

Alpine Advance 5 LLC v Quick Towing LLC

2024 NY Slip Op 32496(U)

July 11, 2024

Supreme Court, New York County

Docket Number: Index No. 650557/2024

Judge: Nicholas W. Moyne

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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. NICHOLAS W. MOYNE **PART** **41M**

Justice

-----X

ALPINE ADVANCE 5 LLC,

Plaintiff,

- v -

QUICK TOWING LLC, MARIO MORA

Defendant.

-----X

INDEX NO. 650557/2024

MOTION DATE 02/01/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 12, 13
were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT

Upon the foregoing documents, it is

Petitioner, Alpine Advance 5 LLC (“Petitioner”), commenced this special proceeding, pursuant to CPLR §§ 7510 and 7514, seeking confirmation and directing entry of judgment on the arbitration award, dated December 27, 2023, issued by Mediation & Civil Arbitration, Inc. (“MCA”), in the arbitration proceeding, MCA Claim No.: 45220/2023, rendered in favor of Petitioner and jointly and severally against Respondents, Quick Towing LLC (“Quick”) and Mario Mora (collectively “Respondents”) (NYSCEF Doc. No. 7). Respondents have not opposed the application.

The underlying arbitration arises from a breach of contract dispute between Petitioner and Respondents. On March 14, 2023, Respondents entered into a written Standard Merchant Cash Advance Agreement under which Quick agreed to sell Petitioner \$44,970.00 of Quick’s accounts, contract rights, and other obligations arising from or relating to the payment of monies from Quick’s customers and other third-party payors for the sum of \$30,000.00 (NYSCEF Doc. No. 4; 7). This Agreement included a personal guaranty, which Mora signed as Owner and

Guarantor (NYSCEF Doc. No. 4 at 12). Under the Agreement, Respondents allowed Petitioner access to their online banking accounts and repayment through ACH debits at all times unless and until satisfaction of the Agreement has been made in-full (NYSCEF Doc. No. 4). Respondents then failed to meet its obligations under the Agreement by blocking Claimant's access to ACH debits. Petitioner subsequently brought the underlying arbitration against Respondents, pursuant to CPLR § 7501, to which Respondents did not appear or answer (NYSCEF Doc. No. 6). On December 27, 2023, Arbitrator Matthew Klieger, under the Commercial Arbitration Rules of Mediation & Civil Arbitration, Inc., issued a Final Arbitral Award- finding in favor of Petitioner and against Respondent Quick, jointly and severally, and against Respondent Mario Mora individually, in the amount of \$48,381.25 (NYSCEF Doc. No. 7).

Petitioner now demands judgment confirming the Award in the sum of \$48,381.25, together with 9% interest thereon from December 27, 2023, the costs and disbursements of this special proceeding, and Petitioner's reasonable attorneys' fees for the prosecution of this proceeding in the sum of \$3,000.00, and directing that the judgment will accrue post-judgment interest at a rate of 10% per annum, which rate will govern over the statutory rate of interest up until actual satisfaction of the judgment (NYSCEF Doc. No. 1).

Here, in accordance with CPLR § 7510, petitioner's application for confirmation of the award was brought within one year of the arbitration award having been issued, and respondents did not comply with the award within seven days. Additionally, in accordance with CPLR § 7511, there have been no applications to vacate or modify the award made within the applicable statutory time period. Although not conforming to the methods provided by CPLR 403 (b), the notice of petition, petition, and accompanying papers were served on Respondents in accordance

with the methods of service provided in the Agreement (NYSCEF Doc. No. 4 at 10, 14; 12; 13; see also *Matter of New York Merch.'s Protective Co., Inc. v Mima's Kitchen, Inc.*, 114 AD3d 796, 797 [2d Dept 2014] [New York courts have recognized that parties to an arbitration agreement may prescribe a method of service different from that set forth in the CPLR]). Thus, the criteria of CPLR Article 75 have been satisfied.

The Arbitrator awarded Petitioner all costs of confirming the Final Award and pre-judgment interest accruing from the date of Respondents' default accruing at nine-percent (9%) *per annum* thereon (NYSCEF Doc. No. 7 at 5). The Arbitral Award was silent as to post-judgment interest. Petitioner seeks that the court direct entry of a judgment that will accrue post-judgment interest at a rate of ten-percent (10%) *per annum* until satisfaction of the judgment. CPLR § 5003 provides that every money judgment shall bear interest from the date of its entry, including when an arbitration award is confirmed by the court and reduced to a money judgment (*see Matter of Sedlis (Gertler)*, 161 AD2d 228, 230 [1st Dept 1990]). Although CPLR § 5004 sets the post-judgment interest rate at 9%, the Parties' contract provides a post-judgment interest rate of 10% (NYSCEF Doc. No. 4 at ¶ 40; *Korea Resolution and Collection Corp. v Hyuk Kee Yoo*, 170 AD3d 485, 486 [1st Dept 2019]).

Accordingly, it is hereby


ORDERED and ADJUDGED that the petition is granted, and the award rendered in favor of Petitioner and against Respondent is confirmed; and it is further

ORDERED and ADJUDGED that Petitioner Alpine Advance 5 LLC, having an address of 46 Washington Street, Suite #6, Middletown, CT 06457, and its authorized representative having an address of Gene Rosen's Law Firm, 200 Garden City Plaza, Suite 405, Garden City, NY 11530, do recover from Respondents, Quick Towing LLC and Mario Mora, having an address at 4016

Kimsue Way, San Diego, CA 92154, the amount of \$48,381.25, plus pre-judgment interest at the statutory rate of 9 % from the date of December 27, 2023, to the date of this order, as computed by the Clerk in the amount of \$ _____, together with costs and disbursements in the amount of \$ _____ as taxed by the Clerk upon the submission of an appropriate bill of costs, and for the total judgment amount of \$ _____, for which post-judgment interest will accrue at a rate of 10% per annum until such judgment is satisfied, and that the petitioner have execution therefor.

This constitutes the decision and order of the court.

7/11/2024
DATE


NICHOLAS W. MOYNE, J.S.C.

DATE			CLERK
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input 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
		<input type="checkbox"/> DENIED	
		<input type="checkbox"/>	<input type="checkbox"/> SUBMIT ORDER
		<input type="checkbox"/>	<input type="checkbox"/> FIDUCIARY APPOINTMENT