). The grounds specified in CPLR 7511 for vacatur of an arbitration award are exclusive (see *Bernstein Family Ltd. Partnership v Sovereign Partners, L.P.*, 66 AD3d 1, 8 [1st Dept 2009]), and it is a “well-established rule that an arbitrator’s rulings, unlike a trial court’s, are largely unreviewable” (*Matter of Falzone v New York Cent. Mut. Fire Ins. Co.*, 15 NY3d 530, 534 [2013]).

The instant proceeding to confirm the arbitration award was timely commenced on September 22, 2023 (see CPLR 304[a]). Bernstein contends that the award was proper in all respects and that no grounds exist for modification or vacatur. In his affidavit in opposition to the petition, the Anderson failed to demonstrate that any of the grounds for vacatur of the award were applicable, instead averring that the respondents’ failure to complete the work was

Bernstein's fault because Bernstein moved his furniture into the work site prior to the respondents' commencement of construction activities, and that a "change work" order made it impossible for the respondents to complete the job as initially agreed upon. A party, however, cannot raise in court an issue which should have been raised in arbitration (*see Matter of Telemaque v New York City Bd./Dept. of Educ.*, 148 AD3d 503, 504 [1st Dept 2017]; *Matter of American Tr. Ins. Co. v NextStep Healing, Inc.*, 2023 NY Slip Op 50521[U], *5, 2023 NY Misc LEXIS 2613, *12 [Sup Ct, Kings County, May 28, 2023]).

The court agrees with Bernstein, and concludes that Bernstein is entitled both to the confirmation of the award, and the entry of a money judgment in the sum of \$25,215.00. The money judgment must bear interest from the date of the arbitration award, that is, from August 7, 2023 (*see CPLR 5002; Board of Educ. of Cent. School Dist. No. 1 of Towns of Niagara, Wheatfield, Lewiston & Cambria v Niagara-Wheatfield Teachers Assn.*, 46 NY2d 553, 558 [1979]; *Dermigny v Harper*, 127 AD3d 685, 686 [2d Dept 2015]; *Matter of Levin & Glasser, P.C. v Kenmore Prop., LLC*, 70 AD3d 443, 446 [1st Dept 2010]; *Matter of Gruberg v Cortell Group, Inc.*, 143 AD2d 39, 39 [1st Dept 1988]).

Accordingly, it is,

ADJUDGED that the petition is granted, and the arbitration award rendered in the matter entitled *Matter of Fred A. Bernstein v Rohan Anderson and NuLook Buildings, LLC*, American Arbitration Association Case Number 01-22-0003-7690, dated August 7, 2023, be, and hereby is, confirmed; and it is further,

ORDERED that the Clerk of the court shall enter a money judgment in favor of the petitioner, Fred A. Bernstein., and against the respondents, Rohan Anderson and NuLook Buildings, LLC, jointly and severally, in the principal sum of \$25,215.00, with statutory interest at 9% per annum from August 7, 2023.

This constitutes the Decision, Order, and Judgment of the court.

4/3/2024
DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE