

Jet Aviation Flight Servs., Inc. v Harbinger Capital Partners, LLC

2020 NY Slip Op 30916(U)

March 4, 2020

Supreme Court, New York County

Docket Number: 650974/2020

Judge: Andrew Borrok

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

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JET AVIATION FLIGHT SERVICES, INC.

INDEX NO. 650974/2020

Plaintiff,

MOTION DATE 03/04/2020

- v -

MOTION SEQ. NO. 001

HARBINGER CAPITAL PARTNERS, LLC,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 5 were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT .

Upon the foregoing documents and for the reasons set forth below, Jet Aviation Flight Services, Inc.'s (Jet Aviation) petition to confirm the arbitration award (the Award) in favor of Jet Aviation and against Harbinger Capital Partners, LLC (Harbinger) in the action entitled Matter of the Arbitration between Jet Aviation Flight Services, Inc. v Harbinger Capital Partners, LLC, Case No. 01-19-0002-9927, pursuant to the Federal Arbitration Act (9 USC § 1, et seq) and CPLR § 7510, is granted as unopposed.

Reference is made to a certain Aircraft Services Agreement (the Agreement), dated July 22, 2016, by and between Jet Aviation and Harbinger, (NYSCEF Doc. No. 2). Pursuant to the Agreement, Harbinger engaged Jet Aviation to provide aircraft maintenance, logistics, and management services for its Gulfstream Aerospace GV aircraft, Serial No. 612, Registration No. N88DZ (the Aircraft). Pursuant to Section 9.6 of the Agreement, Jet Aviation agreed to pay all operating expenses and non-recurring expenses up front, and then invoice Harbinger for the same (id., § 9.6). In addition, Section 16.2 of the Agreement provides:

16.2 In the event of a dispute or controversy under or relating to this Agreement other than a dispute or controversy seeking injunctive or equitable relief, it shall be submitted to arbitration for resolution, which arbitration shall be conducted in New Jersey, before one arbitrator, in accordance with the rules of the American Arbitration Association then in effect. The decision of the arbitrator shall be binding on the parties and judgment upon the award or arbitration rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall limit its judgment to the matters permitted to be submitted to it under the express terms of the Agreement. The expense of the arbitrator shall be borne equally between the parties hereto (*id.*, § 16.2).

In addition, Section 16.6 of the Agreement provides that in the event of any action or arbitration relating the Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs (*id.*, § 16.6).

From February 2018 through November 2018, Jet Aviation performed its obligations under the Agreement and invoiced Harbinger for its expenses as provided in the Agreement. However, Harbinger failed to pay its invoices and pursuant to the terms of the Agreement incurred late fees. After multiple missed payments, Jet Aviation submitted this matter for arbitration before the American Arbitration Association (the AAA) on August 20, 2019, pursuant to Section 16.2 of the Agreement (NYSCEF Doc. No. 3).

The matter came before arbitrator Kip C. Luebke. The parties waived oral hearing in accordance with the AAA rules and the arbitrator rendered the Award, dated January 1, 2020, in favor of Jet Aviation and against Harbinger, awarding Jet Aviation the amount of \$796,010.69 in damages and \$25,482.09 in attorneys' fees, together with AAA administrative fees of \$5,500 and compensation of the arbitrator in the amount of \$1,620, for a total of \$828,612.78. Jet Aviation

commenced the instant petition to confirm the Award on February 12, 2020 (NYSCEF Doc. No. 1).

Judicial confirmation of an arbitration award is governed by CPLR § 7510. Pursuant to CPLR § 7510, “[t]he 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.” Here, the Award was delivered less than one year ago and the Respondent has not made a request to vacate or modify the award. Therefore, the petition is granted and the Award is confirmed.

Accordingly, it is

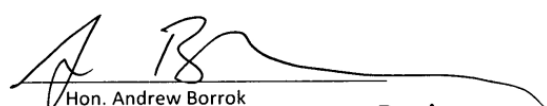
ORDERED that the petition to confirm the Award, dated January 1, 2020, in the action entitled *Matter of the Arbitration between Jet Aviation Flight Services, Inc. v Harbinger Capital Partners, LLC*, Case No. 01-19-0002-9927, Case No. 01-19-0002-9927, is granted; and it is further

ADJUDGED that the Award is hereby confirmed in its entirety; and it is further

ORDERED that the County Clerk is directed to enter judgment in favor of Jet Aviation Flight Services, LLC and against Harbinger Capital Partners, LLC in the amount of \$828,612.78, together with interest thereon at the statutory rate of 9% per year from January 20, 2020, the date on which the Award was delivered to the parties, together with costs and disbursements incurred

in connection with the petition to confirm the Award upon submission of an appropriate bill of costs to the County Clerk; and it is further

ORDERED that the issue of the amount of attorneys' fees to which the petitioner is entitled is severed and, upon the filing by the plaintiff with the General Clerk's Office (60 Centre Street, Room 119) of a copy of this Order with notice of entry and a note of issue, and the payment of the fee therefor, the Clerk shall place this matter upon the inquest calendar for an assessment of attorneys' fees.


Hon. Andrew Borrok
J.S.C. Hon. Andrew Borrok

03/04/2020

DATE

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE