

Matter of AKF Inc. v Arrendell Enters., LLC

2024 NY Slip Op 32810(U)

August 9, 2024

Supreme Court, New York County

Docket Number: Index No. 655885/2023

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,

INDEX NO. 655885/2023
MOTION DATE 07/12/2024
MOTION SEQ. NO. 001

- v -

ARRENDELL ENTERPRISES, LLC, doing business as
CROSSROADS MINI MART/CROSSROADS MINI MART
2/CROSSROADS MINI MART 3, AARON KEITH ARNOLD,
ARRENDELL PROPERTY, LLC, and ARRENDELL
ENTERPRISES, LLC, doing business as CROSSROADS
MINI MART 3,

**DECISION, ORDER, AND
JUDGMENT**

Respondents.

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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, 14

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

AKF, Inc., doing business as Fundkite (AKF), petitions pursuant to CPLR 7510 to confirm an arbitration award dated November 10, 2023, made by an arbitrator acting under the auspices of the Mediation and Civil Arbitration, Inc. (MCA). The respondents do not oppose the petition. The petitioner 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 \$53,125.90, plus statutory interest from August 7, 2023 on the first \$39,620.64 of that sum and from November 10, 2023 on the next \$11,505.26 of that sum.

On March 20, 2023, AKF entered into an agreement with the respondent Arrendell Enterprises, LLC, doing business as Crossroads Mini Mart/Crossroad Mini Mart 2/Crossroads Mini Mart 3 (hereinafter Arrendell), pursuant to which AKF agreed to purchase \$92,448.00 of Arrendell's future receivables for the sum of \$64,200.00, less service fees in the sum of \$4,037.00, in consideration for Arrendell's future repayment of that sum plus 9% in annual

interest. The agreement presumed a weekly “delivery” amount of \$3,301.71 from Arrendell’s receivables, via an automatic debit from Arrendell’s bank account, with a monthly reconciliation. The respondents Aaron Keith Arnold, Arrendell Property, LLC, and Arrendell Enterprises, LLC, doing business as Crossroads Mini Mart 3, jointly guaranteed Arrendell’s obligations under the agreement. The agreement provided for arbitration of any dispute under the agreement, including claims that Arrendell breached the agreement by failing to pay its weekly delivery.

AKF alleged in its petition that, on July 17, 2023, again on August 7, 2023, and then continuing through November 27, 2023, it received a notice from Arrendell’s bank that the scheduled weekly debit of receipts from the designated account was declined because “Payment [was] Stopped.” AKF further asserted that, as of the date of Arrendell’s default, Arrendell had paid only \$52,827.36 of the \$92,448.00 ultimately due under the agreement, leaving a balance of \$39,620.64. AKF alleged that it believed that Arrendell’s principals began “diverting” Arrendell’s receipts into other accounts.

On September 11, 2023, AKF served the respondent with a demand for arbitration of its claim for \$39,620.64 against them 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 November 10, 2023, the arbitrator agreed with AKF’s contentions, and awarded AKF the principal sum of \$39,620.64, plus liquidated default fees in the sum of \$9,905.00 attorneys’ fees in the sum of \$1,157.00, and actual costs and expenses in the sum of \$443.10, as required by the agreement, for a total award of \$51,125.90. The arbitrator also awarded AKF prejudgment interest at 9% per annum on the principal sum, from the date of Arrendell’s default under the agreement, which he, in effect, found to be August 7, 2023, as well as the fees and costs to be incurred in obtaining judicial confirmation 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 27, 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 \$51,125.90, which had been awarded by the arbitrator, plus the sum of \$2,000.00, which the court finds to be the fees and costs that were incurred in obtaining judicial confirmation of the award, totaling \$53,125.90.

Generally, the total award must bear interest from the date of the arbitration award, that is, from November 10, 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]). Here, however, the arbitrator awarded prejudgment interest from the date of Arrendell’s August 7, 2023 default. Hence, the court, in confirming the award, will award prejudgment interest on the arbitrator’s principal award of

\$39,620.64 from August 7, 2023, and it will award prejudgment interest on the remaining \$11,505.26 of the arbitration award from November 10, 2023 (see *Solow Mgmt. Corp. v Tanger*, 19 AD3d 225, 226 [1st Dept 2005] [interest on award of attorney’s fees is the date on which the party seeking those fees has been determined to be the prevailing party]). Prejudgment interest shall not be awarded on this court’s award of \$2,000.00 for attorney’s fees and costs that the petitioner incurred in obtaining judicial confirmation of the award.

Accordingly, it is,

ADJUDGED that the petition is granted, and the arbitration award rendered in the matter entitled *Matter of AKF, Inc. v Arrendell Enterprises, LLC, etc., et al.*, Mediation and Civil Arbitration, Inc., Case Number 45008/2023, dated November 10, 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, Arrendell Enterprises, LLC, doing business as Crossroads Mini Mart/Crossroad Mini Mart 2/Crossroads Mini Mart 3, Aaron Keith Arnold, Arrendell Property, LLC, and Arrendell Enterprises, LLC, doing business as Crossroads Mini Mart 3, jointly and severally, in the principal sum of \$53,125.90, with statutory prejudgment interest from August 7, 2023 at 9% per annum on the first \$39,620.64 of that sum, and with statutory prejudgment interest from November 10, 2023 at 9% per annum on the next \$11,505.26 of that sum.

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

8/9/2024
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