

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

2023 NY Slip Op 34449(U)

December 18, 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
Justice

PART 10M

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AKF, INC. D/B/A FUNDKITE,
Petitioner,
- v -

INDEX NO. 650708/2023
MOTION DATE 06/29/2023
MOTION SEQ. NO. 002

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.

**AMENDED DECISION AND
ORDER ON MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

were read on this motion to/for ENFORCEMENT.

Upon the foregoing documents, this decision and order amends and substitutes the court’s previous decision and order, dated October 16, 2023, filed under NYSCEF Doc. No. 34. The court grants Petitioner AKF Inc., d/b/a Fundkite’s (“Petitioner”) motion to enforce its settlement agreement with 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”), filed under motion sequence 002, without opposition.

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 payments. Petitioner argues that Respondents owe Petitioner \$75,454.90 under the terms of the RPA.

In the court's previous decision and order as to motion sequence 001, dated April 24, 2023, filed as NYSCEF Doc. No. 14, the court granted Petitioner's request for a preliminary injunction in aid of arbitration and the court restrained the funds in any accounts held by the 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 Pattern Medical Clinic. The bank restrained \$6,000.00.

Subsequent to this decision, the parties, through their respective counsel engaged in settlement discussions and the parties agreed to settle this matter. In a Settlement Agreement ("Agreement") and Stipulation of Settlement ("Stipulation"), both dated March 20, 2023, filed under NYSCEF Doc. No. 22, Respondents agreed to pay Petitioner a total amount of \$65,000.00. Respondents agreed to pay Petitioner \$6,000.00 from the restrained funds, \$5,805.00 by on or before March 24, 2023, and monthly installment payments in the amount of \$5,319.50 due on the 15th of each month, beginning on April 15, 2023. In the event of a default, the parties agreed that Petitioner maintained the right, without any notice to Respondents, to enter judgment against all Respondents, jointly and severally, in the amount of \$75,454.90, plus costs and disbursements, minus any amounts paid to Petitioner on behalf of Respondents. The parties acknowledged that time was of the essence.

Respondent Annex Luberisse executed the Agreement on behalf of all of the Respondents via an electronic signature. However, he mistakenly also executed the Agreement on behalf of the Petitioner. However, both parties signed the Stipulation in their correct respective locations. Petitioner asked Respondents' attorney to have Mr. Luberisse re-sign the Agreement in the correct locations, but after no response, Respondents' attorney stated in substance that he received no response from Respondents. It should be noted that although Respondents' attorney

appeared in court on behalf of Respondents and was in communication with Petitioner's attorney, he failed to file a notice of appearance with the court. As such, Petitioner notified both Respondents and their attorney of the court orders requiring their appearance.

Petitioner now moves, under motion sequence 002, for an order entering judgment in the amount of \$75,454.90, in favor of Petitioner as against Respondents. Respondents failed to oppose the motion and they failed to appear for two oral arguments on this matter, despite being properly served with notice of the oral arguments. To date, Respondents have failed to provide a new properly executed Agreement and they have failed to make any of the agreed upon payments. As such, Respondents have breached the terms of the partially executed Agreement and they are in default. Petitioner seeks enforcement of the Agreement.

The court determines that the parties had the intent to enter into a valid Settlement Agreement pursuant to the terms set forth in the Agreement. Respondent properly signed the Agreement in the two areas designated for Respondents' signatures. Although Petitioner was unable to sign the Agreement in the area designated for Petitioner's signature because Respondents incorrectly signed on Petitioner's line, the court determines that there was a mutual meeting of the minds and a valid, binding agreement sufficient to bind Respondents to the terms of the Agreement. Additionally, both parties properly executed the Stipulation of Settlement containing the same payment terms.

Therefore, the court determines that Respondents are bound by the terms of both the Agreement and the Stipulation. Thus, the court grants Petitioner's motion to enforce the terms of the Agreement. The court enters judgment in the amount of \$75,454.90 in favor of Petitioner as against Respondent.

Additionally, the court finds that Petitioner demonstrated its entitlement to attorney's fees, costs and disbursements in the amount of \$7,746.56.

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 is hereby

ORDERED that the court grants Petitioner AKF Inc., d/b/a Fundkite's motion filed under motion sequence 002; and it is further

ORDERED and ADJUDGED that the court finds that the Settlement Agreement and Stipulation of Settlement, both dated March 20, 2023, are enforceable, valid and binding agreements as against 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.; and it is further

ORDERED that the court directs the Clerk of the Court to enter a judgment in favor of Petitioner AKF Inc., d/b/a Fundkite as against 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., jointly and severally, in the amount of \$75,454.90, plus attorney's fees, costs and disbursements incurred in this action in the amount of \$7,746.56.

This constitutes the decision and order of the court.

12/18/2023

DATE



ERIKA M. EDWARDS, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE