

**Matter of Greenan v North Am. Surveillance Sys.,  
Inc.**

2011 NY Slip Op 31455(U)

May 25, 2011

Supreme Court, New York County

Docket Number: 101789/11

Judge: Shlomo S. Hagler

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

PRESENT: SHILOMO S. HAGLER, J.S.C.  
*Justice*

PART 25

Index Number : 101546/2011  
**GREENAN, IRENE C.**  
vs.  
**NORTH AMERICAN SURVEILLANCE**  
SEQUENCE NUMBER : 001  
CONFIRM AWARD

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_  
MOTION CAL. NO. \_\_\_\_\_

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

PAPERS NUMBERED

1  
2

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

Answering Affidavits — Exhibits \_\_\_\_\_

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

*Repetition*  
Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**THIS MOTION/ORDER TO SHOW CAUSE  
IS DECIDED IN ACCORDANCE WITH  
THE ATTACHED ORDER.**

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).

Dated: 5/25/11

*N*  
SHILOMO S. HAGLER, J.S.C.  
*J.S.C.*

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/ JUDG.  SETTLE ORDER/ JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 25

-----X

In the Matter of the Arbitration Between

INDEX NO.: 101789/11

IRENE C. GREENAN,

Petitioner,

-against-

DECISION/ORDER

NORTH AMERICAN SURVEILLANCE  
SYSTEMS, INC.,

Respondent.

UNFILED JUDGMENT

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HON. SHLOMO S. HAGLER, J.S.C.:

Petitioner Irene C. Greenan ("Greenan" or "petitioner") moves by notice of petition and verified petition to confirm an arbitration award dated January 26, 2011 ("Award") pursuant to CPLR § 7510.<sup>1</sup> Respondent North American Surveillance Systems, Inc. ("NASS" or "respondent") opposes the petition and cross-petitions to vacate the Award pursuant to CPLR § 7511(b)(1)(iii).

Background

Petitioner is the former wife of Roger Alan Greenan, who died on July 25, 2009. Greenan is the personal representative of her deceased husband pursuant to Domiciliary Letters issued January 14, 2010 by the State of Wisconsin. Verified Petition at ¶1. Her husband was formerly the managing director of a company known as Tactronics Holdings, LLC ("Tactronics"). In 2007, Tactronics sold substantially all of its assets to NASS. On June 1, 2008, NASS entered

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1. On the return date of the hearing, petitioner's counsel withdrew a portion of the Award which required respondent to pay \$1,000.00 for the value of a computer owned by Roger Greenan. Therefore, that claim is withdrawn and the Court will not confirm that portion of the Award.

into a written consulting agreement with Roger Greenan to help in the orderly transition of the business ("Consulting Agreement"). See Exhibit "A". Verified Petition at ¶¶ 3, 4. Under the terms of the Consulting Agreement, NASS agreed to pay Roger Greenan a consultant fee of \$100,000.00 per year, at the rate of \$8,333.33 per month. NASS also agreed to pay Roger Greenan commissions of 5% for annual gross revenue over \$1,000,000.00 up to \$2,000,000.00, and 3% for annual gross revenue over \$2,000,000.00. The Consultant Agreement contained a binding arbitration clause.

A dispute arose between petitioner and respondent with respect to certain amounts that petitioner alleged were owed to Roger Greenan under the Consultant Agreement. Petitioner filed a Demand for Arbitration dated February 23, 2010 with the American Arbitration Association ("AAA"). See Exhibit B to the Verified Petition. The assigned arbitrator held a hearing on October 18, 2010. After hearing testimony of the parties and submission of memoranda of law, the arbitrator issued an Award requiring NASS to pay Greenan the sum of (1) \$101,356.00, together with statutory interest at 9% per year from various dates set forth therein; (2) \$1,000.00 for the value of a computer owned by Roger Greenan, and (3) \$6,046.00 representing administration fees of the AAA and compensation and expenses of the arbitrator. See Exhibit C to the Verified Petition.

#### **Confirmation of an Arbitration Award**

There is a strong public policy in New York State favoring arbitration as an efficacious method of dispute resolution. This policy is especially pronounced in the context of commercial matters as arbitration is routinely relied upon for an expeditious resolution of disputes by arbitrators with practical knowledge of the subject area. (*Matter of Goldfinger v Lisker*, 68 NY2d 225 [1986].) Courts are reluctant to set aside arbitration awards even when arbitrators err in

deciding the law or facts “lest the value of this method of resolving controversies be undermined.” (68 NY2d at 230.) The policy favoring arbitration gives rise to judicial deference because “it is imperative that the integrity of the process, as opposed to the correctness of the individual decision, be zealously safeguarded.” (*Id.*) Consistent with this strong public policy, there are few grounds for vacating or modifying arbitration awards and they are narrowly applied.

It is well settled law that courts must confirm an arbitration award pursuant to CPLR § 7510, unless there are grounds to vacate or modify the award pursuant to CPLR § 7511. CPLR § 7511(b)(1) enumerates the following grounds for vacating an award where the parties participated in the arbitration:

- (i) corruption, fraud, or misconduct in procuring the award; or
- (ii) partiality of an arbitrator appointed as a neutral, except where the award was by confession; or
- (iii) an arbitrator, or agency or person making the award exceeded his (her) power or so imperfectly executed it that a final and definite award upon the subject matter was not made; or
- (iv) failure to follow the procedure in this article, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection.

The grounds for modifying an award are set forth in CPLR § 7511(c) as follows:

- 1. there was a miscalculation of figures or a mistake in the description of any person, thing or property referred to in the award; or
- 2. the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
- 3. the award is imperfect in a matter of form, not affecting the merits of the controversy.

Where a dispute has been arbitrated pursuant to an agreement between the parties, the award may not be set aside unless it violates a strong public policy, is totally irrational or clearly

exceeds a specifically enumerated limitation on the arbitrator's power. (*Matter of Town of Callicoon* [*Civil Serv. Empls. Assn., Town of Callicoon Unit*], 70 NY2d 907, 909 [1987]); *Matter of New York City Tr. Auth. v Transport Workers Union of Am., Local 100*, 14 NY3d 119, 124 [2010]).

In this case, respondent contends that the arbitrator exceeded her power because she ignored ¶ 7 of the Consulting Agreement. Paragraph 7(a)(i) states:

- (a) Notwithstanding anything to the contrary herein contained, this Agreement shall terminate upon the occurrence of any of the following:
  - (i) automatically upon the death of Consultant [Roger Greenan].

Paragraph 7(d) continues:

- (d) Upon any termination, the Company [NASS] shall not be obligated to make any severance or other payments whatsoever to Consultant hereunder, except for payment of the Consulting Fee accrued through the effective date of termination.

Respondent argues that the above language expressly removes its obligation to pay any commissions which accrued to Roger Greenan prior to his death. Thus, NASS contends that the arbitrator effectively "rewrote" the Consulting Agreement because she ignored the above plain wording in contravention of CPLR § 7511(b)(1)(iii), citing *Buffalo Professional Firefighters Assn., Inc. v Local 282*, 57 AD3d 1476 (4th Dept 2008), *Bd. of Educ. of N. Babylon Union Free School Dist. v N. Babylon Teachers' Org.*, 104 AD2d 594 (2d Dept 1984).

This creative argument offers a strained meaning of ¶ 7 of the Consulting Agreement because there is no specific language therein that Roger Greenan would forfeit his accrued and uncollected commissions prior to the effective date of termination, to wit: his death. Quite to the contrary, it is clear that once the commissions were earned by Roger Greenan, it could not be forfeited. (*Arbeeney v Kennedy Executive Search Inc.*, 71 AD3d 177 [1st Dept 2010]). In addition,

forfeitures are not favored in law or in equity and the courts will strive to avoid a forfeiture in the interpretation of the contract. (*Boyarsky v Froccaro*, 131 AD2d 710 [2d Dept 1987]). Even if the arbitrator clearly misinterpreted the plain language of the Consultant's Agreement, that would not be a basis to disturb the Award. (*In the Matter of Etkin & Co.*, 235 AD2d 264 [1st Dept 1997]).

### Conclusion

Accordingly, it is

ORDERED and ADJUDGED, that the petition is granted, the cross-petition is denied, and the Arbitration Award rendered in favor of petitioner and against respondent is confirmed to the following extent; and it is further


ORDERED and ADJUDGED, that petitioner Irene C. Greenan does recover from respondent North American Surveillance Systems, Inc., \$101,356.00 plus \$6,046.00 totaling \$107,402.00 as awarded by the Arbitrator, plus interest at the statutory rate of 9% per year on the following amounts as indicated:

- 1) \$13,682.13 from September 1, 2008,
- 2) \$11,616.06 from December 1, 2008,
- 3) \$7,974.43 from March 1, 2009,
- 4) \$41,046.38 from June 1, 2009,
- 5) \$27,037.00 from September 1, 2009; and
- 6) \$6,046.00 from January 26, 2011

as computed by the Clerk in the amount of \$ \_\_\_\_\_, together with costs and disbursements in the amount of \$ \_\_\_\_\_, as taxed by the Clerk, for the total amount of \$ \_\_\_\_\_, and that petitioners have execution therefor.

The foregoing constitutes the decision and order of this Court. Courtesy copies of this decision and order have been sent to counsel for the parties.

Dated: New York, New York  
May 25, 2011

  
\_\_\_\_\_  
Hon. Shlomo S. Hagler, J.S.C.

**UNFILED JUDGMENT**

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