

AKF, Inc. v G&K Gutters & More LLC

2025 NY Slip Op 31366(U)

April 10, 2025

Supreme Court, New York County

Docket Number: Index No. 655258/2024

Judge: Alexander M. Tisch

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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. ALEXANDER M. TISCH PART 18

Justice

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AKF INC.,

Plaintiff,

- v -

G&K GUTTERS AND MORE LLC, GREGORY HILL JR
GRAHAM, G&K GUTTERS AND MORE LLC

Defendant.

-----X

INDEX NO. 655258/2024

MOTION DATE 10/04/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1-18
were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

Upon the foregoing documents, petitioner AKF Inc., doing business as Fundkite, seeks, pursuant to Civil Practice Law and Rules § 7510, to confirm an arbitration award against respondents, G&K GUTTERS AND MORE LLC DBA: G&K GUTTERS AND MORE, LLC – GUTTER CONTRACTOR, GUTTER INSTALLATION SERVICES / G&K GUTTERS / G&K GUTTERS AND MORE / TUXEDO SEAMLESS GUTTER SYSTEMS / GK (G&K Gutters and More), Gregory Hill Jr Graham, and G&K Gutters and More LLC.

AKF and G&K Gutters and More, entered into two Revenue Purchase Agreements, Agreement 1, dated November 3, 2023, and Agreement 2, dated February 22, 2024 (Agreement 1 and Agreement 2 or Agreements, attached as exhibits A and B to the verified petition, NY St Cts Elec Filing [NYSCEF] Docs No. 5, 6). Gregory Hill Jr Graham and G&K Gutters and More LLC (collectively Guarantors) signed as guarantors for the Agreements in their capacity as individual and business guarantor respectively (*id.*).

In Agreement 1, G&K Gutters and More promised AKF \$74,658 (Purchased Amount 1) of its future receivables (Receipts) for an upfront lump sum payment of \$54,100, less applicable fees (Agreement 1 at 2). In Agreement 2, G&K Gutters and More promised AKF \$40,040 (Purchased Amount 2) of its Receipts for an upfront lump sum payment of \$28,600, less

applicable fees (Agreement 2 at 2). Per the Agreements, G&K Gutters and More agreed to deposit all Receipts into a designated bank account (Designated Account)¹ accessible to AKF. Every week, AKF was to debit the Designated Account for the agreed-upon amount until the Purchased Amounts were paid. The agreed-upon amounts were \$1,866.45 for Agreement 1 and \$1,430.00 for Agreement 2, both subject to reconciliation (Agreements, 2).

According to Agreement 1, G&K Gutters and More would default if it “refuses to deliver the Remittance Percentage of its Receipts” or if AKF was “unable, at any time, to successfully debit the Designated Account due to any ‘block’” placed by G&K Gutters and More (Agreement 1, § 3.1). Under Agreement 2, G&K Gutters and More would default if it interfered with AKF’s “right to collect the purchased Receipts” (Agreement 2, § 2.4) After a default, the outstanding Purchased Amount becomes immediately due to AKF with additional default fees (Agreement 1, § 3.2) (Agreement 2, § 3.1). Guarantors guaranteed G&K Gutters and More’s performance for both Agreements (Agreements, 17-8).

On May 10, 2024, AKF was unable to debit the Designated Account for the agreed-upon amounts due to a stopped payment (Bank Notices of Return, attached as exhibit E to the verified petition, NYSCEF Doc No. 9). AKF sought arbitration with G&K Gutters and More and the Guarantors pursuant to the Agreements. Neither G&K Gutters and More nor the Guarantors participated in the arbitration.

The arbitrator issued the Final Arbitration Award on August 29, 2024, finding respondents defaulted under the agreed-upon Mediation & Civil Arbitration, Inc. (MCA) Commercial Arbitration Rules by not filing a responsive statement to AKF’s demand for arbitration within 14 days (Final Arbitration Award, attached as exhibit K to the verified petition, NYSCEF Doc No. 15, ¶ 12-13). Further, the arbitrator found G&K Gutters and More defaulted under both Agreements by issuing the stop payment and “denying Claimant [AKF] the right to receive the monies” (Final Arbitration Award, ¶ 6). The arbitrator awarded AKF \$65,437.88 (Final Arbitration Award, ¶ 8). The award includes the outstanding Purchased Amount 1 (\$26,130.30), outstanding Purchased Amount 2 (25,740.00), default fees (\$12,967.58), and banking and arbitration fees (\$600) (*id.*, ¶ 1, ¶ 8). The arbitrator awarded interest accruing at 9%

¹ The Designated Account for Agreement 1 and Agreement 2 was the same bank account (Agreement 1, 3) (Agreement 2, 3).

from the date of the arbitration award. AKF now seeks confirmation of the arbitration award against the respondents.

Pursuant to CPLR 7510, the Court “shall confirm an [arbitration] award upon application of a party made within one year after its delivery to them, unless the award is vacated or modified upon a ground specified in section 7511.” The award was issued on August 29, 2024. This action was timely filed, with proof of service to respondents, on October 4, 2024. Respondents did not appear to oppose confirmation of the award. The Court, on review of the award, concludes the amount is rational and not arbitrary or capricious and should be confirmed and a money judgment entered for the petitioner. The money judgment will bear interest from the date of the relevant arbitration award (*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 hereby

ORDERED and ADJUDGED that the verified petition (Motion Seq 001) is GRANTED without opposition pursuant to CPLR 7510 and the Final Arbitration Award dated August 29, 2024, MCA Claim No. 45858/2024, 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, G&K GUTTERS AND MORE LLC DBA: G&K GUTTERS AND MORE, LLC – GUTTER CONTRACTOR, GUTTER INSTALLATION SERVICES / G&K GUTTERS / G&K GUTTERS AND MORE / TUXEDO SEAMLESS GUTTER SYSTEMS / GK, Gregory Hill Jr Graham, and G&K Gutters and More LLC., in the principal sum of \$65,437.88, plus interest at 9% per annum from August 29, 2024, as taxed by the Clerk; and it is further

ORDERED that petitioner shall, within 20 days from entry of this decision, order, and judgment, serve a copy of this order with notice of entry on respondents by mail and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (see section J)²

This constitutes the decision, order, and judgment of the Court.

4/10/2025
DATE



ALEXANDER M. TISCH, 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

² The *Protocol* is accessible at the "E-Filing" page on the court's website: <https://ww2.nycourts.gov/courts/ljd/suptmanh/index.shtml>.