

Matter of AKF, Inc. v Jin Clothing, Inc.

2024 NY Slip Op 31468(U)

April 24, 2024

Supreme Court, New York County

Docket Number: Index No. 653384/2023

Judge: John J. Kelley

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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. JOHN J. KELLEY **PART** **56M**

Justice

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In the Matter of

AKF, INC., doing business as FUNDKITE,

Petitioner,

- v -

JIN CLOTHING, INC., DEBBIE C. SIM, and ANTHONY YUN
SIM,

Respondents.

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INDEX NO. 653384/2023

MOTION DATE 04/12/2024

MOTION SEQ. NO. 002

**DECISION, ORDER, AND
JUDGMENT**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 1, 2, 3, 4, 5, 6, 7, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33

were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

AKF, Inc., doing business as Fundkite (AKF), moves pursuant to CPLR 7510 to confirm an arbitration award dated October 7, 2023, made by an arbitrator acting under the auspices of the Mediation and Civil Arbitration, Inc. (MCA). The respondents do not oppose the motion. The motion is granted, the award is confirmed, and the Clerk of the court is directed to enter a money judgment in favor of AKF and against the respondents, jointly and severally, in the sum of \$243,787.88, plus statutory interest from October 7, 2023.

On January 19, 2023, AKF entered into an agreement with the respondent Jin Clothing, Inc. (JCI), pursuant to which AKF agreed to purchase \$352,820.00 of JCI's future receivables for the sum of \$271,400.00, less service fees in the sum of \$11,041.00, in consideration for JCI's future repayment of that sum plus 13% in annual interest. The agreement presumed a weekly "delivery" amount of \$11,025.63 from JCI's receivables via an automatic debit from JCI's bank account, with a monthly reconciliation. The respondents Debbie C. Sim and Anthony Yun Sim guaranteed JCI's obligations under the agreement. The agreement provided for arbitration

of any dispute under the agreement, including claims that JCI breached the agreement by failing to pay its weekly delivery.

The instant proceeding, which initially sought only a preliminary injunction in aid of arbitration, was commenced on July 13, 2023 (see CPLR 304[a]). AKF alleged in its petition that, from May 19, 2023 to May 30, 2023, and again from June 16, 2023 to June 30, 2023, JCI's scheduled weekly debit of receivables from its designated bank account was declined because of insufficient funds. In addition, it asserted that, on July 7, 2023, it received a notice from JCI's bank that its scheduled weekly debit of receipts from the designated account was declined because "Payment Stopped." AKF further asserted that JCI did not inform it whether the bank account had been closed, nor did JCI attempt to demonstrate any supposed downturn in the amount of its weekly receivables, as would have been permitted under the agreement. Neither, according to AKF, did JCI restore its receivables back into that account to permit AKF to continue to receive weekly payments. Rather, AKF alleged that it believed that JCI's principals began "diverting" JCI's receipts into other accounts.

On August 17, 2023, AKF served a demand for arbitration of its claim for \$241,112.88 against the respondents before MCA, doing business as Rapid Ruling, an arbitral forum with headquarters in New York, New York, and offices located in Manhasset, New York. The respondents failed to respond to the demand or appear at the arbitration hearing. In an award dated October 7, 2023, the arbitrator agreed with AKF's contentions, and awarded AKF the principal sum of \$241,787.88, plus the costs of seeking judicial confirmation of the award, along with interest at 9% per annum from the date of the award.

Pursuant to CPLR 7510, the court "shall confirm an [arbitration] award upon application of a party made within one year after its delivery to him [or her] unless the award is vacated or modified upon a ground specified in section 7511." Since the arbitration involved here is consensual, rather than compulsory, the award may only be vacated if the court finds that the rights of a party were prejudiced by:

“(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 power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made; or (iv) failure to follow the procedure of this article, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection”

(CPLR 7511[b][1]). The grounds specified in CPLR 7511 for vacatur of an arbitration award are exclusive (see *Bernstein Family Ltd. Partnership v Sovereign Partners, L.P.*, 66 AD3d 1, 8 [1st Dept 2009]), and it is a “well-established rule that an arbitrator’s rulings, unlike a trial court’s, are largely unreviewable” (*Matter of Falzone v New York Cent. Mut. Fire Ins. Co.*, 15 NY3d 530, 534 [2013]). AKF moved to confirm the award on November 16, 2023 and, thus, its application was timely made. AKF contends that the award was proper in all respects and that no grounds exist for modification or vacatur.

The court agrees with AKF, and concludes that AKF is entitled both to the confirmation of the award, and the entry of a money judgment in the sum of \$243,787.88, representing the principal sum of \$241,787.88 that had been awarded by the arbitrator, and an additional amount for AKF’s costs and fees in securing judicial approval of the award, as also awarded by the arbitrator, which the court concludes should be in the sum of \$2,000.00. The total award must bear interest from the date of the arbitration award, that is, from October 7, 2023 (see CPLR 5002; *Board of Educ. of Cent. School Dist. No. 1 of Towns of Niagara, Wheatfield, Lewiston & Cambria v Niagara-Wheatfield Teachers Assn.*, 46 NY2d 553, 558 [1979]; *Dermigny v Harper*, 127 AD3d 685, 686 [2d Dept 2015]; *Matter of Levin & Glasser, P.C. v Kenmore Prop., LLC*, 70 AD3d 443, 446 [1st Dept 2010]; *Matter of Gruberg v Cortell Group, Inc.*, 143 AD2d 39, 39 [1st Dept 1988]).

Accordingly, it is,

ADJUDGED that the petition is granted, and the arbitration award rendered in the matter entitled *Matter of AKF, Inc. v Jin Clothing, Inc.*, Mediation and Civil Arbitration, Inc., Case Number 44836/2023, dated October 7, 2023, be, and hereby is, confirmed; and it is further,

ORDERED that the Clerk of the court shall enter a money judgment in favor of the petitioner, AKF, Inc., doing business as Fundkite, and against the respondents, Jin Clothing, Inc., Debbie C. Sim, and Anthony Yun Sim, jointly and severally, in the principal sum of \$243,787.88, with statutory interest at 9% per annum from October 7, 2023.

This constitutes the Decision, Order, and Judgment of the court.

4/24/2024
DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: