

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK - CIVIL TERM - PART 53

-----X  
TESS H. WACHS,

Petitioner,

For an Order, Pursuant to Article 75 of the  
Civil Practice Law and Rules to Modify and/or  
Partially Vacate the Arbitration Award and to  
Confirm the Award as Modified or Partially  
Vacated

-against-

RICHARD TIENKEN,

Respondent.

-----X  
Index No. 652586/17                      60 Centre Street  
New York, New York  
August 21, 2017

B E F O R E:

HONORABLE CHARLES E. RAMOS,  
Supreme Court Justice

A P P E A R A N C E S:

GERARD FOX LAW P.C.  
Attorneys for the Plaintiff  
12 East 49th Street, 26th floor  
New York, N.Y. 10017  
BY: EDWARD D. ALTABET, ESQ.

THE AUSLANENDER FIRM, P.C.  
Attorneys for the Defendant  
43 West 43rd Street, Suite 163  
New York, N.Y. 10036  
BY: JUSTIN AUSLAENDER, ESQ.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Proceedings

THE COURT: Is there a cross-motion to confirm the arbitration award?

MR. AUSLAENDER: I did request that relief in the opposition papers.

THE COURT: Okay. Petitioner, I don't think I'm going to grant your motion. This arbitrator was not acting irrationally. His suggestion that the arbitration award could be used in a subsequent petition to dissolve the corporation is an argument that could be made. It's made in the purview of the Arbitration Agreement, because it was a very, very broad Arbitration Agreement and usually the Courts will grant arbitrators an enormous amount of leeway so long as what they do falls within the Agreement to arbitrate.

Yes, it's true, nobody asked for dissolution, but he didn't grant a dissolution. He just basically made a finding, these two folks can't get along with one another. But as far as his determination on the eight causes of action he's absolutely correct. Your client's husband was a 50 percent owner of this company and he and the Respondent ran this company the way they wanted to run it and now all of a sudden the wife comes in and says this was a violation of my husband's rights or my rights. Nonsense. This company was in business, comedy club was in business for what, 30 years?

1 Proceedings

2 MR. AUSLAENDER: Forty.

3 MR. ALTABET: Forty.

4 THE COURT: Forty years, now all of a sudden the  
5 world is coming to an end.

6 The motion to set aside the award is denied. Fees  
7 were split, I take it, 50-50; everybody had to pay their own  
8 share.

9 MR. AUSLAENDER: That's correct.

10 THE COURT: He didn't make any adjudication against  
11 anybody. The fact that this company did not keep its books  
12 and records means that both of them didn't keep the books  
13 and records properly.

14 MR. ALTABET: Your Honor --

15 THE COURT: Your client's husband was a 50 percent  
16 owner, he acquiesced in all of this. The arbitrator's  
17 determination was eminently reasonable. The motion is  
18 denied.

19 Thank you very much, folks. Thank you for coming  
20 in.

21 MR. ALTABET: May I be briefly heard on one issue,  
22 Your Honor?

23 THE COURT: Sure.

24 MR. ALTABET: The basis for the --let me put aside  
25 the eight causes of action count and let me put aside the  
26 dissolution, I understand Your Honor's reasoning. The --

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Proceedings

with respect to the findings that Your Honor just articulated, Mr. Wachs had passed away at the end of 2012, so between 2012 and the date of this arbitration there was only one person, the Respondent, that was managing all of the books and records.

The findings of fact --

THE COURT: But the record is clear this is the way they did business for 40 years. The Respondent had every reason to believe that this was okie dokie. Now the wife comes in and says no, it's not okay. So the arbitrator says, you know what, you're right, it should be done better but neither of you are in a position to prove that you took too much money out of this company. You know, if understated, if they both knew they were understating revenues and overstating expenses and they both took advantage of it, there's no good guy, bad guy here. This is the way they wanted to do things. Maybe the IRS has a problem with them, but I don't.

Motion denied. Thank you very much folks. We're done.

MR. ALTABET: Your Honor, is the the arbitration award confirmed as it is?

THE COURT: You have made a motion to confirm?

MR. AUSLAENDER: I didn't move by cross-motion. I requested the relief in my opposition papers which may have

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Proceedings

been there, but I thought that was proper procedure.

THE COURT: You did make that request.

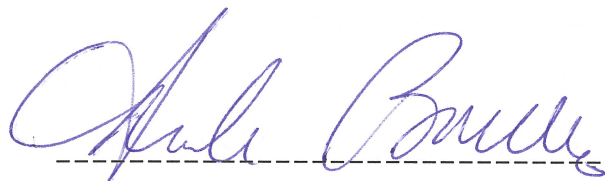
MR. ALTABET: I made a fourth cause of action on this. I requested that the arbitration award be confirmed as modified or partially vacated.

THE COURT: Then it's confirmed in its original form, no modification.

Thank you very much, folks. Good luck.

C E R T I F I C A T E

It is hereby certified that the foregoing is a true and accurate transcript of the proceedings.



-----

ANGELA BONELLO  
SENIOR COURT REPORTER  
SUPREME COURT-NEW YORK COUNTY