



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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APPLICATION OF JOPAL BRONX, LLC D/B/A  
WORKMEN'S CIRCLE MULTICARE CENTER,

**DECISION AND ORDER**

Petitioner(s), Index No: 816052/21E

FOR AN ORDER PURSUANT TO ARTICLE 75 OF THE  
CPLR CONFIRMING AN ARBITRATION AWARD,

- against -

MARILYN FALCON,

Respondent(s).

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In this special proceeding pursuant to CPLR § 7510, to confirm an arbitration award, petitioner seeks to confirm the arbitration award dated January 13, 2021, issued by Jay Safer (Safer), an arbitrator with the American Arbitration Association (the AAA). The petition is unopposed.

For the reasons that follow hereinafter, the petition is granted, without opposition and on default.

In this special proceeding to confirm an arbitration award, the petition states, in pertinent part, as follows. Petitioner is a skilled nursing care facility, which between March 1, 2016 and October 13, 2016, provided skilled nursing care to Ellias Silot (Silot). On March 8, 2016, respondent executed an Admission Agreement (the agreement), wherein she undertook certain

obligations to guarantee payment to petitioner for treatment petitioner provided to Silot. Pursuant to the agreement, respondent guaranteed "payment for any portion or all applicable private pay room and board rate and the ancillary charges incurred for services" related to Silot's care at petitioner's facility. Silot was the recipient of medical assistance from Medicaid and was required to remit \$10,294.10 for care provided on June 10, 2016, \$2,004 for care provided in June, July, and August 2016, and \$2,799 for care provided in September and October 2016. Respondent breached the agreement in failing to tender payments when Silot failed to make them. As a result, and per the agreement, petitioner commenced an arbitration proceeding before the AAA. Respondent was notified to appear for arbitration and failed to appear. On January 13, 2021, Safer rendered a decision issuing a final arbitration award in petitioner's favor. Based on the foregoing, petitioner seeks an order confirming Safer's award and the entry of a judgment for the sums awarded.

Petitioner's motion is granted. On this record, petitioner establishes that it received an arbitration award against respondent and that it moved to confirm the same within a year of the award's issuance.

Pursuant to CPLR § 7510, "the court shall confirm an award upon application of a party made within one year after its delivery

to him, unless the award is vacated or modified upon a ground specified in section 7511." Accordingly, a timely application to confirm an arbitration award that has not been vacated or modified must be granted (*Bernstein Family Ltd. Partnership v Sovereign Partners, L.P.*, 66 AD3d 1, 5 [1st Dept 2009] ["Giving the word 'shall' its ordinary meaning, we are directed unequivocally by CPLR 7510 to confirm an arbitration award if a timely application is made whenever the award is not vacated or modified under CPLR 7511."]; see *Matter of Allstate Ins. Co. v Dental Health Care, P.C.*, 24 AD3d 437, 438 [2d Dept 2005]; *Geneseo Police Benev. Ass'n, Council 82 v Vil. of Geneseo*, 91 AD2d 858, 858 [4th Dept 1982], *affd sub nom Matter of Geneseo Police Benevolent Assn. Council 82 v Vil. of Geneseo*, 59 NY2d 726 [1983]; *Biller v David*, 37 AD2d 954, 954 [1st Dept 1971]).

Pursuant to CPLR § 7511(a), in response to an application to confirm an arbitration award, "[a]n application to vacate or modify an award may be made by a party within ninety days after its delivery to him." Moreover, an objection to confirmation may be made in opposition to an application to confirm arbitration (*Pine St. Assoc., L.P. v Southridge Partners, L.P.*, 107 AD3d 95, 100 [1st Dept 2013] ["As a threshold matter, we begin by observing that a party may oppose an arbitral award either by motion pursuant to CPLR 7511(a) to vacate or modify the award within 90 days after delivery of the award or by objecting to the award in opposition to

an application to confirm the award notwithstanding the expiration of the 90-day period.”]; *Matter of Brentnall v Nationwide Mut. Ins. Co.*, 194 AD2d 537, 538 [2d Dept 1993]).

Pursuant to CPLR § 7513, “[u]nless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including attorney's fees, incurred in the conduct of the arbitration, shall be paid as provided in the award.” The court, however can “on application, [] reduce or disallow any fee or expense it finds excessive or allocate it as justice requires.” This is because a party to an arbitration is liable for those fees imposed by the arbitration tribunal to which the parties bind themselves (*C. F. Simonin's Sons, Inc. v Antonio Corrao Corp.*, 285 AD 953 [2d Dept 1955] [“The arbitrators properly awarded administration fees to respondent and against appellant on both the claims of respondent and the counterclaim of appellant under the rules of the American Arbitration Association which governed the submission.”]; *Lief v Brodsky*, 126 NYS2d 657, 658 [Sup Ct 1953] [“The provisions governing fees of arbitrators, Sec. 1457, Civil Practice Act, have no application here. The parties subjected themselves to the rules and regulations of the American Arbitration Association, which contain a schedule of administrative fees predicated upon the amount claimed in the controversy. Respondent contends that as the result of this schedule, he is required to pay \$250 in fees, and by

direction of the arbitrators to pay a like sum to reimburse petitioner for a total of \$500. It is argued that a charge of \$500 for fees upon a total award of \$1,795 is excessive. While it is true that costs and disbursements in court litigation would not, except under most unusual circumstances, equal these charges, nevertheless the respondent can obtain no relief here, for he, as already indicated, made himself subject to these charges.”)].

