

MNR Capital Group v Fliggins
2024 NY Slip Op 35585(U)
April 11, 2024
Supreme Court, Nassau County
Docket Number: Index No. 600396/2023
Judge: Denise L. Sher
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

.....
MNR CAPITAL GROUP,

Petitioner,

-against-

ANTONIO QUANTAIN FLIGGINS,

Respondent.
.....

TRIAL/IAS PART 30
NASSAU COUNTY

Index No.: 600396/2023
Motion Seq. No.: 01
Motion Date: 01/30/2023
XXX

The following papers have been read on this application:

	<u>Papers Numbered</u>
<u>Notice of Petition, Verified Petition and Exhibits, Affirmation,</u>	
<u>Memorandum of Law</u>	<u>1</u>

Upon the foregoing papers, it is ordered that the application is decided as follows:

Petitioner moves, pursuant to CPLR §§ 7510 and 7514, for an order confirming the Arbitration Award, dated November 4, 2022, in the sum of \$15,065.45, with prejudgment interest at a rate of sixteen percent (16%) [but actually requesting eighteen percent (18%)] from November 4, 2022, plus reasonable attorney's fees in the amount of \$3,000 [which actually should be \$2,828.55], plus costs and disbursements, and directing the entry of a judgment that will accrue postjudgment interest at a rate of sixteen percent (16%) [but actually requesting eighteen percent (18%)] per annum, which rate will govern over the statutory rate of interest up until actual satisfaction of the judgment. No opposition was submitted to the application.

In support of the application, counsel for petitioner submits, in pertinent part, that, “Petitioner and Respondent entered into a written contract, dated June 2, 2022,.... which contain (*sic*) agreements to arbitrate any dispute, including issues of arbitrability, with the arbitration to be administered by Mediation And Civil Arbitration, Inc. (‘MCA’) under its Commercial Arbitration Rules(“Rules”):... Rule 32.1 of the Rules authorizes service of a demand for arbitration by e-mail, stating in relevant part that: Each party shall be deemed to have consented that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these Rules ... may be served on a party by e-mail addressed to ... the e-mail address designated under the agreement to arbitrate.... On July, 18, 2022, Respondent was served with a demand for arbitration, a statement of claim, and a copy of the agreement to arbitrate,... On July 27, 2022, the demand for arbitration was filed with MCA. Rule 5.5 of the Rules states that ‘RapidRuling shall give notice of such filing to the Respondent or Respondents within three (3) business days of receipt via e-mail as provided herein.’... On July 27, 2022, MCA gave notice of the filing to Respondent. Rule 5.6 of the Rules requires a respondent to file an answering statement within 14 days after MCA gives notice of the filing of the demand for arbitration, stating that: A Respondent may file an answering statement with RapidRuling at the eFile Portal within fourteen (14) calendar days after notice from RapidRuling of the claim, together with any counterclaim Respondent may want to assert, and the appropriate filing fee as provided for in the Schedule of Fees set forth herein.... Respondent did not file an answering statement within 14 days after MCA gave notice of the filing of the demand for arbitration and Respondent’s time to do so was not extended. Rule 22.1 of the Rules provides that an arbitration may proceed in the absence of a party under certain circumstances: Unless the law provides to the contrary, the arbitration may proceed in the absence of any party who, after due notice pursuant to these Rules, fails to appear at a hearing or is otherwise unable or unwilling to participate in the hearing. The Arbitrator shall

