

Matter of AKF, Inc. v SLK Song, LLC

2024 NY Slip Op 31838(U)

May 17, 2024

Supreme Court, New York County

Docket Number: Index No. 654980/2023

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 -

SLK SONG, LLC, doing business as BUDDHA BELLY
SUSHI, and IN JONG SONG,

Respondents.

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INDEX NO. 654980/2023

MOTION DATE 02/28/2024

MOTION SEQ. NO. 002

**DECISION, ORDER, AND
JUDGMENT**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

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

In this proceeding pursuant to CPLR 6301, 6312(a), and 7502(c) for a preliminary injunction in aid of arbitration to restrain respondents' bank accounts pending an award in the underlying arbitration, the petitioner, AKF, Inc., doing business as Fundkite (AKF), moves pursuant to CPLR 7510 to confirm an arbitration award dated December 27, 2023, made by an arbitrator acting under the auspices of Mediation and Civil Arbitration, Inc. (MCA). Although the respondents answered the petition for a preliminary injunction, therein denying all substantive allegations, they did not specifically oppose the instant 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 \$129,950.00, plus statutory interest from December 27, 2023.

On September 26, 2023, AKF entered into an agreement with the respondent SLK Song, LLC (SLK Song), pursuant to which AKF agreed to purchase \$102,120.00 of SLK Song's future receivables for the sum of \$74,000.00, less service fees in the sum of \$3,145.00, in consideration for SLK Song's future repayment of that sum plus 16% in annual interest. The

agreement presumed a weekly “delivery” amount of \$2,320.91 from SLK Song’s receivables via an automatic debit from SLK Song’s bank account, with a monthly reconciliation. The respondent In Jong Son personally guaranteed SLK Song’s obligations under the agreement. The agreement provided for arbitration of any dispute under the agreement, including claims that SLK Song 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 October 10, 2023 (see CPLR 304[a]). AKF alleged in its petition that, beginning on October 4, 2023, SLK Song’s scheduled weekly debit of receivables from its designated bank account was declined, and that it had received notification that the account had been closed. AKF further asserted that SLK Song did not inform it that the bank account had been closed, nor did SLK Song 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 SLK Song restore its receivables back into that account or any other bank account to permit AKF to continue to receive weekly payments. Rather, AKF alleged that it believed that SLK Song’s principal began “diverting” SLK Song’s receipts into other accounts.

On October 5, 2023, AKF served a demand for arbitration upon the respondents of its claim for \$102,120.00 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 December 27, 2023, the arbitrator agreed with AKF’s contentions, and awarded AKF the principal sum of \$127,950.00, 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 January 5, 2024, 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 \$129,950.00, representing the base award of \$102,120.00 that had been made by the arbitrator, plus the award of a \$25,530.00 “liquidated default fee,” as also awarded by the arbitrator, along with a \$300.00 award for the arbitral forum’s filing fee, as further 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 December 27, 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 SLK Song, LLC, et al.*, Mediation and Civil Arbitration, Inc., Case Number 45263/2023, dated December 27, 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, SLK Song, LLC, doing business as Buddha Belly Sushi, and In Jong Song, jointly and severally, in the principal sum of \$129,950.00, with statutory interest at 9% per annum from December 27, 2023.

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

5/17/2024
DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE