SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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MOSHE CHAIM PANZER

Petitioner,

- v -

JOEL EPSTEIN

Respondent.

INDEX NO. 654909/2021

MOTION DATE 04/14/2023

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 98, 99, 102, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147
were read on this motion to CONFIRM ARBITRATION AWARD.

Respondent Joel Epstein's ("Respondent" or "Epstein") motion to confirm the March 20, 2023 arbitration award (the "Final Award" [NYSCEF 60]) issued by a three-member panel (the "Panel") of the American Arbitration Association ("AAA") in *Joel Epstein v. Moshe Chaim Panzer,* AAA Case No 01- 21-0004-9666 (the "Arbitration") is **granted.** That branch of Respondent's motion for an order directing Petitioner to accept the monetary amount specified in the Final Award is **denied** as premature. Petitioner Moshe Chaim Panzer's ("Petitioner" or "Panzer") cross-motion to vacate the Final Award is **denied.**

A. Background

This proceeding involves a dispute between the shareholders of Fabuwood Cabinetry Corporation and related entities ("Fabuwood"). On July 29, 2021, Epstein filed a Demand for Arbitration (NYSCEF 62). Panzer unsuccessfully moved to stay the Arbitration (NYSCEF 55). Thereafter, the parties proceeded to Arbitration before the AAA Panel.

During the Arbitration, the parties entered a settlement agreement dated May 31, 2022 ("Settlement" [NYSCEF 63]), pursuant to which Epstein is to purchase Panzer's interest in Fabuwood. In the Settlement, the parties agreed that the valuation would be determined in a "baseball-style" arbitration before the Panel, which would in turn select either Petitioner's or Respondent's valuation.

Each party appointed a valuation firm to prepare an expert appraisal report. Thereafter, the Panel considered discovery disputes raised by the parties (NYSCEF 64-69). On November 30, 2022, the Panel directed that expert appraisals be exchanged on or by January 18, 2023, and that the Final Arbitration Hearing be held on January 24-25, 2023 (NYSCEF 67).

Following motion practice authorized by the Panel, on December 14, 2022, the Panel declined to adjourn the foregoing deadlines (NYSCEF 69). Instead, the Panel ordered "that at the final hearing arguments that negative inferences should be drawn pertaining to discovery disputes, may be advanced by any aggrieved party, and can further be handled by way of testimony and argument of counsel."

Both parties timely submitted expert valuation reports (NYSCEF 70-71). The evidentiary hearing was held on January 24-25, 2023 (NYSCEF 74-75). During the hearing, Panzer's expert testified that, "although the time available to prepare my analyses was stringent. . .we were able to complete this report and make this presentation. . ." (NYSCEF 73 at 29:8-15).

The Panel received post-hearing briefing (NYSCEF 76-77) in which both parties argued the merits of their respective expert's valuation and against those of their adversary's expert. The AAA Panel's Final Award adopted Respondent Epstein's position "after hearing the presentation of both experts at an Evidentiary hearing. . .and after reviewing the appraisal reports or both experts. . ."

B. The Final Award is Confirmed

Respondent Epstein timely moved to confirm the Final Award pursuant to CPLR 7510 (NYSCEF 58). Petitioner Panzer timely cross-moved to vacate the Final Award pursuant to CPLR 7511 (NYSCEF 112).

Panzer alleges that Epstein did not provide certain financial information to Panzer's expert until eighteen (18) days before expert reports were due and twenty-two (22) days before the Final Arbitration Hearing commenced. Panzer argues that that Panel's refusal to adjourn the deadline for expert reports and the hearing date constitutes misconduct warranting vacatur and a new arbitration pursuant to CPLR 7511(d). Epstein argues that the Panel's Final Award was properly issued after the parties were afforded an opportunity to make all arguments and present all evidence at the evidentiary hearing.

CPLR 7510 provides that "[t]he court shall confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in section 7511." CPLR 7511(b)(1)(i) provides, in relevant part, that "[t]he award shall be vacated. . .if the court finds that the rights of [the moving] party were prejudiced by. . .corruption, fraud or misconduct in procuring the award. . ." Petitioner Panzer bears the burden of establishing a basis to vacate the Final Award (*Channel Textile Co., Inc. v Adams*, 161 AD2d 409 [1st Dept 1990]). Absent a basis to vacate, the Court is "statutorily mandated to confirm the award" (*Id.*).

The Court's role in reviewing an arbitration award is tightly constrained. As the Court of Appeals stated in a seminal decision in this area: "It is well settled that judicial review of arbitration awards is extremely limited. An arbitration award must be upheld when the arbitrator 'offer[s] even a barely colorable justification for the outcome reached.' Indeed, we have stated

time and again that an arbitrator's award should not be vacated for errors of law and fact committed by the arbitrator and the courts should not assume the role of overseers to mold the award to conform to their sense of justice" (*Wien & Malkin LLP, v. Helmsley-Spear, Inc.*, 6 NY3d 471, 479-80 [2006]). "[A]n arbitrator's rulings, unlike a trial court's, are largely unreviewable" (*In re Falzone (New York Cent. Mut. Fire Ins. Co.)*, 15 NY3d 530, 534 [2010]).

Arbitrators are properly given broad discretion with respect to procedural matters such as the scope of discovery (*Matter of Merrill Lynch, Pierce, Fenner & Smith*, 198 AD2d 181, 181 [1st Dept 1993]). Similarly, "[a]djournments generally fall within the sound exercise of an arbitrator's discretion pursuant to CPLR 7506(b), the exercise of which will only be disturbed when abused. A refusal to grant an adjournment constitutes 'misconduct' within the meaning of CPLR 7511[b][1][i] only when it results in the failure to hear pertinent and material evidence and in the effective exclusion of an entire issue" (*Campbell v New York City Tr. Auth.*, 32 AD3d 350, 352 [1st Dept 2006] [collecting cases]). Petitioner has not established that the Panel foreclosed "the presentation of pertinent and material evidence" (*HSBC Bank USA, Nat. Ass'n v Natl. Equity Corp.*, 23 AD3d 305, 305 [1st Dept 2005]).

Contrary to Petitioner's contentions, the Panel authorized briefing and considered Petitioner's adjournment requests prior to the evidentiary hearing. The Panel properly determined that either party could seek an adverse inference at the hearing. Further, Petitioner's expert testified that his firm was able to complete its appraisal report in advance of the evidentiary hearing. Lastly, the Final Award was issued after post-hearing briefing and makes clear that the Panel considered the parties' expert testimony and reports. Petitioner's disagreement with the result is not a sufficient basis to find "misconduct" under CPLR 7511 (*Channel* and *Wien, supra*).

That branch of Respondent's motion seeking to compel Petitioner to accept the monetary amount specified in the Final Award is denied as premature. Should Petitioner fail to abide by the Final Award, which will be enforceable as a judgment, Respondent may move to compel compliance (*Pine St. Assoc., L.P. v Southridge Partners, L.P.*, 107 AD3d 95, 100 [1st Dept 2013]; *Gibson, Dunn & Crutcher LLP v World Class Capital Group, LLC*, 194 AD3d 567, 569 [1st Dept 2021], *lv to appeal denied*, 38 NY3d 901 [2022]).

* * * *

Accordingly, it is

ORDERED that Respondent's motion to confirm the Final Award is **GRANTED;** it is further

ORDERED that Respondent's motion to compel Petitioner to accept the monetary amount specified in the Final Award is **DENIED** as premature; it is further

ORDERED that Petitioner's cross-motion to vacate the Final Award is **DENIED**.

This constitutes the decision and order of the Court. The Clerk is directed to enter judgment accordingly upon presentment by Respondent.

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6/23/2023
DATE

JOEL M. COHEN, J.S.C.

CHECK ONE:	[X]	**CASE DISPOSED**		[ ]	**NON-FINAL DISPOSITION**			
	[ ]	**GRANTED**	[ ] **DENIED**	[X]	**GRANTED IN PART**	[ ]	**OTHER**	
APPLICATION:	[ ]	**SETTLE ORDER**		[ ]	**SUBMIT ORDER**			
CHECK IF APPROPRIATE:	[ ]	**INCLUDES TRANSFER/REASSIGN**		[ ]	**FIDUCIARY APPOINTMENT**	[ ]	**REFERENCE**	