

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

Matter of Cutri v. Wolfe

2021 NY Slip Op 03523 (App. Div. 2021) · No. Appeal No. 13998; Case No. 2021-00517; Index No. 650406/15
· Decided June 3, 2021

SUMMARY

The Appellate Division, First Department affirmed the denial of petitioner Saro Cutri's motion to hold respondents in contempt and compel compliance with a judgment confirming a final arbitration award. The court held that the judgment did not contain an unequivocal mandate requiring respondents to permit investment in future Lux Capital Group funds or prohibiting a proposed buyout and merger.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Manzanet-Daniels, J.P.; Kapnick, J.; Mazzarelli, J.; Oing, J.
JURISDICTION	New York
DECIDED	June 3, 2021
DOCKET	Appeal No. 13998; Case No. 2021-00517; Index No. 650406/15
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner Cutri appealed from an order denying his motion to hold respondents in contempt and compel compliance with a judgment confirming a final arbitration award.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Saro Cutri, Eric Rodie et al. v. Josh Wolfe et al., Robert Paull et al., Lux Capital Management, LLC, nonparty respondent

TOPICS

contempt remedies civil procedure appellate procedure commercial litigation

PRACTICE AREAS

civil procedure remedies commercial litigation appellate procedure corporate law

QUESTIONS PRESENTED

1. Whether the judgment confirming the arbitration award expressed an unequivocal mandate sufficient to support a contempt finding or compel respondents to permit investment in future Lux Capital Group funds.
2. Whether the judgment prohibited respondents from proposing a buyout of Lux Capital Group members and merging Lux Capital Group into Lux Capital Management.

HOLDINGS

1. Contempt and enforcement relief was properly denied because the judgment did not express an unequivocal mandate requiring respondents to allow Cutri to invest in future Lux Capital Group funds or prohibiting them from proposing a buyout of LCG members and merging LCG into Lux Capital Management.

KEY QUOTATIONS

*“Petitioner Cutri failed to show that the judgment confirming the final arbitration award expressed an unequivocal mandate either requiring respondents to allow him to invest in future Lux Capital Group (LCG) funds or prohibiting respondents from proposing a buyout of LCG members and merging LCG into Lux Capital Management” (*1)*

FACTUAL BACKGROUND

A judgment confirmed a final arbitration award involving representations by Lux Capital Group directors concerning members' participation in future funds. Cutri argued that the judgment required respondents to permit him to invest in future Lux Capital Group funds and prohibited them from proposing a buyout of LCG members and merging LCG into Lux Capital Management. The arbitration award contained no express mandate requiring those actions and dismissed the petitioners' claims.

PROCEDURAL HISTORY

The Supreme Court, New York County, entered a judgment on November 10, 2015 confirming a final arbitration award. On December 21, 2020, that court denied Cutri's motion for contempt and enforcement of the judgment. The Appellate Division, First Department, unanimously affirmed the order with costs.

DISPOSITION

affirmed

CASES CITED

- El-Dehdan v. El-Dehdan, 26 N.Y.3d 19, 29 (2015)

OPINION

PER CURIAM.

Matter of Cutri v Wolfe (2021 NY Slip Op 03523) Matter of Cutri v Wolfe 2021 NY Slip Op 03523 Decided on June 03, 2021 Appellate Division, First 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 and Entered: June 03, 2021 Before: Manzanet-Daniels, J.P., Kapnick, Mazzairelli, Oing, JJ. Index No. 650406/15 Appeal No. 13998 Case No. 2021-00517 [*1]In the Matter of Saro Cutri, Petitioner-Appellant, Eric Rodie et al., Petitioners, vJosh Wolfe et al., Respondents-Respondents, Robert Paull et al., Respondents.

Lux Capital Management, LLC, Nonparty Respondent. Stinson LLP, New York (Kieran M. Corcoran of counsel), for appellant. Cooley LLP, New York (Philip M. Bowman of counsel), for respondents. Order, Supreme Court, New York County (Debra A. James, J.), entered December 21, 2020, which denied petitioner Cutri's motion to hold respondents in contempt of court and to compel compliance with a judgment, same court and Justice, entered November 10, 2015, confirming a final arbitration award, unanimously affirmed, with costs.

Petitioner Cutri failed to show that the judgment confirming the final arbitration award expressed an unequivocal mandate either requiring respondents to allow him to invest in future Lux Capital Group (LCG) funds or prohibiting respondents from proposing a buyout of LCG members and merging LCG into Lux Capital Management (see *El-Dehdan v El-Dehdan*, 26 NY3d 19, 29 [2015]).

Although the arbitrators noted that they had based their decision in part on representations by the directors that included a pledge to allow LCG members to participate in future funds and that those commitments were binding, the pledges were made in the context of an acknowledgement by the directors that they could not guarantee that LCG members would receive any particular rate of "carry" and that all decisions had be taken in view of maximizing the potential success of the fund.

No language in the award mandated any particular action on the part of the directors, and the concluding section of the award, which dismissed petitioners' claims, did not include any of the language from the section on the future of LCG. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: June 3, 2021