require the party who is present to submit such evidence as the Arbitrator may require for the making of an award.... Rule 5.8 of the Rules provides that a respondent shall be held in default for failure to answer within the time permitted and that an award may be requested against a party in default: If no answering statement is filed within the time provided for under these Rules, Respondent shall be deemed to be in default, and all allegations shall be deemed admitted. Failure to file an answering statement shall not operate to delay the arbitration. An award pursuant to this Rule 5.8 may be requested by the Claimant by filing a Motion, including a proposed award, at the eFile Portal and paying the required Arbitrator Fees, if any.... On November 4, 2022, Matthew H. Herlihy, as Arbitrator, after having taken the oath prescribed by law and after the parties had duly submitted their proofs or had the opportunity to do so, and having fully considered all of the evidence and arguments submitted and having come to a decision, duly made his award in writing, whereby he determined and awarded that there is \$15,065.45 due to Petitioner from Respondent.... Rule 37 of the Rules provides for the methods of delivery of the Award, stating in relevant part that: Parties shall accept as legal delivery of the Award the placing of the award or a true copy thereof in the e-mail addressed to a party or its counsel at the last known address, personal service of the award, or the filing of the award in any other manner that is permitted by law without regard for the said transmittal being filtered to a recipient's SPAM filter or sent via the eFile Portal.... On November 7, 2022, the Arbitrator delivered a copy of the Award to each party in the manner provided in the agreement to arbitrate.... Rule 37 of the Rules states that '[t]he parties shall comply with the award within seven (7) days unless additional or other time is specified in the award.' ... Respondent did not comply with the award within seven days of its issuance. The parties' contract contains a provision stating in relevant part that 'notwithstanding any provision in this Agreement to the contrary ... any application to confirm an arbitration award may be made under the arbitration laws of the State in which the arbitration

is being conducted ... without regard to any applicable principles of conflict of laws.’ ...

The parties’ contract contain (*sic*) a provision stating in relevant part that

‘[n]otwithstanding any provision in this Agreement to the contrary, ... any application ...

to confirm an arbitration award for an arbitration conducted in the State of New York

may be made in the Supreme Court of New York for Nassau County’ The parties’ contract

contains a provision permitting service of process by First Class or Priority Mail,

stating in relevant part that.... Rule 37 of the Rules authorizes service of process by mail or

by e-mail in a special proceeding to confirm an arbitration award, stating in relevant part that....

Service of process is being made in this special proceeding by mail and e-mail to the address

designated by Respondent in the arbitration agreement. The parties’ contract contains a provision

setting the pre-judgment interest rate for any judgment to be entered in favor of Petitioner

to 18%, stating in relevant part that ‘[i]f [Petitioner] becomes entitled to the entry of a judgment

against any [Respondent], then [Petitioner] will be entitled to the recovery of

prejudgment interest at a rate of 18% per annum’ The parties’ contract contains a provision

setting the postjudgment interest rate for any judgment to be entered in favor of Petitioner

to 18%, stating in relevant part that ‘upon entry of any such judgment, it will accrue interest

at a rate of 18% per annum ... which rate will govern over the statutory rate of interest

up until actual satisfaction of the judgment.’ ... The parties’ contract contains a provision

authorizing the recovery of Petitioner’s reasonable attorneys’ fees, stating in relevant part that

‘[i]f [Petitioner] prevails in any litigation ... with [Respondent], then [Respondent] must pay ...

[Petitioner]’s reasonable attorney fees’ Rule 37 of the Rules authorizes the recovery of

reasonable attorneys’ fees in a special proceeding to confirm an award, stating in relevant part

that:... It is respectfully requested that Petitioner be awarded its reasonable attorneys’ fees

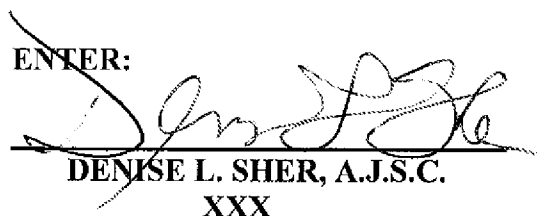
for the prosecution of this special proceeding.” See Petitioner’s Verified Petition Exhibits A-D.

As previously indicated, no opposition was submitted to the application.

Based upon the above, petitioner's motion, pursuant to CPLR §§ 7510 and 7514, for an order confirming the Arbitration Award, dated November 4, 2022, in the sum of \$15,065.45, with prejudgment interest at a rate of eighteen percent (18%) from November 4, 2022, plus reasonable attorney's fees in the amount of \$2,828.55, and directing the entry of a judgment that will accrue postjudgment interest at a rate of eighteen percent (18%) per annum, which rate will govern over the statutory rate of interest up until actual satisfaction of the judgment, is hereby **GRANTED**.

This constitutes the Decision and Order of this Court.

ENTER:



DENISE L. SHER, A.J.S.C.
XXX

Dated: Mineola, New York
April 11, 2024

ENTERED

Apr 15 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE