

202 A.D.3d 560
Supreme Court, Appellate Division,
First Department, New York.

In the Matter of TREBUCHET CAPITAL
MANAGEMENT, LP, et al., Petitioners–Appellants,

v.

PRELUDE OPPORTUNITY FUND,
LP, et al., Respondents–Respondents.

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Index No. 655170/21

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Case No. 2021–03568

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ENTERED February 15, 2022

Attorneys and Law Firms

Emmet, Marvin & Martin, LLP, New York ([John Dellaportas](#) of counsel), for appellants.

[Joshua L. Seifert](#) PLLC, New York ([Joshua L. Seifert](#) and [Jaime L. Berger](#) of counsel), for respondents.

[Kapnick, J.P.](#), [Webber, Gesmer, Scarpulla, Shulman, JJ.](#)

Opinion

****664 *560** Order, Supreme Court, New York County (Lyle E. Frank, J.), ***561** entered on or about September 29,

2021, which denied the petition brought pursuant to CPLR article 75 to vacate or modify a mediator's award, dated August 11, 2021, and granted respondents' motion to dismiss the petition, unanimously affirmed, with costs.

The parties unequivocally agreed, in writing, to submit their contract dispute to a person who had previously mediated for them, that each would be “bound by whatever decision [that mediator] makes,” and that each “waive[d] any right to review or appeal from such decision.” That decision was clearly intended to be the final determination of the dispute. Thus, the plain language of the parties' agreements precludes judicial review (*see Brad H. v. City of New York*, 17 N.Y.3d 180, 185, 928 N.Y.S.2d 221, 951 N.E.2d 743 [2011]; *Sullivan v. Harnisch*, 96 A.D.3d 667, 667, 948 N.Y.S.2d 34 [1st Dept. 2012]).

We note that the crux of the parties' dispute, as defined by petitioners' own submission, was whether respondents had breached the agreements, whether petitioners were entitled to any of the “Target Amount” set forth in the parties' agreements, and if so, how much. The mediator's decision, that petitioners waived any right to any portion of the Target Amount, squarely resolved the dispute presented.

All Citations

202 A.D.3d 560, 159 N.Y.S.3d 663 (Mem), 2022 N.Y. Slip Op. 00991