

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Present:

Hon. Maria G. Rosa, Justice

TEAMSTERS LOCAL 445,

Petitioner,

DECISION, ORDER
AND JUDGMENT

-against-

Index No. 52247/17

TOWN OF MONROE,

Respondent.

The following papers were read and considered on this petition to compel arbitration:

- NOTICE OF PETITION
- VERIFIED PETITION
- AFFIRMATION IN SUPPORT (erroneously entitled "Affidavit")
- EXHIBITS A - G

VERIFIED ANSWER

On August 24, 2017, the Teamsters Local 445, Petitioner, commenced this proceeding pursuant to CPLR Article 75 to compel arbitration of a dispute regarding the termination of an employee of Respondent Town of Monroe, Kathryn Troiano. By notice of motion filed September 8, 2017, Respondent moved to dismiss. On September 29, 2017, this court denied the motion to dismiss and directed Respondent to file an answer within thirty days. Instead of answering, Respondent appealed. The notice of appeal was filed October 17, 2017.

On November 12, 2020, the Appellate Division, Second Department affirmed this court's denial of the motion to dismiss. The Appellate Division noted that there is no statutory, constitutional or public policy prohibition against arbitration; that the parties agreed to arbitrate; that there is a reasonable relationship between the subject matter of the dispute and the general subject matter of the collective bargaining agreement; that the issue of whether Kathryn Troiano was afforded tenure protections within the scope of the substantive provisions of the collective bargaining agreement is a question for the arbitrator; and that the Town's assertion that the demand for arbitration was not properly filed is also for the arbitrator to determine.

On September 9, 2021, the Court of Appeals dismissed Respondent's appeal to it on the ground that the order denying dismissal of the petition to arbitrate did not finally determine the proceeding.

It was not until November 3, 2021, that Respondent filed an answer. This court directed the answer to be filed within thirty days of the denial of the motion to dismiss. Through correspondence, counsel argued as to whether the matter was stayed pending appeal. This court determined that it was. As the Court of Appeals dismissed the appeal on September 9, 2021, the answer should have been filed, at the very latest, by October 9, 2021. Respondent's counsel advised the court by letter dated and filed September 28, 2021, that it would file its answer on or before October 27, 2021. It did not. The court attorney responded that the matter was calendared for control purposes only for November 3, 2021. That was not a decision or order modifying the deadline. Therefore, the answer was filed late.

As to the substance of the petition and answer, the only issues that remain which were not dispensed with by the Appellate Division's decision are Respondent's contentions that arbitration cannot be compelled because the collective bargaining agreement has expired, Petitioner no longer represents the Respondent's employees, and that Troiano cannot be reinstated because the bargaining unit no longer exists. The Court finds that Respondent's contentions are without merit. "[T]he duty to arbitrate a dispute arising during the term of the agreement survives the expiration thereof" (*D'Addario v Weinstein*, 211 AD2d 633, 634 [2d Dept 1995] [internal quotations and citations omitted]). Here, the right to arbitrate accrued under the collective bargaining agreement while it was in effect. As such, the right to arbitration survived the expiration of the agreement (see *Fairfield Towers Condo. Ass'n v Fishman*, 1 AD3d 252, 254 [1st Dept 2003], citing *Litton Fin. Print. Div. v National Labor Relations Bd.*, 501 US 190, 208 [1991]). The appropriate remedy available to Troiano should the arbitrator find in her favor is for the arbitrator to determine (see e.g., *Fairfield Towers Condo. Ass'n v Fishman*, 1 AD3d at 254).

Based upon the foregoing, the petition to compel arbitration is granted.

The foregoing constitutes the decision, order and judgment of the Court.

Dated: January 21, 2022
Poughkeepsie, New York

ENTER:



MARIA G. ROSA, J.S.C.

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Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

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