

**Matter of Kushner v Goldberg & Connolly**

2007 NY Slip Op 32215(U)

July 12, 2007

Supreme Court, New York County

Docket Number: 0105131/2007

Judge: Marcy L. Kahn

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SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY: CIVIL TERM: IAS PART 50K

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In the Matter of the Application of  
JAY KUSHNER and ALEXANDER A. MIUCCIO

Petitioners, DECISION AND ORDER  
PURSUANT TO  
CPLR §7510

-and-

Index No. 105131/07

GOLDBERG & CONNOLLY  
HENRY L. GOLDBERG,

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk  
and notice of entry cannot be served based hereon. To  
obtain entry, counsel or an authorized representative must  
appear in person at the County Clerk's Desk (Room  
141B).  
Re: the Judgment

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MARCY L. KAHN, J.:

By notice of petition and verified petition filed May 11,  
2007, petitioners Jay Kushner and Alexander A. Miuccio  
(collectively, "petitioners") seek an order pursuant to CPLR  
§7510 confirming the final award of the arbitrator, Leslie  
Trager, as modified on April 3, 2007, which granted monetary  
awards in specified amounts to each petitioner as against  
respondents Goldberg & Connolly and Henry L. Goldberg  
(collectively, "respondents"), and made other findings and  
conclusions.

Respondents submitted an affirmation in opposition dated  
May 9, 2007, and the petitioners replied by affirmation dated  
May 15, 2007, concerning errors in the monetary calculations.<sup>1</sup>

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This initial opposition and the reply addressed an overpayment  
in the initial arbitration award, which petitioners and  
respondents now both agree was mistaken, and petitioners have  
submitted an amended proposed judgment correcting this  
calculation.

By sur-reply affirmation in opposition dated May 16, 2007, and supplemental affirmation in opposition dated May 21, 2007, respondents noted that the respondents had already paid petitioners all specified monetary sums awarded in the final modified arbitrator's award, rendering the monetary portions of petitioner's proposed judgment "moot," and eliminating any basis for the inclusion in the judgment of a monetary award. Respondents have submitted a proposed counter-judgment containing only the non-monetary findings, conclusions and other relief, which are uncontested in this proceeding.

Where an arbitration award contains a clear and definite determination of the rights and obligations of the parties, it will be final and enforceable in a judgment confirming the award. (Matter of Hunter v. Proser, 274 AD 311, 312 [1<sup>st</sup> Dept. 1948], aff'd, 298 NY 828 [1949]). This is so, notwithstanding the need for any further calculation as to any amount due under the award, where the calculation involves no more than a ministerial act, and the rights and obligations of the parties have been determined by the award itself. (Morgan Guaranty Trust Co. Of New York v. Solow, 114 AD2d 818 [1<sup>st</sup> Dept. 1985]; Overseas Distributors Exchange, Inc. v. Benedict Bros. & Co., 5 AD2d 498 [1<sup>st</sup> Dept. 1958]). Thus, the fact that a portion of the award, such as a monetary payment, has been satisfied does not eliminate this necessary function, and the judgment should continue to contain and memorialize all elements of the award

that are properly confirmed. (See Matter of City of Cortland v. Murray Walter, Inc., 124 AD2d 875 [3<sup>rd</sup> Dept. 1986]).

Here, where the award clearly and definitively determines the rights of the parties, and where the parties concur as to all other aspects of the award, the court should confirm the award as to all of its provisions and reduce it to judgment in full.

Any effort by petitioners to seek to enforce anew the monetary aspects of the judgment would be in patent bad faith, and could, apart from any sanctions potentially enforceable against them (see, e.g., 22 NYCRR §130-1), be averted by the respondents' entry of satisfaction pursuant to CPLR §5021. In any case, this decision makes clear that both petitioners and respondents have acknowledged that full payment has already been made.

Accordingly, upon the petition of Jay Kushner and Alexander A. Miuccio and the affirmation of Alexander A. Miuccio, Esq., both dated April 13, 2007 seeking confirmation pursuant to CPLR §7510 of the final modified arbitration award in the arbitration proceeding No. Re 13 181 01662 05 conducted by the American Arbitration Association Commercial Arbitration Tribunal; the affirmation in opposition of Brian P. Craig, Esq., dated May 9, 2007; the reply affirmation of Alexander A. Miuccio, Esq., dated May 15, 2007; the sur-reply affirmation dated May 16, 2007, and supplemental affirmation in opposition dated May 21, 2007, both

of Brian P. Craig, Esq.; and the exhibits annexed to the aforesaid papers; and upon all the prior pleadings and proceedings, and upon the final award of the arbitrator, signed by the arbitrator, Leslie Trager, on February 23, 2007; and the modification of the final award of arbitrator, signed by the arbitrator, Leslie Trager, on April 3, 2007; and no party having sought vacation of the award pursuant to CPLR §7511(b)(1) or(2); it is hereby

ORDERED and ADJUDGED, that pursuant to CPLR §7510, the Petition to confirm the final award as modified is granted; and it is further

ORDERED and ADJUDGED, that petitioner Jay Kushner, residing at 15 Woodlawn Avenue, Great Neck, New York, have judgment and recover against respondents Goldberg and Connolly and Henry L. Goldberg, located at 66 North Village Avenue, Rockville Centre, New York, in the sum of \$1,152.56, and that petitioner Jay Kushner have execution therefor, and it is further

ORDERED and ADJUDGED, that petitioner Alexander A. Miuccio, residing at 420 East 72<sup>nd</sup> Street, Apt. 19D, New York, New York, have judgment and recover against respondents Goldberg and Connolly and Henry L. Goldberg, located at 66 North Village Avenue, Rockville Centre, New York, in the sum of \$102.16, and that petitioner Alexander A. Miuccio have execution therefor, and it is further

ORDERED and ADJUDGED, that petitioners Jay Kushner and Alexander A. Miuccio are awarded interest under the final award as modified in the sum of \$3,457.78, and that petitioners have execution therefor, and it is further

ORDERED and ADJUDGED, that petitioners Jay Kushner and Alexander A. Miuccio have judgment and recover against respondents Goldberg and Connolly and Henry L. Goldberg, the sum of \$2,837.50, representing that portion of the arbitrator's fees in excess of the apportioned costs previously incurred by petitioners, and that petitioners have execution therefor, and it is further

ORDERED and ADJUDGED, that under the final award, the administrative fees of the American Arbitration Association totaling \$1,050.00 shall be borne equally by the petitioners and the respondents, and it is further

ORDERED and ADJUDGED, that under the final award, all information relating to calculations used by respondents to compute compensation payments due petitioners be made available to petitioners at the time compensation payments are made to petitioners, and it is further

ORDERED and ADJUDGED, that under the final award, all records and books relating to the amounts billed to petitioners' clients and monies received from petitioners' clients shall be made available by respondents, if requested by petitioners, once

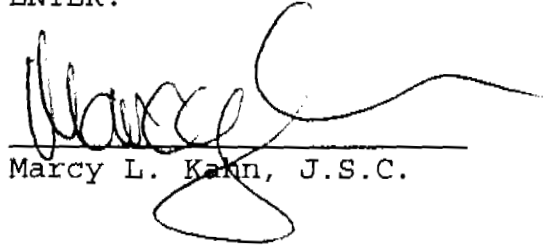
each month during normal business hours, or at such other times as the parties shall agree, and it is further

ORDERED and ADJUDGED, that respondents Goldberg & Connolly and Henry L. Goldberg, have materially breached the agreement between the parties, and that petitioners Jay Kushner and Alexander A. Miuccio are entitled to terminate the agreement between the parties, and it is further

ORDERED, that each party shall bear its own costs and disbursements of this proceeding.

The foregoing constitutes the decision and judgment of this court.

ENTER:

  
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Marcy L. Kahn, J.S.C.

Dated: New York, New York  
July 12, 2007

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).