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September 24, 2018

TO:  
Fishkin Lucks, LLP  
One River Plaza, Suite 410  
Newark, New Jersey 07102

Bill for stenographic services in the matter of:  
Mark Steyn, et al versus CRTV, LLC

Index Number: 650887/2018

DATE OF PROCEEDINGS:  
September 13, 2018  
Before: Honorable Eileen Bransten, JSC

Transcription fee: \$63.70

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: CIVIL TERM: PART - 3

-----X  
MARK STEYN, MARK STEYN ENTERPRISES (US), INC.;  
And OAK HILL MEDIA, INC.,

Petitioners

INDEX NUMBER:  
650887/2018

-against-

CRTV, LLC,

Respondents

-----X  
60 Centre Street  
New York, New York 10007  
September 13, 2018

BEFORE:

HONORABLE: Eileen Bransten, JSC

APPEARANCES:

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Newark, New Jersey 07102  
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Judith R. Cohen, Esq.

Delores Hilliard  
Official Court Reporter

## Proceedings

COURT CLERK: Index Number 650887/2018.

In the matter of M A R K S T E Y N, et al  
versus C R T V, L L C.

THE COURT: For Mark Steyn, Mark Steyn Enterprises  
US, Incorporated and Oak Hill Media, Incorporated, with the  
Fishkin Lucks, LLP I have Erin O'Leary. How are you?

MS. O'LEARY: Good. How are you, your Honor.

THE COURT: For CRTV, LLC. I have from the Browne  
George Ross, LLP firm I have Ms. Cohen. How are you?

MS. COHEN: Good morning, your Honor.

THE COURT: And Jeffrey Mitchell. How are you?

MR. MITCHELL: Good morning, your Honor.

THE COURT: This is Motion Sequence Number 6. And  
it is a motion for Leave to File Counter Judgment. And I'm  
ready to give you my decision on this. I don't need  
argument. So, please be seated. And I think that we can do  
it.

Background. Petitioners Mark Steyn, Mark Steyn  
Enterprises (US), Incorporated otherwise known as ("MSE"),  
and Oak Hill Media, Incorporated otherwise known as ("Oak  
Hill") brings this petition to confirm an arbitration award,  
dated February 21st, 2018, otherwise known as (the "Award").

On May 9, 2016, Mark Steyn, MSE and Respondent  
CRTV, LLC otherwise known as ("CRTV") entered into a Binding  
Term Sheet which is called ("the Steyn Agreement") whereby

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Mr. Steyn and MSE would host, and CRTV would fund and produce a television program to be distributed by CRTV, otherwise known as (the "Show"). Petition at paragraph 11.

As part of the same transaction embodied in the Steyn Agreement, CRTV and Oak Hill Media entered into a letter agreement, dated May 9, 2016. And that is called (the "Oak Hill Agreement"), pursuant to which Oak Hill would provide ancillary services related to the Show. And again that is the petition at paragraph 15.

On February 8, 2017, CRTV mailed to Mr. Steyn, MSE, and Oak Hill which was purported to be a "Notice of Termination" of the Steyn Agreement. The Petition at paragraph 17.

On February 20, 2017, CRTV initiated the Demand for Arbitration to the American Arbitration Association, which was later amended on March 14, 2017.

As amended, the Demand for Arbitration alleged claims against Mr. Steyn and MSE for breach of the Steyn Agreement, civil theft and conversion, and trespass to chattels. Petition at paragraph 18.

Mr. Steyn and MSE answered the Demand on March 22, 2017, and raised counterclaims for breach of the Steyn Agreement and fraud. Petition at paragraph 19.

In addition, Oak Hill asserted a claim for breach of the Oak Hill Agreement.

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The arbitration hearing was conducted on, from October 16th through October 26, 2017 in Williston, Vermont.

On February 21st, 2018, the Arbitrator, the Honorable Elaine Gordon (retired), rejected each of CRTV's claims and entered the Award in the total amount of \$3,797,427.98 in favor of Mr. Steyn, MSE, and Oak Hill. Petition at paragraph 36.

First, the Arbitrator found that CRTV breached the Steyn Agreement awarding Mr. Steyn and MSE \$1,800,000 in damages, plus interest. And that is the same citation, Petition at paragraph 32.

Second, the Arbitrator awarded Oak Hill \$908,124 for un-reimbursed expenses and amounts due under the Oak Hill Agreement, plus interest. Again, the Petition at paragraph 33.

Finally, the Arbitrator awarded Mr. Steyn, MSE and Oak Hill the attorneys' fees and costs.

On July 20, 2018, this court confirmed the following aspects of the award.

Awarding Mr. Steyn and MSE \$1,800,000 in damages, plus interest against the CRTV.

Awarding Oak Hill Media \$908,124 for unreimbursed expenses and amounts due and owing under the Oak Hill agreement, plus interest.

Awarding Mark Steyn and MSE \$76,574.98 in



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administrative expenses.

And modified the award to Steyn, MSE and Oak Hill by removing the grant for attorneys' fees in the amount of \$1,012,720.

Motion Sequence Number 6, which is the Motion for a Proposed Counter Judgment.

The parties were directed to settle a judgment.

The Petitioner submitted a proposed judgment and the Respondent submitted a proposed counter judgment by bringing this instant action.

At issue is the Respondent's request to dismiss certain claims against non-party Cary Katz during the arbitration proceeding.

It should be noted that the parties have submitted their pre-hearing arbitration papers on the issue.

It is well settled that judicial review of arbitration awards is extremely limited, and an arbitrator's award will be upheld and when there is even a barely colorable justification for the result, regardless of the errors of law or fact. And I cite to Wein & Malkin, LLP versus Helmsley-Spear, Incorporated, 6 N.Y.3d 471 at pages 479-480, a 2006 case.

Accordingly, the court may only disturb an arbitrator's award when it is against strong public policy, is irrational, or clearly exceeds the specific and

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enumerated limitation on the arbitrator's powers. That cites McIver-Morgan versus Dal Piaz, 108 A.D.3d 47 at page 51, (1st Department 2013), Affirmed 22 N.Y.3d 1104 (2014).

By adding the additional request for dismissal of claims made against Carl Katz, who was not even a party to this action, the Respondent is effectively asking the court to reinterpret the decision of the arbitrator.

The Court has already confirmed the arbitration award made by the Honorable Elaine Gordon and will not reconsider her decision.

To the extent that the Respondent seeks a further modification in the award by dismissing the claims against Carl Katz, that question is answered in the negative.

Conclusion, the motion is DENIED.

Cross-Motion to Enter Judgment. The Petitioner moves to have its proposed judgment entered by the court.

The proposed judgment very clearly sets down only the amounts confirmed by this court in motion sequence number 4.

Therefore, the Cross-Motion for a proposed judgment is hereby GRANTED.

And I have behind here a proposed judgment, which I have read and I checked the numbers. And I'm sure that everybody else has read it; right? You have read the proposed judgment?

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MR. MITCHELL: Yes.

THE COURT: And you have checked the numbers;  
right?

MR. MITCHELL: Yes.

THE COURT: The numbers are exactly what was  
awarded; am I correct?

MR. MITCHELL: Yes, your Honor.

THE COURT: So, today's date is the 13th of  
September. And here's my name and my signature. And this  
is what we are going to up-load. But, this is what will be  
entered as a judgment, okay.

So, that constitutes the decision and order of the  
Court.

Now, you're going to have to, I'm going to wait on  
the judgment and wait on the minutes of my decision. Then,  
I will give you the gray sheet. Then, we will do the order.  
Okay. All right. So, as soon as you can get the minutes  
the better it will be.

MS. O'LEARY: Yes, your Honor. Thank you.

MR. MITCHELL: Your Honor, may I ask a question  
just so I understand?

THE COURT: Yes.

MR. MITCHELL: The confirmation -- This is simply  
for future reference because, obviously, there may be things  
that come up in the future that we need to deal with.



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Is the Court's decision that the decretal paragraphs of the award say what they say and the Court was confirming that part of the award?

Because, obviously, there are things that are in the final award and statements concerning evidence and things like that.

THE COURT: Let me tell you what usually happens.

Usually, you don't come in with an order to show cause of that commission to put in a counterclaim. That's not what happened.

What happens is that the order, the judgment, okay, is made. And it says that noticing it to be adopted on such and such a date. And the CPLR tells us how long it has to wait. All right.

Now, during that period the other side can put in a counter judgment. All right. And it was the counter judgment that the Court then considers. And it goes back to the arbitrator's award. And the arbitrator's award is what is -- The motion sequence number 4 where I confirmed the arbitration award.

Remember, I didn't confirm the attorneys' fees. Never did I do the attorneys' fees, because that was requesting a million and something plus. I did not confirm that. But, everything else was confirmed.

MS. COHEN: Your Honor, with respect to the

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1  
2 procedure regarding the judgment we had actually sent your  
3 Honor a letter asking that the Court direct that the  
4 judgment be settled by a notice of settlement. And before  
5 your Honor had an a chance to respond Petitioner submitted,  
6 just submitted judgment, no notice of settlement.

7 We were concerned, because we didn't have the  
8 opportunity to be heard. That is why we brought on the  
9 order to show cause.

10 THE COURT: I did say settle the order, which is  
11 notice of settlement.

12 MS. O'LEARY: May I be heard, your Honor?

13 THE COURT: Yes.

14 MS. O'LEARY: At the first hearing back in April on  
15 the petition to confirm, your Honor directed that the  
16 Petitioner submit a proposed judgment. That to my  
17 understanding was not effected by the subsequent order in  
18 June and it has not been my understanding. And it doesn't  
19 sound like it has been the Defendant's understanding that it  
20 was actually directed to be settled. So, nothing was  
21 obligated.

22 Petitioner submitted a notice to settle the  
23 judgment. The Petitioners were directed by the prevailing  
24 party to submit a proposed judgment. And that is what we  
25 did.

26 THE COURT: Let me tell you this, it doesn't really

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1  
2 matter. Because, the bottom line, once that proposed  
3 judgment, two, signing it. And any time, I mean, instead of  
4 making a motion by order to show cause for permission to put  
5 in something it should just be done. That's what the CPLR  
6 says to do.

7 MR. MITCHELL: I'm not arguing with your Honor. I  
8 just want to understand your Honor's decision.

9 I would at least like to understand the import.  
10 Because, for later just for res judicata purposes this may  
11 be important to understand.

12 So, with respect to the award, the final award of  
13 the arbitrator is confirmed by the Court's decision without  
14 the award of attorneys' fees, that's the Court's decision.  
15 The final award being the entire document. The judgment  
16 itself it's effecting the decretal paragraphs in the award.

17 THE COURT: I asked you, specifically, the decretal  
18 paragraphs in the award are reflected in this proposed  
19 judgment; am I correct?

20 MR. MITCHELL: Yes, that's correct.

21 New York law applies to certain-- So, to the extent  
22 the final award contains other findings or things like that,  
23 the award is confirmed in its entirety without the attorneys  
24 fees. So that to the extent we have argument that derives  
25 from the language of the final award, that award is  
26 confirmed; correct? That's the Court's decision?

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1  
2 THE COURT: Yes. I don't see anything in here that  
3 is anything different.

4 MR. MITCHELL: No, no. See, the issue is, your  
5 Honor, our concern is the two parts. On page 14 of the  
6 final award where the arbitrator found --

7 THE COURT: Look, that should have been arguments  
8 made when I confirmed the award. Arguments, I don't know if  
9 you made them or didn't, but I made a decision that I'm  
10 confirming the award.

11 MR. MITCHELL: Right. We agreed, we moved to  
12 confirm that part of the award, as well. In our motion we  
13 cross-moved to confirm it. So, in our motion on the award  
14 we cross-moved to confirm that portion of the award. So,  
15 when the Court -- That is why the purpose of getting the  
16 counter judgment when the Court confirms the arbitration  
17 award it was also granting our cross-motion to confirm the  
18 portion of the award --

19 THE COURT: Not necessarily. I confirmed their  
20 motion. I didn't confirm the counter judgment. I did not  
21 do that.

22 MR. MITCHELL: No, I'm not talking about the  
23 judgment. Put the judgment aside. I understand the  
24 judgment awards them money.

25 THE COURT: Yes.

26 MR. MITCHELL: And the --



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1  
2 THE COURT: Actually, the arbitration awarded them  
3 money. They came to confirm it and I confirmed the  
4 arbitration award. And the judgment now is being settled.

5 MR. MITCHELL: And the entirety, my simple  
6 clarification, the entirety of the arbitration award has  
7 been confirmed. But, not the attorneys fees award, without  
8 the attorneys fees award.

9 THE COURT: I think I made that as clear as  
10 possible. All right.

11 MR. MITCHELL: Thank you, your Honor.

12 THE COURT: I mean, I did it once when I confirmed  
13 the award. All right. I did it again when I was reading  
14 the decision today denying this ridiculous, if I say so,  
15 order to show cause I don't think was necessary or proper.

16 MR. MITCHELL: I understand.

17 THE COURT: Anyway, I denied it. And now, I will  
18 sign on the date that I put out the denial of this motion,  
19 all right, Motion Sequence Number 6.

20 The minutes that I'll be getting, which you will be  
21 ordering them, and I'll then sign the proposed judgment. It  
22 won't be proposed it will be the judgment. Okay.

23 MR. MITCHELL: I understand. I understand, your  
24 Honor.

25 I just wanted to understand the award is confirmed  
26 except for the attorneys fees. That is all.



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THE COURT: You know, you should have been here before. I mean, I did that exactly. Didn't I do that before? Exactly.

MR. MITCHELL: Thank you, your Honor.

THE COURT: You know, you're trying to relitigate something that has passed, gone, finished.

MR. MITCHELL: With all due respect, I'm not trying to relitigate. I'm trying to obtain what the order says. I'm not relitigating.

THE COURT: You should have gotten the minutes from the last one and you would have seen. Okay.

So, this is it. Please, order the minutes so that I can get going on this.

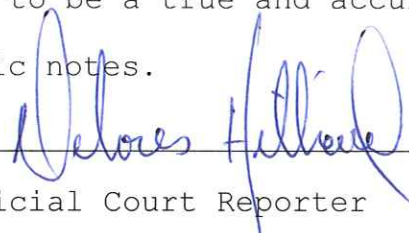
MS. O'LEARY: Yes, your Honor. Thank you.

MR. MITCHELL: Thank you, your Honor.

THE COURT: All right. Have a good day.

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Certified to be a true and accurate transcription of said stenographic notes.

  
\_\_\_\_\_  
Official Court Reporter

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