

SHORT FORM ORDER

SUPREME COURT — STATE OF NEW YORK

Present: **ANTONIO I. BRANDVEEN**
J. S. C.

D & W CENTRAL STATION FIRE
ALARM CO., INC.,

**TRIAL / IAS PART 22
NASSAU COUNTY**

Petitioner,

Index No. 607573/2020

— against —

Motion Sequence No. 1, 2

FLATIRONHOTEL OPERATIONS LLC,

Respondent.

The following papers having been read on the petition and the cross petition:

Motion sequence No. 1

Notice of Motion, Affidavits & Exhibits	1, 2, 3, 4, 5
Answering Affidavits.....	6
Replying Affidavits.....	_____
Briefs: Plaintiff / Petitioner.....	_____
Defendant / Respondent.....	_____

Motion sequence No. 2

Notice of Cross Petition, Affidavits & Exhibits	1, 2, 3
Answering Affidavits.....	4
Replying Affidavits.....	5
Briefs: Plaintiff / Petitioner.....	_____
Defendant / Respondent.....	_____

UPON DUE DELIBERATION AND CONSIDERATION BY THE COURT of the foregoing papers, including efiled documents/exhibits numbered 1 through and including 28, the petition and the cross petition are decided as follows:

The petitioner seeks (sequence 001) an order pursuant to CPLR 7510 and 7514 confirming the arbitration award dated July 2, 2020, in the sum of \$52,890.33 with costs, disbursements, interest from July 2, 2020 and granting additional counsel fees in the sum of \$2,500.00.

The respondent cross petitions (sequence 002) for an order pursuant to CPLR 7511(b)(ii) and (iii) and 7513 vacating the portion of or modifying the arbitration award with respect to the award of attorneys' fees. The respondent asserts the arbitrator exceeded power under both the parties' contract and the arbitration rules as to the attorneys' fees awarded in the arbitration award. The respondent contends the amount of the arbitration award for attorneys' fees was contradicted by the petitioner's own proof.

"Judicial review of an arbitrator's award is extremely limited." A court may vacate an arbitration award pursuant to CPLR 7511(b)(1)(iii) "only if it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power." A party can only waive its contention that an arbitrator acted in excess of his or her power "by participating in the arbitration with full knowledge" of the alleged error that is being committed and "by failing to object until after the award" is issued [citation omitted]

Matter of Town of Babylon v Carson, 111 AD3d 951, 953 [2d Dept 2013].

The Court determines the petitioner satisfied the burden for confirming the arbitration award dated July 2, 2020, in the sum of \$52,890.33 with costs, disbursements, interest from July 2, 2020 and granting additional counsel fees in the sum of \$2,500.00 (CPLR 7510 and 7514). Here, the petitioner commenced an arbitration proceeding pursuant to a written agreement to arbitrate, and that on July 2, 2020, Allan L. Pullin, as arbitrator, after having taken the oath prescribed by law and after the parties had duly submitted their proofs or had the opportunity to do so, and having fully considered all of the evidence and arguments submitted and having come to a decision, duly made the arbitration award in writing. The arbitrator determined and awarded \$52,890.33 due to the petitioner from the respondent. On July 7, 2020, the arbitrator delivered a copy of the arbitration award to each party in the manner provided in the parties' agreement to arbitrate (CPLR 7507).

“ ‘An arbitration award must be upheld when the arbitrator “offer[s] even a barely colorable justification for the outcome reached.’ ” In addition, 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.” “An arbitrator is not bound by principles of substantive law or rules of evidence, and may do justice and apply his or her own sense of law and equity to the facts as he or she finds them to be” [citation omitted]

Matter of Aftor v Geico Ins. Co., 110 AD3d 1062, 1064 [2d Dept 2013].

“A party seeking to overturn an arbitration award on one or more grounds stated in CPLR 7511(b)(1) bears a heavy burden. That party must establish a ground for vacatur by clear and convincing evidence” [citation omitted] (*Matter of Kirchoff-Consigli Const. Mgt., LLC v Mechatronics Corp.*, 144 AD3d 682, 683 [2d Dept 2016]). Here, the respondent failed to satisfy the burden by clear and convincing evidence for vacating the arbitration award.

The respondent failed to satisfy the burden by clear and convincing evidence for vacating the portion of or modifying the arbitration award with respect to the award of attorneys’ fees (CPLR 7511[b][1][ii] and [iii] and 7513). “[W]hile the arbitrators’ fees and other expenses incurred in the arbitration may be recovered in the award, attorneys’ fees are specifically excluded (CPLR 7513), unless they are expressly provided for in the arbitration agreement [citation omitted] (*Grossman v Laurence Handprints-N.J., Inc.*, 90 AD2d 95, 101 [2d Dept 1982]). Here, paragraph 16 of the parties’ agreement expressly states, “[i]f D&W prevails in any litigation or arbitration between the parties, Lessee shall pay D&W legal fees.” The petitioner is entitled, contrary to the respondent’s assertions, to the attorneys’ fees awarded by the arbitrator compensating only for the legal services rendered in obtaining the arbitration award and not for the legal services necessary to confirm and enforce the award. Moreover, the petitioner is entitled to additional attorneys’ fees for this instant special proceeding and to enforce the judgment (*D&W Cent. Sta. Fire Alarm Co., Inc. v. United Props. Corp.*, 34 Misc3d 85 [App. Term, 2d Dept., 11th & 13th Jud. Dists. 2012]). Further, additional attorneys’ fees are expressly authorized under the ASI Commercial Arbitration Rules and the binding enforceable agreement between the parties. An inquest is not required, under these circumstances, regarding the additional attorneys’ fees. The petitioner’s attorney provided an affirmation in support of the additional attorneys’ fees.

ORDERED, ADJUDGED and DECREED that the petition is GRANTED (sequence 001) pursuant to CPLR 7510 and 7514 confirming the arbitration award, dated July 2, 2020,

in the sum of \$52,890.33, with costs, disbursements, interest from July 2, 2020 and granting additional counsel fees in the sum of \$2,500.00, and it is also,

ORDERED that the cross motion (sequence 002) is DENIED for vacating or modifying the portion of the arbitration award with respect to the award of attorneys' fees.

This decision will constitute the order of the Court.

SUBMIT JUDGMENT

Dated: October 21, 2020

ENTERED

ENTERED

Oct 26 2020

NASSAU COUNTY
COUNTY CLERK'S OFFICE



ANTONIO I. BRANDVEEN
J. S. C.

FINAL DISPOSITION