

**Matter of AKF, Inc. v R & C Food Mart, Inc.**

2024 NY Slip Op 32905(U)

August 16, 2024

Supreme Court, New York County

Docket Number: Index No. 655042/2023

Judge: John J. Kelley

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**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 -

R & C FOOD MART, INC., doing business as RC FOOD  
MART, INC./R & C FOOD MART, CRISTINA  
ALAMAWI, and NORTH AVENUE MART, INC.,

Respondents.

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**INDEX NO. 655042/2023**

**MOTION DATE 07/12/2024,  
07/19/2024**

**MOTION SEQ. NO. 001, 002**

**DECISION, ORDER, AND  
JUDGMENT**

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, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24

were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

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

In this proceeding pursuant to CPLR 6301, 6312(a), and 7502(c), AKF, Inc., doing business as Fundkite (AKF), petitions for a preliminary injunction in aid of arbitration to restrain the respondents' bank accounts, pending an award in the underlying arbitration proceeding (MOT SEQ 001). AKF also moves pursuant to CPLR 7510 to confirm an arbitration award dated January 9, 2024, made by an arbitrator acting under the auspices of Mediation and Civil Arbitration, Inc. (MCA) (MOT SEQ 002). Although the respondents did not answer the petition, which sought a preliminary injunction, the petition is denied as academic, and the temporary restraining order contained in the initiatory order to show cause dated October 17, 2023 is vacated and dissolved. The motion is granted, without opposition, 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 \$93,503.97, plus statutory interest from January 9, 2024.

On September 22, 2023, AKF entered into an agreement with the respondent R & C Food Mart, Inc., doing business as RC Food Mart, Inc./R & C Food Mart (R&C), pursuant to which AKF agreed to purchase \$72,000.00 of R&C's future receivables for the sum of \$50,000.00, less service fees in the sum of \$2,185.99, in consideration for R&C's future repayment of that sum plus 15% in annual interest. The agreement presumed a daily "delivery" amount of \$571.43 from R&C's receivables via an automatic debit from R&C's bank account, with a monthly reconciliation. The respondents Cristina Alamawi and North Avenue Mart, Inc., personally guaranteed R&C's obligations under the agreement. The agreement provided for arbitration of any dispute under the agreement, including claims that R&C breached the agreement by failing to pay its daily delivery.

On October 12, 2023, AKF commenced the instant proceeding (see CPLR 304[a]), which initially sought only a preliminary injunction in aid of an anticipated arbitration proceeding. AKF alleged in its petition that, beginning on October 2, 2023, R&C's scheduled daily 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 R&C did not inform it that the bank account had been closed, nor did R&C attempt to demonstrate any supposed downturn in the amount of its daily receivables, as would have been permitted under the agreement. Neither, according to AKF, did R&C restore its receivables back into that account or any other bank account to permit AKF to continue to receive daily payments. Rather, AKF alleged that it believed that R&C's principal began "diverting" R&C's receipts into other accounts.

On November 8, 2023, AKF served a demand for arbitration upon the respondents of its claim for \$87,857.14, representing \$70,285.71 in uncollected receipts due under the agreement, and a \$17,571.43 default fee, also due under the agreement, calculated at 25% of the uncollected receipts as of the date of breach. AKF thereby sought to arbitrate its claim 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 January 9, 2024, an arbitrator acting under the auspices of MCA agreed with AKF's substantive contentions, and awarded AKF the sum of \$91,503.97, inclusive of the award of the liquidated default fee, as permitted by the underlying agreement, an attorney's fee, as also permitted by the agreement, and the arbitral forum's filing fee, plus an award of the costs and fees it was likely to incur in obtaining judicial confirmation of the award, with prejudgment interest accruing at 9% per annum on the total award. Since the arbitration has been completed, and AKF has obtained all of the relief that it sought therein, there is no longer a basis for granting relief in aid of the arbitration, and the petition must be denied as academic (*see Winter v Brown*, 49 AD3d 526, 528 [2d Dept 2008]). Any collection activities, including restraints on the respondents' bank accounts, must await the entry of a money judgment, as directed by the court, and proceedings thereafter pursuant to CPLR 5222, 5223, and 5224, and like provisions of the CPLR.

In any event, the granting of a preliminary injunction would have been improper even while the arbitration proceeding remained pending, because AKF was seeking money damages for which equitable relief was inappropriate, and the court lacked personal jurisdiction over the out-of-state banks that AKF sought to restrain (*see AKF, Inc. v Windows & Beyond Interiors, LLC*, 2023 NY Slip Op 34330[U], 2023 NY Misc LEXIS 23034 [Sup Ct, N.Y. County, Dec. 11, 2023] [Kelley, J.]).

The petitioner's motion to confirm the award, however, must be granted. 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 15, 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 \$93,503.97, representing the award of \$91,503.97 that had been made 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 January 9, 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]), particularly since the arbitrator awarded prejudgment interest even on the fees that were anticipated to have been incurred in obtaining judicial confirmation of the award.

Accordingly, it is,

ORDERED that the petition seeking preliminary injunctive relief (MOT SEQ 001) is denied; and it is,

ADJUDGED that so much of the proceeding as sought preliminary injunctive relief is dismissed; and it is further,

ORDERED that the temporary restraining order set forth in the initiatory order to show cause dated October 17, 2023 be, and hereby is, vacated and dissolved; and it is further,

ORDERED that motion to confirm the arbitration award rendered in the matter entitled *Matter of AKF, Inc. v R&C Food Mart, Inc., et al.*, Mediation and Civil Arbitration, Inc., Case Number 45264/2023, dated January 9, 2024 (MOT SEQ 002) is granted; and it is further,

ADJUDGED that the arbitration award rendered in the matter entitled *Matter of AKF, Inc. v R&C Food Mart, Inc., et al.*, Mediation and Civil Arbitration, Inc., Case Number 45264/2023, dated January 9, 2024, 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 R & C Food Mart, Inc., doing business as RC Food Mart, Inc./R & C Food Mart, North Avenue Mart, Inc., and Cristina Alamawi, jointly and severally, in the principal sum of \$93,503.97, with statutory interest at 9% per annum from January 9, 2024.

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

JOHN J. KELLEY, J.S.C.

8/16/2024

DATE

MOTION 001:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
MOTION 002:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
	<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE	<input type="checkbox"/>