

APPENDIX

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Appendix A

**Supreme Court of the State of New York
Appellate Division,
First Judicial Department**

Webber, J.P., Moulton, Scarpulla,
Mendez, Rodriguez, JJ.

Index No. 100595/22
Case No. 2022-04760

140 In the Matter of ANNA PEZHMAN,
Petitioner-Appellant,
—against—
BLOOMINGDALES, INC.,
Respondent-Respondent.

Anna Pezhman, New York, appellant pro se.
Barton Gilman LLP, New York
(Gabriela A. Tremont of counsel), for respondent.

Order, Supreme Court, New York County (Arlene P. Bluth, J.), entered October 4, 2022, which denied petitioner's petition to vacate a final arbitration award, dated May 17, 2022, and granted respondent's

cross-motion to confirm the award, unanimously affirmed, without costs.

The parties' arbitration agreement provided that judicial review of an award would be pursuant to the requirements of the Federal Arbitration Act (*see* 9 USC §§ 9, 10). The grounds for vacatur at 9 USC § 10(a), as relevant here, are analogous to those specified in CPLR 7511(b)(1). The arbitrator's detailed, well-reasoned award addressed each of petitioner's substantive claims and undermines petitioner's arguments that the award reflected a manifest disregard of the law (*see generally Matter of Roffler v Spear, Leeds & Kellogg*, 13 AD3d 308, 313 [1st Dept 2004]; *Nexia Health Tech., Inc. v Miratech, Inc.*, 176 AD3d 589, 591 [1st Dept 2019]). Petitioner's allegations that the presentment of her case was prejudiced by the arbitrator's decisions regarding discovery and procedure are unsupported by the record. There is no evidence to support petitioner's claim that the arbitrator exceeded his powers in rendering the award, as the arbitrator enforced agreed upon the discovery rules and procedures in the parties' arbitration agreement, and answered the claims framed by the parties.

Finally, petitioner waived her claim that the arbitrator was biased by participating in the arbitration (*see Matter of Miller Tabak & Co., LLC v Coppedge*, 166 AD3d 432 [1st Dept 2018]), and in any event, is based on speculation unsupported by objective facts inconsistent with impartiality (*Scandinavian Reinsurance Co. v Saint Paul Fire & Marine Ins. Co.*, 668 F3d 60, 72 [2d Cir 2012]).

3a

THIS CONSTITUTES THE DECISION
AND ORDER OF THE SUPREME COURT,
APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: April 27, 2023

/s/ Susanna Molina Rojas
Susanna Molina Rojas
Clerk of the Court

4a

Appendix B

SUPREME COURT OF
THE STATE OF NEW YORK
NEW YORK COUNTY

NOTICE OF ENTRY

100595-2022

ANNA PEZHMAN,

Petitioner,

—against—

BLOOMINGDALES, INC.,

Respondent.

Petitioner, hereby, gives notice that the Decision and Order of Justice Bluth, dated September 30, 2022, attached herewith, has been entered by the clerk of the court on October 4, 2022.

Dated: October 13, 2023

New York, New York

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/s/ Anna Pezhman

By Anna Pezhman, Esq.

235 E. 87th Street Apt 12f

New York, New York 10128

To Steve Gerber, Esq.,

Barton Gilman LLP

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6a

SUPREME COURT OF
THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH

Justice

[STAMP]
HON. ARLENE P. BLUTH
J.S.C.

PART	14
INDEX NO.	<u>100595/2022</u>
MOTION DATE	<u></u>
MOTION SEQUENCE NO.	<u>001</u>

DECISION + ORDER ON MOTION

PEZHMAN, ANNA

Petitioner,

—v—

BLOOMINGDALES, INC

Respondent.

[STAMP]

FILED

OCT. 04 2022

NEW YORK COUNTY
COUNTY CLERK

The following papers, numbered 1 - 8 were read
on this application to/for Vacate award

Notice of Motion/Petition/OSC - Affidavits - Exhibits
..... No(s) 1

Answering Affidavits - Exhibits
..... No(s) 2, 3, 4, 5, 6

Replying No(s) 7, 8

The petition to vacate the arbitration award is denied and the defendant's cross-motion to confirm the arbitration award is granted.

