

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND JUDICIAL DEPARTMENT

Matter of Soliman v. Suffolk County Dept. of Pub. Works

2017 NY Slip Op 8382 (Appellate Division of the Supreme Court of the State of New York Second Judicial Department 2017) · No. 2016-13001 · Decided November 29, 2017

SUMMARY

The Appellate Division, Second Department, affirmed a judgment denying a petition to vacate an arbitration award, dismissing the proceeding, and confirming the award. The court held that the petitioner failed to show by clear and convincing evidence that the arbitrator acted irrationally, exceeded a specifically enumerated limitation on authority, or was partial under CPLR article 75.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Judicial Department
WRITING FOR THE COURT	Randall T. Eng, P.J.; Reinaldo E. Rivera, J.; Sheri S. Roman, J.; Francesca E. Connolly, J.
JURISDICTION	New York
DECIDED	November 29, 2017
DOCKET	2016-13001
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment denying a CPLR article 75 petition to vacate an arbitration award, dismissing the proceeding, and confirming the award.
STANDARD OF REVIEW	A party seeking to vacate an arbitration award under CPLR 7511(b)(1) bears a heavy burden and must establish a ground for vacatur by clear and convincing evidence. An award may be vacated for exceeding the arbitrator's power only if it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Nader I. Soliman v. Suffolk County Department of Public Works

TOPICS

arbitration

appellate procedure

standard of review

employment law

municipal law

PRACTICE AREAS

arbitration

civil procedure

employment law

municipal law

QUESTIONS PRESENTED

1. Whether the arbitration award should be vacated as irrational under CPLR 7511(b)(1).
2. Whether the arbitrator exceeded a specifically enumerated limitation on his or her power under CPLR 7511(b)(1)(iii).
3. Whether the award should be vacated because the petitioner's rights were prejudiced by arbitrator partiality under CPLR 7511(b)(1)(ii).

HOLDINGS

1. The petitioner failed to establish by clear and convincing evidence that the arbitration award was irrational; the arbitrator's determination was supported by evidence in the record.
2. The petitioner failed to demonstrate that the arbitrator exceeded a specifically enumerated limitation on the arbitrator's power, and the award therefore was not subject to vacatur on that basis.
3. The petitioner did not establish a basis for vacating the award based on arbitrator partiality, and his remaining contentions were without merit.

KEY QUOTATIONS

“A party seeking to overturn an arbitration award on one or more grounds stated in CPLR 7511(b)(1) bears a heavy burden, and must establish a ground for vacatur by clear and convincing evidence”

“A court may vacate an arbitration award on the ground that the arbitrator exceeded his [or her] powers' within the meaning of CPLR 7511(b)(1)(iii) only where the arbitrator's award violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power”

“Under CPLR 7511(b)(1)(ii), an arbitration award may be vacated if the rights of a party were prejudiced by the partiality of the arbitrator”

FACTUAL BACKGROUND

Nader I. Soliman was employed as a Senior Civil Engineer by the Suffolk County Department of Public Works. He was charged with misconduct, including accessing unauthorized websites for non-County use and viewing sexually explicit material during working hours. Following consensual arbitration, the arbitrator found him guilty and imposed termination; the court found the determination supported by the record and not irrational.

PROCEDURAL HISTORY

The petitioner, a Senior Civil Engineer employed by Suffolk County Department of Public Works, was charged with misconduct and proceeded to consensual arbitration. The arbitrator found him guilty and imposed

termination. The Supreme Court, Suffolk County, denied the petition to vacate, dismissed the proceeding, and confirmed the award; the petitioner appealed, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Quality Bldg. Constr., LLC v Jagiello Constr. Corp., 125 AD3d 973, 973
- Matter of Subway Surface Supervisors Assn. v New York City Tr. Auth., 153 AD3d 1264
- Matter of Kirchhoff-Consigli Constr. Mgt., LLC v Mechtronics Corp., 144 AD3d 682, 683
- Matter of Romaine v New York City Tr. Auth., 82 AD3d 986, 987
- Matter of New York City Tr. Auth. v Transport Workers' Union of Am., Local 100, AFL-CIO, 6 NY3d 332, 336
- Matter of Krausz v Ashkenazi, 147 AD3d 949, 950
- Matter of Reddy v Schaffer, 123 AD3d 935, 936
- Matter of Transit Workers Union, Local 100 v New York City Tr. Auth., 152 AD3d 530, 531
- Matter of Fagan v Village of Harriman, 140 AD3d 868, 868-869
- Matter of Tarantino v MTA N.Y. City Tr. Auth., 129 AD3d 738, 739

OPINION

PER CURIAM.

Matter of Soliman v Suffolk County Dept. of Pub. Works (2017 NY Slip Op 08382) Matter of Soliman v Suffolk County Dept. of Pub. Works 2017 NY Slip Op 08382 Decided on November 29, 2017 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on November 29, 2017 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Second Judicial Department RANDALL T. ENG, P.J. REINALDO E. RIVERA SHERI S. ROMAN FRANCESCA E. CONNOLLY, JJ. 2016-13001 (Index No. 19429/15) [*1]In the Matter of Nader I. Soliman, appellant, vSuffolk County Department of Public Works, respondent. Nader I. Soliman, West Islip, NY, appellant pro se.

Dennis M. Brown, County Attorney, Hauppauge, NY (Drew W. Schirmer of counsel), for respondent. DECISION & ORDER In a proceeding pursuant to CPLR article 75 to vacate an arbitration award dated August 12, 2015, the petitioner appeals from a judgment of the Supreme Court, Suffolk County (Rebolini, J.), entered February 6, 2017, which denied the petition, dismissed the proceeding, and confirmed the award.

ORDERED that the judgment is affirmed, with costs. The petitioner was employed as a Senior Civil Engineer by the respondent, Suffolk County Department of Public Works. In 2014, the petitioner was charged with misconduct for, inter alia, accessing unauthorized websites for non-County use and acting in an immoral manner during working hours, including viewing inappropriate material of a sexually explicit nature.

Thereafter, the matter proceeded to consensual arbitration on the charges. Following a hearing, the arbitrator found the petitioner guilty of misconduct and imposed a penalty of termination. Subsequently, the petitioner commenced this proceeding pursuant to CPLR article 75 to vacate the arbitration award.

The Supreme Court, in a judgment entered February 6, 2017, denied the petition, dismissed the proceeding, and confirmed the award. "A party seeking to overturn an arbitration award on one or more grounds stated in CPLR 7511(b)(1) bears a heavy burden, and must establish a ground for vacatur by clear and convincing evidence" (*Matter of Quality Bldg. Constr., LLC v Jagiello Constr.*

Corp., 125 AD3d 973, 973 [citations and internal quotations marks omitted]; see *Matter of Subway Surface Supervisors Assn. v New York City Tr. Auth.*, 153 AD3d 1264; *Matter of Kirchhoff-Consigli Constr. Mgt., LLC v Mechtronics Corp.*, 144 AD3d 682, 683). "A court may vacate an arbitration award on the ground that the arbitrator exceeded his [or her] powers' within the meaning of CPLR 7511(b)(1)(iii) only where the arbitrator's award violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power" (*Matter of Romaine v New York City Tr.*

Auth., 82 AD3d 986, 987, quoting *Matter of New York City Tr. Auth. v Transport Workers' Union of Am., Local 100, AFL-CIO*, 6 NY3d 332, 336; see *Matter of Krausz v Ashkenazi*, 147 AD3d 949, 950). Additionally, "[u]nder CPLR 7511(b)(1)(ii), an arbitration award may be vacated if the rights of a party were prejudiced by the partiality of the arbitrator" (*Matter of Reddy v Schaffer*, 123 AD3d 935, 936).

Here, the petitioner failed to demonstrate by clear and convincing evidence that the arbitration award should be vacated on the ground that it was irrational. The arbitrator's determination was supported by evidence in the record, and was not irrational (see *Matter of Transit Workers Union, Local 100 v New York City Tr. Auth.*, 152 AD3d 530, 531; *Matter of Fagan v Village of Harriman*, 140 AD3d 868, 868-869).

Furthermore, nothing in the record indicates that the arbitrator exceeded a specifically enumerated limitation on the arbitrator's power (see *Matter of Tarantino v MTA N.Y. City Tr. Auth.*, 129 AD3d 738, 739). The petitioner's remaining contentions are without merit.

Accordingly, the Supreme Court properly denied the petition, dismissed the proceeding, and confirmed the award. ENG, P.J., RIVERA, ROMAN and CONNOLLY, JJ., concur. ENTER: Aprilanne Agostino Clerk of the Court

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/new-york-appellate-division-of-the-supreme-court-of-the-state-of-new-york-second-judicial-department/2017/matter-of-soliman-v-suffolk-county-dept-of-pub-works-iuejaxog>