Matter of Weiss v Davatgarzadeh
2024 NY Slip Op 32358(U)
June 28, 2024
Supreme Court, Kings County
Docket Number: Index No.: 526216/2023
Judge: Carolyn E. Wade

At an IAS Term, Part 84, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 28th day of June, 2024.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: Hon. Carolyn E. Wade

In the Matter of the Application of
SHMUEL WEISS and DIANE HOCHMAN

Petitioners,

for an Order Pursuant to CPLR Article 75 to Confirm the Arbitration Award, dated May 28, 2023

-against-

MAJID DAVATGARZADEH and LM DAVATGAR LLC,

Respondents.

Index No. 526216/2023

Cal. No.: 49
Mot. Seq. #2

DECISION AND ORDER

The following papers were reviewed and considered in connection with Respondents' Order to Show Cause:

Order to Show Cause; Affirmations in Support; Exhibits--NYSCEF Doc. Nos. 14, 16-29
Opposition Affirmations; Exhibits; Memorandum -- NYSCEF Doc. Nos. 32-39

Upon the foregoing cited papers, and after oral argument, Respondents Majid Davatgarzadeh ("Davatgardzadeh") and LM Davatgar LLC (collectively, "Respondents" or "Landlord") move, by Order to Show Cause, for an Order: (1) vacating and setting aside the Order of this Court, dated January 17, 2024, which confirmed the Rabbinical Court ruling, dated May 28, 2023, (2) vacating any Judgment herein and any execution upon Respondents' bank account, and (3) dismissing the Petition in its entirety, is decided as follows:

Party Claims:

Shmuel Weiss ("Weiss") and Diane Hochman ("Hochman") (collectively, "Petitioners" or "Tenants"), a married couple, allege that as Tenants of Respondents, they were entitled to reimbursement from their Landlord for rent payments that they made, which were subsequently paid by the New York State Emergency Rental Assistance Payments (ERAP) program during the pandemic. The parties agreed to have the dispute heard before a rabbinical beth din arbitration panel. On May 28, 2023, the arbitration panel found in Petitioners' favor and awarded them $24,000.00 against Davatgarzadeh.

Thereafter, Petitioners moved for confirmation of the arbitration award. The Verified Petition was granted by this Court on default, as the Respondents neither appeared on the return date nor submitted written opposition (NYSCEF Doc. No. 8). On March 13, 2024, this Court issued an Amended Order, confirming the beth din arbitration award (NYSCEF Doc. No. 22). The instant Order to Show Cause ensued.

In support, Respondents acknowledge that Petitioners paid them rent for several months during the pandemic, which totaled $24,250.00. Respondents also note that the ERAP program subsequently paid the rent in full for the very same months. However, Respondents contend that Petitioners attempt to recoup the rent payments that they personally paid them is "antithetical to the ERAP program whose purpose is to provide emergency rental assistance to applicants during the COVID pandemic to prevent evictions and homelessness" (¶ 8 of David Lyle Stern, Esq.'s affirmation). They also assert that the ERAP application states that its funds are to be "used only for expenses that are not paid by other sources;" and that if a tenant is provided with duplicate assistance, they must return the funds to the program. *Id.* at ¶ 6. Thus, Respondents maintain that the Rabbinical ruling is irrational, and that Petitioners should return the funds that were issued by ERAP.

Respondents additionally submit a letter from Eliyahu Kavian, a Physician's Assistant, dated January 15, 2024, which states that Davatgarzadeh was diagnosed with influenza. They assert that his sickness was the reason for his non-appearance in court for the confirmation of the arbitration award (NYSCEF Doc. 21).

In opposition, Petitioners submit an affirmation from Hochman, who avers that during the COVID-19 pandemic, she was seven months pregnant with two children, and could not pay her bills. Hochman recounts that her Landlord threatened to evict if she did not pay her rent; although, evictions were prohibited due to the COVID-19 eviction moratorium. As a result, Hochman states that she not only borrowed money to pay her rent, but also applied for ERAP relief. She states that Davatgarzadeh agreed to refund all of the payments that she made, once he received the ERAP funds. However, once Davatgarzadeh received the funds, he was willing to refund her only a small amount of the monies he received from her.

