

SCAW

MEMORANDUM

mg,md

SUPREME COURT, STATE OF NEW YORK

In the Matter of the Application of  
VESTED BUSINESS BROKERS, LTD.

By LALLY, J.  
TRIAL/IAS, PART 8  
NASSAU COUNTY

Petitioner(s),  
-against-

MOTION DATE: 7/10/07  
INDEX No.: 7006/07  
MOTION SEQUENCE NO: 1,2

X X X

YOUNET J. JIN and NY TRINITY LLC,

Respondent(s).

---

KIRSCHENBAUM & KIRSCHENBAUM  
Attorney for Plaintiff  
200 Garden City Plaza, #500  
Garden City, NY 11530

JINSOO JEON  
Attorney for Defendant  
136-26 37th St, #500  
Flushing, NY 11354

This application pursuant to CPLR 7510 for an order confirming the arbitration award dated April 2, 2007 and directing that a judgment in the amount of \$93,575.00, with interest, costs and disbursements be entered in favor of plaintiff against defendant is granted; cross motion by respondent for an order pursuant to CPLR 7511 vacating the arbitration award and dismissing the petition is denied.

This is an application in which petitioner, a broker, seeks an order confirming the arbitration award in the amount of \$93,575.00, representing a commission earned upon the sale of a business, costs and arbitrator's fees. In addition, petitioner claims attorney's fees in the amount of \$750 for legal services rendered due to this application.

Respondents, in support of their application to vacate the arbitrator's award, claim that the arbitrator did not have jurisdiction over this matter. They allege that the contract provides that National Arbitration Association was to be the forum and instead Arbitration Services, Inc. conducted the arbitration.

It appears that both entities have the same address, to wit: 7600 Jericho Turnpike, Woodbury, New York. In addition, a visit to the website of National Arbitration Associates website (www.natarb.com) reveals that "Arbitration Services, Inc." is the "successor by the merger with National Arbitration, Inc." Therefore, respondents have failed to establish that the arbitrator lacked jurisdiction over the matter.

Respondents further claim that the award made by the arbitrator was completely irrational, in total disregard of the applicable law.

Pursuant to CPLR 7511(b)(1)(iii) one of the grounds specified for vacating the arbitration award is that the arbitrator "exceeded his power." The burden of proof necessary to establish same is difficult and rarely successful, as an arbitrator does not need to apply to the rules of evidence and is not bound by the principles of substantive law (Lentine v Fundance, 29 NY2d 382,385). "He may do justice as he sees it, applying his own sense of law and equity to the facts as he finds them to be" (Silverman v Benmor Coats. Inc., 61 NY2d 299, 308). Therefore, there are very few circumstances where an award is vacated, one of them being an arbitrator forming a "totally irrational decision" (Board of Education of the Dover Free School District v Dover Wingdale Teachers' Assoc., 61 NY2d 913, 915). This requires the respondent to demonstrate that there was "no proof whatever to justify the award" (Rockland County Board of Cooperative Educational Services v Boces Staff Assoc., 308 AD2d 452, 453).

In support of the application to vacate, respondents' motion consists of mere allegations without providing any proof. Since the arbitrator evaluated the arguments and manuals of both parties in his decision, the court does not find that the decision is irrational and/or has no basis in law or fact.

Petitioner's application for attorney's fees requires a hearing to determine the fair and reasonable value of the legal services rendered (First National Bank of East Islip v Brower, 42 NY2d 471; see also Fleet Credit Corp. V Harvey Hutter &

Co., Inc., 207 AD2d 380 and Bauer v Central Trust Co., 77 AD2d 239).

Settle order on notice, including a provision to permit the court to schedule an attorney's fee hearing.

Dated: SEP 05 2007

*Arthur J.*  
J.S.C.