

Short Form Order

**NEW YORK STATE SUPREME COURT - QUEENS COUNTY**

Present: **HONORABLE PATRICIA P. SATTERFIELD** IAS TERM, PART 19

Justice

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RUBY TUCKER,

Index No: 5054/03

Petitioner,

Motion Date: 4/30/03

-against-

Motion Cal. No: 49

CECILE C. WEICH, Esq.,

Respondent.

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The following papers numbered 1 to 8 read on this motion by Pro Se petitioner, for an order setting aside the determination of the fee dispute arbitration and rescinding the amount owed to respondent.

**PAPERS**

**NUMBERED**

Notice of Petition-Affidavits-Exhibits..... 1 - 5

Upon the foregoing papers, it is hereby ordered that the motion is disposed of as follows:

Pro se petitioner moves this Court for an order vacating the determination of the arbitration panel which heard the fee dispute between petitioner, and respondent, her former attorney, arising out of respondent's representation of petitioner in her divorce proceeding. Pursuant to retainer agreement signed by petitioner on February 24, 1999, she agreed to pay a retainer fee of \$5000.00, which she contends was for an uncontested divorce. Petitioner alleges that she has been charged fees

in excess of \$20,000.00, stating that “\$21,000.00 is an obscene price to be charged for a divorce that is being advertised as \$350.00, \$300.00, and in some cases by paralegals at \$139.00.” Upon petitioner’s failure to remit approximately \$8,000.00 in legal fees to respondent, petitioner was served with a notice to arbitrate, and an arbitration hearing was held on October 8, 2002, in which respondent was awarded \$8000.00. It is upon that determination that petitioner seeks to vacate the arbitration award, pursuant to CPLR § 7511, which states, in pertinent part:

The award shall be vacated on the application of a party who either participated in the arbitration or was served with a notice of intention to arbitrate if the court finds that the rights of that 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...

It is well-settled that judicial review of an arbitrator’s award is not limitless, and upon the issuance of a determination by an arbitrator, “questions of law and fact are not within the power of the judiciary to review, as they are merged in the award (see, North Syracuse Cent. School Dist. v.

North Syracuse Educ. Assn., 45 N.Y.2d 195, 200, 408 N.Y.S.2d 64, 379 N.E.2d 1193).” Pearlman v. Pearlman, 169 A.D.2d 825, 826. An award from a compulsory arbitration will not be vacated on the basis that the court disagrees with the arbitrator’s interpretation, or he unwittingly “misapplies substantive rules of law, unless it is violative of a strong public policy, or is totally irrational, or exceeds a specifically enumerated limitation on his power (citations omitted).” 645 First Ave. Manhattan Co. v. Kalisch-Jarcho, Inc., 220 A.D.2d 517, 518.

Moreover, as the nature of an attorney’s fee dispute arbitration proceeding conducted under 22 NYCRR Part 136 is compulsory, the Court’s review is limited to determining if the award is supported by evidence or any other rational basis appearing in the record. See, Matter of McNamee, Lochner, Titus & Williams P.C. (Killeen), 235 A.D.2d 17, 18. The standard of review of an arbitrator’s award after compulsory arbitration thus is significantly more stringent than that of voluntary arbitration. Selimis v. General Acc. Ins., 264 A.D.2d 738. The applicable standard is that “an award in a compulsory arbitration proceeding must have evidentiary support and cannot be arbitrary and capricious.” Motor Vehicle Acc. Indemnification Corp. v. Aetna Cas. & Sur. Co., 89 N.Y.2d 214, 223.

Here, the arbitration panel rendered a determination on October 15, 2002, based upon a hearing on October 8, 2002 in which petitioner attended, which found in favor of respondent. The findings and decision of the panel noted that respondent was entitled to additional fees of \$8,000.00, from the \$9,078.65 in dispute. The Statement of Reasons indicates “client did not receive first invoice statement for billable hours until five (5) months after commencement of action.” However,

the award is silent as to the reasoning which supports the panel’s determination that respondent is entitled to additional fees. Further, although not required, there was no transcript of the arbitration hearing, which would have given this Court insight into the panel’s basis for its determination. Most significantly, the record does not give any indication as to the nature of the evidence relied upon, and is devoid of any other relevant information for this Court to determine the reasonableness of the panel’s determination. See, Yonkers v. Willsea, 141 A.D.2d 820, 821. Therefore, it cannot be said that the panel “fulfilled their primary responsibility of reviewing the evidence and rendering an inherently discretionary but supportable determination, [which] had a rational, plausible basis founded upon the recited evidence and testimony presented and was not made ‘without regard to the facts’ or ‘without sound basis in reason’ (Matter of Pell v Board of Educ., 34 N.Y.2d 222, 231; see, Matter of Petrofsky [Allstate Ins. Co.], 54 N.Y.2d 207, 211, supra; Caso v Coffey, 41 N.Y.2d 153, 158).” McNamee, Lochner, Titus & Williams P.C., 267 A.D.2d 919, 921.

Accordingly, as this Court finds no evidentiary basis for the panel’s determination, the arbitration award hereby is vacated, and upon service of a copy of this order with notice of entry, the matter is remitted to a new arbitration panel for rehearing and redetermination within sixty days of such notice.

Dated: July 9, 2003

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J.S.C.