

**Trustees of the N.Y. State Nurses Assn. Pension  
Plan v Mount Vernon Hosp.**

2010 NY Slip Op 30569(U)

March 16, 2010

Supreme Court, New York County

Docket Number: 600159/2010

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

HON. JUDITH J. GISCHE

PRESENT: \_\_\_\_\_ J.S.C. Justice

PART 10

Index Number : 600159/2010

**TRUSTEES**

VS.

**MOUNT VERNON HOSPITAL**

SEQUENCE NUMBER : 001

CONFIRM AWARD

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

MOTION CAL. NO. \_\_\_\_\_

this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...

Answering Affidavits -- Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion


motion (s) and cross-motion(s) decided in accordance with the annexed decision/order of even date.

**FILED**

MAR 18 2010

NEW YORK COUNTY CLERK'S OFFICE

Dated: 3/16/10

  
 HON. JUDITH J. GISCHE J.S.C.  
 J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 10**

-----X  
**TRUSTEES OF THE NEW YORK STATE NURSES  
ASSOCIATION PENSION PLAN,**

Plaintiff (s),

**-against-**

**THE MOUNT VERNON HOSPITAL**

Defendant (s).  
-----X

**DECISION/ ORDER**  
Index No.: 600159/2010  
Seq. No.: 001

**PRESENT:**  
Hon. Judith J. Gische

**J.S.C.**

Recitation, as required by CPLR § 2219 [a] of the papers considered in the review of this (these) motion(s):

**Papers**

Petition and notice of petition w/affid Al exhbs ..... 1  
Proof of service ..... 2

**FILED**  
MAR 18 2010  
NEW YORK  
COUNTY CLERK'S OFFICE

-----X  
*Upon the foregoing papers, the decision and order of the court is as follows:*

**Discussion:**

This is Trustees of the New York State Nurses Association Pension Plan's ("Trustees,") verified petition to confirm an arbitrator's award in the matter of the arbitration between Trustees and The Mount Vernon Hospital ("Mount Vernon.") Mount Vernon failed to appear at the arbitration hearing on January 11, 2010, despite of being served with notice on December 2, 2009 according to the plaintiff's petition. On January 12, 2010, the arbitrator signed and mailed out its award in compliance with the American Arbitration Association's ("AAA") rules.

The Notice of Petition, Petition and accompanying papers were served on Mount Vernon by personal service on its managing agent on January 22, 2010. Mount Vernon failed to timely answer the petition or otherwise appear in this matter. The plaintiff has provided proof of service. Accordingly, the petition will be considered and decided on default.

Trustees establish the following in their petition, which is affirmed by the plaintiff's attorney Albert Kalter. Trustees and Mount Vernon are subject to an agreement and declaration of trust which authorizes the trustees to enforce payment of contributions due in accordance with the voluntary labor arbitration rules of the AAA. On December 2, 2009 Trustees served respondent with a demand for arbitration with respect to the failure of respondent to contribute the amounts due to Trustees. Mount Vernon was served with notice of the arbitration proceeding and failed to appear at it.

**Argument:**

According to the Arbitrators award, Trustees offered proof to show the following: The contribution for October 2009 in the amount of \$55,424.69 due on November 30, 2009 has not been paid. The incentive payment for the month of December 2009 in the sum of \$593.50 due on December 1, 2009 in accordance with the retirement benefit improvement plan has not been paid. The contribution for November 2009 in the amount of \$55,910.02 due on December 31, 2009 has not been paid. The incentive payment for the month of January 2010 in the amount of \$593.50 due on January 1, 2010 in accordance with the retirement benefit improvement plan has not been paid. The arbitrator awarded Trustees:

- 1) The sum of \$55,424.69 representing the contribution for October 2009 due on November 30, 2009 plus interest at the rate of 1 ½ percent per month from November 30, 2009 to the date payment is received.
- 2) The sum of \$593.50 representing the December 2009 incentive payment due on December 1, 2009 in accordance with the retirement benefit plan plus interest at a rate of 1 ½ percent per month from December 1, 2009 to the date payment is received.
- 3) The sum of \$55,910.02 representing the contribution for November 2009 due on December 31, 2009 plus interest at a rate of 1 ½ percent per month from December 31, 2009 to the date payment is received.
- 4) The sum of \$593.50 representing the January 2010 incentive payment due on January 1, 2010 in accordance with the retirement benefit improvement plan plus interest at a rate of 1 ½ percent from January 1, 2010 to the date payment is received.
- 5) The sum of \$200.00 representing reimbursement of Trustees portion of the initial filing fee paid to the AAA.
- 6) The sum of \$200.00 representing reimbursement of Mount Vernon's portion of the initial filing fee, which was paid by the Trustees to the AAA.
- 7) The sum of \$41.67 representing Mount Vernon's portion of the hearing room fee.
- 8) The sum of \$900.00 representing the arbitrator's fee, which trustees are empowered to collect on behalf of the arbitrator.

CPLR §7510 provides that 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 under § 7511. This motion is timely, having been made within the one-year time period.

**Law and Analysis:**

An Arbitration award may be confirmed upon non-appearance of the respondent only when the petitioner makes a prima facie showing, through admissible evidence, that the award is entitled to confirmation. *Worldwide Asset Purchasing, LLC v. Chris Karafotias* 9 Misc. 3d 390,393, 801 N.Y.S.2d. 721(July 21, 2005). CPLR 3215 (f) requires "proof by affidavit made by the party of the facts constituting the claim"; A verified petition may be considered in lieu of an affidavit. See, *Worldwide Asset Purchasing, LLC v. Chris Karafotias, supra*. Since petitioner's attorney was present at the hearing, he has personal knowledge of the facts and his verification is acceptable.

Since the verified petition establishes a prima facie case, Trustees is entitled to a default judgment against Mount Vernon and the petition is hereby granted.

**Conclusion:**

In accordance with the foregoing,

*IT IS HEREBY:*

**ORDERED** that petitioner's motion to confirm the award of Arbitrator dated January 12, 2010 is GRANTED and it is further

**ORDERED** that the Clerk shall enter a money judgment in favor of Trustees of the New York State Nurses Association Pension Plan and against The Mount Vernon Hospital in the sum of \$55,424.69 representing the contribution for October 2009 due on

November 30, 2009 plus interest at the rate of 1 ½ percent per month from November 30, 2009 to the date payment is received and its further

**ORDERED** that the Clerk shall enter a money judgment in favor of Trustees of the New York State Nurses Association Pension Plan and against The Mount Vernon Hospital in the sum of \$593.50 representing the December 2009 incentive payment due on December 1, 2009 in accordance with the retirement benefit plain plus interest at a rate of 1 ½ percent per month from December 1, 2009 to the date payment is received, and its further

**ORDERED** that the Clerk shall enter a money judgment in favor of Trustees of the New York State Nurses Association Pension Plan and against The Mount Vernon Hospital in the sum of \$55,910.02 representing the contribution for November 2009 due on December 31, 2009 plus interest at a rate of 1 ½ percent per month from December 31, 2009 to the date payment is received and its further

**ORDERED** that the Clerk shall enter a money judgment in favor of Trustees of the New York State Nurses Association Pension Plan and against The Mount Vernon Hospital in the sum of \$593.50 representing the January 2010 incentive payment due on January 1, 2010 in accordance with the retirement benefit improvement plan plus interest at a rate of 1 ½ percent from January 1, 2010 to the date payment is received and its further

**ORDERED** that the Clerk shall enter a money judgment in favor of Trustees of the New York State Nurses Association Pension Plan and against The Mount Vernon Hospital in the sum of \$200.00 representing reimbursement of Trustees portion of the initial filing fee paid to the AAA and its further

**ORDERED** that the Clerk shall enter a money judgment in favor of Trustees of the New York State Nurses Association Pension Plan and against The Mount Vernon Hospital in the sum of \$200.00 representing reimbursement of Mount Vernon's portion of the initial filing fee, which was paid by the Trustees to the AAA and its further

**ORDERED** that the Clerk shall enter a money judgment in favor of Trustees of the New York State Nurses Association Pension Plan and against The Mount Vernon Hospital in the sum of \$41.67 representing Mount Vernon's portion of the hearing room fee and its further


**ORDERED** that the Clerk shall enter a money judgment in favor of Trustees of the New York State Nurses Association Pension Plan and against The Mount Vernon Hospital in the sum of \$900.00 representing the arbitrator's fee, which trustees are empowered to collect on behalf of the arbitrator and its further

**ORDERED** that any requested relief not expressly addressed is hereby denied.

**ORDERED** that this shall constitute the decision and order of the court.

Dated: New York, New York  
March 16, 2010

So Ordered

  
\_\_\_\_\_  
Hon. Judith J. Gische, J.S.C.

**FILED**  
MAR 18 2010  
NEW YORK  
COUNTY CLERK'S OFFICE