Background

Petitioner worked for respondent Bloomingdales from March 17, 2019 until October 21, 2021 when she was terminated due to a violation of company policy. Petitioner claims she was discriminated against as a Caucasian employee when she was terminated after customers lodged complaints against petitioner asserting that she racially profiled them. Respondent claims petitioner was fired because she did not meet the expectations of her job and acted unprofessional

and hostile during a disciplinary meeting, after which she was suspended and ultimately fired.

Pursuant to Bloomingdales Early Dispute Resolution Procedures, petitioner filed a demand for arbitration on October 25, 2021. Petitioner's demand sought \$25 million in damages in connection with her claims for defamation, *per quod*, intentional infliction of emotional

Theodore K. Cheng was appointed arbitrator on December 9, 2021. After meeting with the parties, Mr. Cheng ordered the petitioner to submit a document outlining her claims and relevant timeframes along with the relief she was seeking. The following day, petitioner submitted an MS Word document that did not comply with Mr. Cheng's orders as it did not specify dates, relevant statutory provisions, or the relief petitioner sought. Accordingly, Mr. Cheng gave petitioner another opportunity to provide him with the proper document. Four days later, on December 14, 2021, petitioner submitted her statement of facts and relevant claims which Mr. Cheng outlined as the following: (1) retaliation under the New York State Human Rights Law, N.Y. Exec. Law § 290 *et seq.*; (2) retaliation under the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101 *et seq.*; (3) defamation *per quod* under New York common law; (4) defamation *per se* under New York common law; (5) retaliation under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution; (6) racial discrimination under the NYSHRL; and (7) racial discrimination under the NYCHRL. Respondent submitted an answer on December 21, 2021.

The parties entered into a briefing schedule and on April 1, 2022, respondent submitted opening dispositive motion papers. Petitioner did not submit any opening motion papers. Petitioner submitted opposition papers between April 21, 2022 and April 25, 2022, and requested a sur-reply on April 26, 2022, even before respondent submitted any reply papers. Mr. Cheng denied petitioner's request as it was premature. Petitioner requested a sur-reply again on April 29, 2022, after respondent submitted reply papers, but Mr. Cheng once again denied the request as there was no detailed explanation of the reasons a sur-reply was necessary. Mr. Cheng gave petitioner another opportunity to request a sur-reply with enough specificity and a showing that a sur-reply was justified, and petitioner obliged and stated respondent raised two new arguments in its reply papers; however, Mr. Cheng denied this request, noting that Bloomingdale's only responded to substantive arguments raised by petitioner.

On May 9, 2022, Mr. Cheng notified the parties that he did not need any further submissions and oral argument was unnecessary as he was prepared to issue a decision. On May 22, 2022, Mr. Cheng granted respondent's motion for summary award and dismissed petitioner's claims.

As to petitioner's claim for retaliation under the Fourteenth Amendment, Mr. Cheng noted that a "constitutional claim can only be imposed against a state actor." (Final Award "Exhibit A" at 8). He further outlined that petitioner never alleged Bloomingdale's was a state actor, thus dismissing her claim (*id.*). As to petitioner's claim for intentional infliction of emotional distress, Mr. Chen denied the claim as moot because petitioner withdrew the claim

when she did not include it in her summary of facts (*id.* at 9).

Mr. Cheng dismissed petitioner's claim for defamation. Petitioner claimed that customers accused her of racially profiling them, and petitioner contends these claims led to her disciplinary meeting in which she was ultimately fired. Although common law defamation requires the publication of defamatory remarks to a third party, Mr. Cheng noted that "nowhere in [petitioner's] response to the interrogatory, her Summary of Facts and Applicable Law, or her opposition brief does she set forth any facts or evidence from which it can be reasonably inferred that these statements were ever published to a third party by Bloomingdale's" (*id.* at 11).

Mr. Cheng dismissed petitioner's racial discrimination claims under the NYHRL and the NYCHRL. Mr. Cheng observed that petitioner "failed to raise a triable issue of fact as to whether [Bloomingdale's] conduct . . . was a pretext to mask a discriminatory intent or was, in part, motivated by discrimination" (*id.* at 14). According to Mr. Cheng, petitioner "advance[d] her own narrative version of events," never citing to specific record or failing to put forth any evidence (*id.*).

Finally, as to petitioner's claims for retaliation pursuant to the NYSHRL and NYCHRL, Mr. Cheng observed that petitioner submitted a formal complaint to her supervisors requesting a hearing *after* she was told not to return to the store. This version of events negates any possibility of retaliation against protected activity as required by both NYSHRL and NYCHRL (*id.* at 13). Additionally, Mr. Cheng noted that "there is insufficient evidence . . . that there exists a causal connection between

[petitioner's] alleged complaints of discrimination and campaign of harassment and the decision to terminate [petitioner's] employment" (*id.* at 18).

Petitioner seeks an order vacating the arbitration award pursuant to CPLR 7511. Petitioner contends Mr. Cheng's decision was an abuse of discretion and biased. Petitioner asserts that Mr. Cheng did not grant her an opportunity to present her case and demonstrated bias against her because she represented herself as an attorney. Petitioner claims Mr. Cheng was not impartial in rendering his decision and upholding the arbitration award contravenes public policy.

Defendant asserts Mr. Cheng complied with the arbitration agreement entered by the parties and acted impartially in rendering his decision. Additionally, defendant brings a cross-motion seeking confirmation of the arbitration award.

Discussion

"CPLR 7511 provides just four grounds for vacating an arbitration award, including that the arbitrator exceeded his power (CPLR 7511[b][1][iii]), which 'occurs only where the arbitrator's award violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power. Mere errors of fact or law are insufficient to vacate an arbitral award. Courts are obligated to give deference to the decision of the arbitrator, even if the arbitrator misapplied the substantive law in the area of the contract'" (*NRT New York v Spell*, 166 AD3d 438, 438-39, 88 NYS3d 34 [1st Dept 2018] [internal quotations and citations omitted])

The Court denies petitioner's motion to vacate the award and grants respondent's request to confirm the award. Petitioner did not submit sufficient evidence to show that the arbitrator exceeded his authority or violated public policy by deciding in favor of respondent. By all accounts, Mr. Cheng gave petitioner ample opportunity to make her case; even though she is an attorney and should have been more diligent, Mr. Cheng allowed her several opportunities to correct or restate various submissions when petitioner ignored deadlines and instructions, and he gave her leeway when she disregarded various procedural rules. There is absolutely no evidence of bias against petitioner.

Moreover, the arbitration decision was rational, and Mr. Cheng thoughtfully considered each of petitioner's and carefully explained why each claim failed. His determination to dismiss petitioner's claims was rational and justified.

It is not the role of this Court to second guess an arbitrator's decision or look for areas where it might disagree. The circumstances under which a court may vacate an award, outlined above, are not present here. This Court understands that nobody likes to lose. But petitioner's dissatisfaction and attempt to relitigate the matter here are not bases to vacate.

Accordingly, it is hereby

ORDERED that the motion by petitioner to vacate the arbitration award is denied, the request by respondent to confirm the award dated May 17, 2022 is granted and the Clerk is directed to enter judgment accordingly in favor of respondent and against petitioner along with costs and disbursements upon presentation of proper papers therefor.

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9/30/22

DATE

/s/ Arlene P. Bluth

ARLENE BLUTH, J.S.C.

[STAMP]

**HON. ARLENE P. BLUTH
J.S.C.**

CHECK ONE:

☒ DATE DISPOSED
☐ GRANTED ☐ DENIED

APPLICATION:

☐ SETTLE ORDER

CHECK IF APPROPRIATE:

☐ INCLUDES TRANSFER/
REASSIGN

☐ NON-FINAL DISPOSITION

☐ GRANTED IN PART

☒ OTHER

☐ SUBMIT ORDER

☐ FIDUCIARY APPOINTMENT

☐ REFERENCE

[STAMP]

FILED

OCT 04 2022

**NEW YORK COUNTY
COUNTY CLERK**

14a

Appendix C

Court of Appeals of New York

2023-364

Decided: October 19, 2023

IN RE: Anna PEZHMAN,
—v.— Appellant,

BLOOMINGDALES, INC.,
Respondent.

Motion for leave to appeal denied with one hundred
dollars costs and necessary reproduction disbursements.