APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Matter of 544 Bloomrest, LLC v. Harding

2022 NY Slip Op 00936 (App. Div. 2022) · No. 2021-03415 · Decided February 10, 2022

SUMMARY

The Appellate Division, First Department modified an order confirming an arbitration award by vacating punitive damages, sanctions, and attorneys' fees that had not been demanded in the arbitration. The court otherwise upheld the award, including the findings concerning conversion by fraud, the individual respondent's personal liability, dismissal of counterclaims, and arbitration costs. The court held that an arbitrator may not award relief beyond the issues and remedies presented by the parties.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Gische, J.P.; Kern, J.; Moulton, J.; Kennedy, J.; Rodriguez, J.
JURISDICTION	New York
DECIDED	February 10, 2022
DOCKET	2021-03415
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Respondents appealed from an order of Supreme Court, New York County, confirming an arbitration award and denying their cross motion to vacate the award.
STANDARD OF REVIEW	An arbitration award may be vacated where the arbitrator exceeded her power; purported errors of law or fact by the arbitrator are not subject to judicial review.
PRECEDENTIAL VALUE	published opinion
PARTIES	Alexi Harding et al. v. 544 Bloomrest, LLC

TOPICS

arbitration · appellate procedure · attorney fees · punitive damages · sanctions

PRACTICE AREAS

arbitration | commercial litigation | corporate law | torts | remedies

QUESTIONS PRESENTED

1. Whether respondents' challenges to the arbitrator's determination concerning conversion by fraud and dismissal of their breach-of-contract counterclaims were subject to judicial review.
2. Whether a corporate officer or director who personally participated in or had actual knowledge of fraud may be held personally liable.
3. Whether an arbitrator exceeds her power by awarding punitive damages, sanctions, or attorneys' fees that were not demanded in the arbitration.
4. Whether arbitration costs were properly awarded and confirmed when they were requested in the arbitration demand and authorized by the applicable arbitration rules and CPLR 7513.

HOLDINGS

1. Respondents' challenges to the arbitrator's award on Bloomrest's conversion-by-fraud claim and dismissal of their breach-of-contract counterclaims, insofar as they asserted only errors of law or fact, were not subject to judicial review.
2. A corporate officer or director is not immune from personal liability when there is evidence that the individual personally participated in the fraud or had actual knowledge of it.
3. An arbitrator exceeds her power by awarding punitive damages, sanctions, or attorneys' fees that were not demanded in the particular arbitration.
4. AAA Commercial Rule 47(d) does not authorize an award of attorneys' fees unless all parties requested the award or it is authorized by law or by the arbitration agreement; even where the arbitrator otherwise has authority, the fees must have been demanded in the particular arbitration.
5. The arbitration-cost portion of the award was properly confirmed because Bloomrest requested those costs in its demand and AAA Commercial Rule 47(c), as well as CPLR 7513, authorized the arbitrator to assess them.

KEY QUOTATIONS

> *“The arbitrator, however, exceeded her power by awarding petitioner punitive damages, sanctions and attorneys' fees none of which were demanded”* (*1)

> *“An "arbitrator's authority extends to only those issues that are actually presented by the parties"”* (*2)

> *“In contrast, the arbitrator's award granting petitioner the costs of arbitration was properly confirmed by Supreme Court.”* (*2)

FACTUAL BACKGROUND

544 Bloomrest pursued arbitration against respondents for conversion by fraudulent means, seeking $362,456.77, interest, and arbitration costs. Its arbitration demand did not request punitive damages or attorneys'

fees, and Bloomrest did not amend the demand or seek those forms of relief in its post-arbitration memorandum. The arbitrator nevertheless awarded punitive damages, sanctions, and attorneys' fees, as well as arbitration costs, and Supreme Court confirmed the award.

PROCEDURAL HISTORY

Supreme Court granted 544 Bloomrest, LLC's motion to confirm an arbitration award dated May 27, 2020 and denied respondents' cross motion to vacate. The Appellate Division modified the order to vacate the portions of the award granting punitive damages, sanctions, and attorneys' fees, and otherwise affirmed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The order was modified to vacate the portions of the arbitration award awarding punitive damages, sanctions, and attorneys' fees; it was otherwise affirmed. The matter was not remanded for further factual proceedings.

CASES CITED

- Wien & Malkin LLP v. Helmsley-Spear, Inc., 6 NY3d 471, 479-480 [2006], cert dismissed 548 US 940 [2006]
- Matter of SCM Corp. [Fisher Park Lane Co.], 40 NY2d 788, 793 [1976]
- Marine Midland Bank v. Russo Produce Co., 50 NY2d 31, 44 [1980]
- Denson v. Donald J. Trump for President, Inc., 180 AD3d 446, 451 [1st Dept 2020]
- Matter of Steyn v. CRTV, LLC, 175 AD3d 1, 6-8 [1st Dept 2019]
- Matter of Joan Hansen & Co., Inc. v. Everlast World's Boxing Headquarters Corp., 13 NY3d 168, 173 [2009]
- Matter of Stewart Tabori & Chang [Stewart], 282 AD2d 385 [1st Dept 2001], lv denied 96 NY2d 718 [2001]
- Myron Assoc. v. Obstfeld, 224 AD2d 504 [2d Dept 1996], lv denied 88 NY2d 807 [1996]
- Matter of Flintlock Constr. Svcs., LLC v. Weiss, 122 AD3d 51 [1st Dept 2014], appeal dismissed 24 NY3d 1209 [2015]