

AKF, Inc. v A Pattern Med. Clinic, P.C.

2023 NY Slip Op 31342(U)

April 24, 2023

Supreme Court, New York County

Docket Number: Index No. 650708/2023

Judge: Erika M. Edwards

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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. ERIKA M. EDWARDS

PART 10M

Justice

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AKF, INC. D/B/A FUNDKITE,

Petitioner,

- v -

A PATTERN MEDICAL CLINIC, P.C. D/B/A A PATTERN
MEDICAL CLINIC, ANNEX LUBERISSE, PROJECT 144
AGENCY, LLC, A PATTERN HOLDINGS, LLC, A PATTERN
HEALTH CLINIC, INC. and A PATTERN MEDICAL CLINIC,
P.C.,

Respondents.

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INDEX NO. 650708/2023

MOTION DATE 02/06/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Upon the foregoing documents, the court grants in part Petitioner AKF Inc., d/b/a Fundkite’s (“Petitioner”) motion by order to show cause filed under motion sequence 001 and the relief requested in its Petition, without opposition, to the extent set forth herein. The court grants a preliminary injunction in aid of arbitration, pending the resolution of the arbitration between the parties and until further order of the court and the court restrains all funds in any accounts held by the Respondents A Pattern Medical Clinic, P.C. d/b/a A Pattern Medical Clinic, Annex Luberisse, Project 144 Agency, LLC, A Pattern Holdings, LLC, A Pattern Health Clinic, Inc. and A Pattern Medical Clinic, P.C. (collectively, “Respondents”) at Regions Bank up to the amount of \$60,530.48, which includes account ending in 3346 titled A Pattern Medical Clinic, P.C. d/b/a A Pattern Medical Clinic.

This matter involves Petitioner’s attempt to collect on a Revenue Purchase Agreement (“RPA”), dated October 18, 2022, that Respondents allegedly defaulted on by failing to make the

agreed upon weekly payments. Pursuant to the terms of the RPA, Petitioner provided Respondent A Pattern Medical Clinic, P.C. d/b/a A Pattern Medical Clinic with \$52,600.00 in funding, minus \$2,289.00 in service fees, for a total of \$50,311.00. Respondent A Pattern Medical Clinic, P.C. d/b/a A Pattern Medical Clinic agreed to pay back \$71,536.00 of its future receipts, which included a 12% remittance percentage, with an initial estimated delivery amount of \$1,375.69/week from its Regions Bank account ending in 3346. The RPA was guaranteed by the other Respondents and signed by Respondent Annex Luberisse on behalf of himself and all entities.

Petitioner alleges in substance that after approximately 11 weeks, beginning on December 23, 2022, Respondent A Pattern Medical Clinic, P.C. d/b/a A Pattern Medical Clinic stopped making the required weekly payments and the bank notified Petitioner that there were insufficient funds in the designated account. The balance owed on the agreed upon amount was \$60,530.48.

Petitioner further alleges that Respondents are in default pursuant to the terms of the RPA, that Respondent A Pattern Medical Clinic, P.C. d/b/a A Pattern Medical Clinic appears to still be in business and generating revenue, and that it appears that revenue is intentionally being diverted out of the designated account without Petitioner's consent, all of which is a breach of the RPA. Petitioner also alleges that, in addition to the \$60,530.48 owed, Respondents also owe a default fee of 25%, or \$15,132.62, for a total amount of \$75,663.10. Petitioner argues that Respondents are likely to remove all assets from the designated bank account and any arbitration award in Petitioner's favor would be rendered ineffectual because if Respondents dissipated the funds from the designated account, then there would be no funds available to satisfy any judgment rendered in favor of Petitioner.

Petitioner further alleges that it attempted to contact Respondents numerous times regarding why Respondents stopped paying and to collect the money owed, but Respondents failed to respond. Petitioner alleges that the RPA grants any party the right to arbitrate disputes or claims arising from the RPA and they agreed on the forum.

Petitioner now moves by order to show cause, which includes the same relief requested in the Petition, for an order restraining Respondents' bank accounts at Regions Bank up to \$75,663.10, pursuant to CPLR 7502(c). The court declined to grant Petitioner's request for a temporary restraining order, but directed the parties to appear in court on March 15, 2023, at 9:30 a.m., for oral argument on Petitioner's request for a preliminary injunction to restrain Respondent A Pattern Medical Clinic, P.C. d/b/a A Pattern Medical Clinic account(s) pending the resolution of the arbitration proceedings..

Petitioner complied with the service requirements set forth in the Order to Show Cause. Although Respondents failed to file written opposition to Petitioner's order to show cause and failed to file an Answer. Although no attorney filed a notice of appearance on Respondents' behalf, Heath Gurinsky, Esq. appeared for Respondents at the oral argument held on March 15, 2023, via Microsoft Teams. At the parties' request, the court permitted the parties to have an opportunity to resolve this matter. The court adjourned the matter to April 13, 2023, at 10:00 a.m. for a settlement conference. Prior to the conference, the court was advised that the parties had resolved the matter and would be filing a Stipulation of Settlement within the next day or two. Unfortunately, it appears that the parties were unable to resolve their differences and to date, no Stipulation of Settlement or Stipulation of Discontinuance has been filed. Therefore, the court must decide this matter on the merits.

Here, the court determines that Petitioner demonstrated its entitlement to the relief requested in the order to show cause and Petition in that Petitioner demonstrated its need for the restraint on Respondents' bank accounts. Petitioner demonstrated that it is likely to succeed on the merits, that Respondents owe the amount claimed and that Petitioner will suffer irreparable injury if the preliminary injunction is not granted.

Therefore, the court grants in part Petitioner's order to show cause and the relief requested in the Petition, without opposition, to the extent that the court grants a preliminary injunction in aid of arbitration, pending the resolution of the arbitration between the parties and until further order of the court, and the court restrains all funds in any accounts held by the Respondents at Regions Bank, but only up to the amount of \$60,530.48, which includes account ending in 3346 titled A Pattern Medical Clinic, P.C. d/b/a A Pattern Medical Clinic. The court declines to restrain the additional \$15,132.62 for the 25% default fee.

The court has considered any additional arguments raised by Petitioner which were not specifically discussed herein and the court denies any additional requests for relief not expressly granted herein.

As such, it appearing to this court that a cause of action exists in favor of Petitioner and against Respondents and that Petitioner is entitled to a preliminary injunction on the ground that Respondents threaten or are about to do, or are doing or procuring or suffering to be done, an act in violation of Petitioner's rights respecting the subject of the action and tending to render the judgment ineffectual, as set forth above, it is hereby

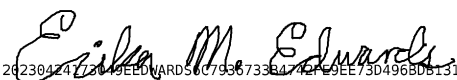
ORDERED that the court grants Petitioner AKF Inc., d/b/a Fundkite's motion by order to show cause filed under motion sequence 001 and relief requested in its Petition, without opposition, to the extent set forth herein; and it is further

ORDERED that the undertaking is fixed in the sum of \$1,000.00 conditioned that the Petitioner, if it is finally determined that it was not entitled to an injunction, will pay to the Respondents all damages and costs which may be sustained by reason of this injunction; and it is further

ORDERED that the court grants a preliminary injunction in aid of arbitration, pending the resolution of the arbitration between the parties and until further order of the court; the court restrains all funds in any accounts held by Respondents A Pattern Medical Clinic, P.C. d/b/a A Pattern Medical Clinic, Annex Luberisse, Project 144 Agency, LLC, A Pattern Holdings, LLC, A Pattern Health Clinic, Inc. and A Pattern Medical Clinic, P.C. at Regions Bank up to the amount of \$60,530.48, which includes account ending in 3346 titled A Pattern Medical Clinic, P.C. d/b/a A Pattern Medical Clinic; and it is further

ORDERED that by granting the requested relief, the court disposes of Petitioner’s petition and order to show cause filed under motion sequence 001.

This constitutes the decision and order of the court.


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<u>4/24/2023</u> DATE					<u>ERIKA M. EDWARDS, J.S.C.</u>
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	REFERENCE