With respect to Davatgarzadeh's missed court appearance, Hochman points out that his physician's assistant note states that he had influenza; yet, he attested to having a COVID related illness.

Analysis:

A. Respondents' Default.

CPLR 5015(a)(1) provides that a

"court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct, upon the ground of:

1. excusable default, if such motion is made within one year after service of a copy of the judgment or order with written notice of its entry upon the moving party, or, if the moving party has entered the judgment or order, within one year after such entry."

To vacate a default, a defendant is required to demonstrate a reasonable excuse for their default and a meritorious defense for the action (*Yaghmour v Mittal*, 208 AD3d 1283, 1285 [2d Dept 2022] [citations omitted]).

Petitioners' counsel asserts that despite numerous conversations, Respondent Davatgarzadeh never mentioned that he had been sick and could not appear in court. Further undermining this excuse is the suspicious nature of the Physician's Assistant note provided. While the note indicates that Davatgarzadeh had influenza (NYSCEF Doc. No. 21), he attested to having a COVID-19 related illness (NYSCEF Doc. No. 16). Thus, this Court finds that the Landlord has not proffered a reasonable excuse for him or his counsel in neither appearing on the return date nor submitting opposing papers to the underlying Petition to confirm arbitration.

B. Vacating Underlying Arbitration Award.

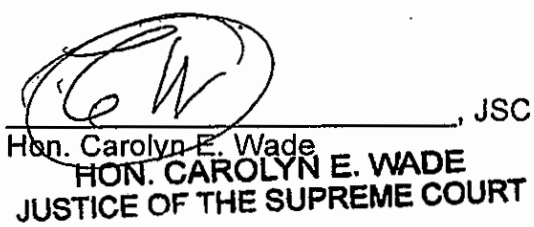
New York State has a long standing public policy in favoring arbitration "as a means of conserving the time and resources of the courts and the contracting parties" (*Stark v. Molod Spitz DeSantis & Stark*, P.C., 9 NY3d 59, 66 [2007]). Consequently, "courts should interfere as little as possible with the freedom of consenting parties to submit disputes to arbitration" *Id.* (*see also Associated Teachers of Huntington, Inc. v. Bd. of Educ.*, 33 NY2d 229, 235 [1973] [arbitrators are generally not bound by substantive law or rules of evidence and even arbitrator's misapplication of the law is no basis to set the award aside]; *Sprinzen v Nomberg*, 46 NY2d 623, 629 [1979]; *NY City Tr. Auth. v Transp. Workers' Union, Local 100*, 6 NY3d 332, 336 [2005] ["an arbitrator's award will not be vacated for errors of law and fact"]). The beth din process is recognized as valid arbitration forum and the court's review of its award is the same as any other arbitration panel (*see Weisenberg v Sass*, 209 AD2d 424, 424 [2d Dept 1994]).

Courts hold that a judicial review of arbitration awards is extremely limited, whereby its vacatur must be established by clear and convincing evidence (*see Matter of Briscoe Protective, LLC v N. Fork Surgery Ctr., LLC*, 215 AD3d 956, 957 [2d Dept 2023]). Respondents claim that the beth din's award was contrary to prevailing law, but does not identify any specific law. There is also no evidence that the beth din disregarded any law.

Moreover, Respondents refer to a section of the ERAP application to argue that the funds disbursed by the program are to be used for "expenses that are not paid by other sources," and are to be refunded to the State when the applicant is provided with "duplicate assistance." Here, Petitioners' rent payment at issue was not "paid by other sources" and the ERAP funds were not "duplicate assistance." The rent payments that Petitioners directly made to the Respondents were to be reimbursed when the ERAP funds arrived. As such, no law was disregarded by the beth din.

Accordingly, based upon the above, Respondents' Order to Show Cause is hereby **DENIED** in its entirety.

This constitutes the Decision and Order of the Court.



_____, JSC
Hon. Carolyn E. Wade
HON. CAROLYN E. WADE
JUSTICE OF THE SUPREME COURT