Pursuant to CPLR § 7514, “[a] judgment shall be entered upon the confirmation of an award.” Thus, once an arbitration award is confirmed, the court may enter a judgment in accordance with the award (*Arcadu v Levinson*, 250 NY 355, 356 [1929] [“Upon the granting of an order confirming, modifying, or correcting an award, judgment may be entered in conformity therewith. Civil Practice Act, § 1461.”]; see *ZMK Realty Co. v Bokhari*, 267 AD2d 391, 392 [2d Dept 1999] [“We agree with appellant's contention that the Supreme Court improvidently exercised its discretion in refusing to entertain his submission of a proposed judgment for signature, and by declaring nunc pro tunc that its prior order dated November 6, 1997, confirming an arbitration award constituted an ‘order and judgment.’”]).

In support of the petition, petitioner submits the arbitration award, dated January 13, 2021, wherein Safer states that respondent breached the agreement between her and petitioner. Specifically,

Safer states that the agreement between the parties obligated respondent to remit payment to petitioner and that she failed to do so. Thus, Safer awarded petitioner \$29,842.10 representing the payments required by the agreement. Safer also awarded petitioner \$2,400, representing fees imposed by AAA and \$2,500, representing Safer's compensation as arbitrator.

Petitioner submits the agreement. It indicates that it was between petitioner, respondent and Silot. Petitioner was designated as the Facility, Silot as the Resident, and respondent as the Designated Representative. According to the agreement, it was agreed that "the Resident will be admitted to the Facility . . . [that the] Resident and/or Designated Representative hereby consent to such routine care and treatment as may be provided by the Facility." Section IV, subsection (a) of the agreement, titled Financial Arrangements states that

[t]he Resident and/or Designated Representative and/or Sponsor shall ensure that the Resident has a continuous payment source and/or shall pay the Facility on a private pay basis, with private insurance, and/or by means of a third-party government payor, such as Medicare or Medicaid. A Resident's obligation to guarantee payment is personal and limited to the extent of his/her finances, and, consistent with applicable laws, rules and regulations, to the extent of his/her spouse's income and resources as well. The Designated Representative is responsible for providing payment from the Resident's

income and resources to the extent he/she has access to such income and resources without the Designated Representative incurring personal financial liability. By signing this Agreement, however, the Designated Representative personally guarantees a continuity of payment from the Resident's funds to which he/she has access or control and agrees to arrange for third-party payment, if necessary, to meet the Resident's cost of care. Unless the Designated Representative is also the resident's spouse or Sponsor, the Designated Representative is not obligated to pay for the cost of, the Resident's care from his/her own funds, except to the extent of his/her breach of this Agreement.

Section XII, subsection (a) of the agreement, titled General Provisions states that "[t]he Parties may agree that it is in their mutual interest to provide for a faster, less costly, and more confidential solution to disputes that may arise between them and hereby elect to execute the Binding Arbitration Agreement set forth in the attached Exhibit 1 hereby exercising their option for any and all disputes or controversies between them." The agreement contains the arbitration agreement referenced by the foregoing section, which is executed by the parties.

Petitioner submits a document titled Budget Explanation Agreement, which indicates that Silot's financial responsibility was \$10,294.10 for the month of June 2016, \$2,004 for the month of July 2016 and \$2,799 for the month of July 2016.

Petitioner submits a letter from AAA, dated May 8, 2020,



addressed to respondent, which apprises her of a virtual hearing scheduled for May 19, 2020.

Based on the foregoing, petitioner's application is hereby granted. Significantly, on an application to confirm an arbitration, the proponent need only establish that the award was made within a year of its issuance and that the same has not been vacated or modified (CPLR § 7510; *Bernstein Family Ltd. Partnership* at 5; *Matter of Allstate Ins. Co.* at 438; *Geneseo Police Benev. Ass'n, Council 82* at 858; *Biller* at 954). Here, the record establishes that the instant arbitration award was issued on January 13, 2021 and that the instant special proceeding to confirm the foregoing award was commenced on November 23, 2021<sup>1</sup>. Although respondent could have moved to vacate or modify the award within 90 days of its issuance (CPLR § 7511[a]) or could have opposed the instant petition (*Pine St. Assoc., L.P.* at 100; *Matter of Brentnall* at), nothing in the record indicates that she did so. Accordingly, the instant petition to confirm the arbitration award is granted.

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<sup>1</sup> Pursuant to CPLR § 304, "[a] special proceeding is commenced by filing a petition in accordance with rule twenty-one hundred two of this chapter." Here, per the Court's file, of which it takes judicial notice (*MJD Construction, Inc. v Woodstock Lawn & Home Maintenance*, 299 AD2d 459, 459 [2d Dept 2002] ["The Supreme Court was entitled to take judicial notice of its prior decision in this matter and the record in the related bankruptcy proceeding."]; *Ptasznick v Schultz*, 247 AD2d 197, 199 [2d Dept 1998]; *Warner v Board of Education of the City of New York*, 14 AD2d 300, n1 [1st Dept 1961]), the instant petition was filed on November 23, 2021, approximately 10 months after the issuance of the arbitration award.


In light of confirmation, the Court also orders the entry of a judgment in accordance with the arbitration award (CPLR § 7514), including the fees associated with the arbitration, such as the arbitrator's compensation (CPLR § 7513).

The Court notes that the record, while supporting petitioner's decision to arbitrate the underlying dispute and supporting Safer's decision insofar as he found that respondent breached the agreement, does not support the amount of the award. Specifically, nothing submitted with the instant petition support an award of \$29,842.10. Nevertheless, in the absence of any opposition seeking to challenge the award, this Court will not disturb the same. It is hereby

**ORDERED** that the Clerk enter judgment in the amount of \$34,742.10, plus interest. It is further

**ORDERED** that Petitioner serve a copy of this Order with Notice of Entry upon respondent within thirty (30) days hereof.

Dated : March 1, 2022  
Bronx, New York

  
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HON. FIDEL E. GOMEZ, AJSC