

Outten & Golden LLP v Kim

2025 NY Slip Op 31446(U)

April 21, 2025

Supreme Court, New York County

Docket Number: Index No. 651102/2025

Judge: Emily Morales-Minerva

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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. EMILY MORALES-MINERVA PART 42M

Justice

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OUTTEN & GOLDEN LLP

Petitioner,

- v -

FRANK KIM,

Respondent.

-----X

INDEX NO. 651102/2025
MOTION DATE 02/26/2025
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 6
were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT

APPEARANCES:

Outten & Golden LLP, New York, NY (Gregory S Chiarello, Esq.,
of counsel), for petitioner.

EMILY MORALES-MINERVA, J.S.C.

In this special proceeding, petitioner OUTTEN & GOLDEN LLP
(law firm) moves, unopposed, by notice of petition (motion
sequence no. 001), for orders, pursuant to CPLR § 7510,¹ (1)
confirming the award of the Arbitration Panel dated November 26,
2024; and (2) directing judgment in the amount of \$17,360.23 in
favor of petitioner and against respondent FRANK KIM.

As explained below, the petition (mot. seq. no. 001) is
granted entirely.

¹CPLR § 7510 provides, "The court shall confirm an [arbitration] award upon
application of a party made within one year after its delivery to him, unless
the award is vacated or modified upon a ground specified in section seventy-
five hundred eleven of this article."

BACKGROUND

On or about June 11, 2024, respondent FRANK KIM (client) initiated a fee dispute arbitration against petitioner OUTTEN & GOLDEN LLP (law firm) pursuant to the Rules of the Chief Administrator of the Courts (22 NYCRR) § 137² (see New York State Court Electronic Filing System [NYSCEF] Doc. No. 01, Petition). Michael P. Graff, Esq., Chris Fladgate, Esq., and GERALYN Capelli (Arbitrators), arbitrators duly appointed pursuant to the 22 NYCRR § 137.4, conducted an arbitration on In the Matter of Fee Dispute Arbitration Between Frank Kim and Outten & Golden LLP, Mr. Gregory S. Chiarello Esq., Case No. 2024-054 (see id.).

Following said arbitration and "based on the testimony and documentary evidence, including the retainer agreements and invoices, and applying the legal standard of the preponderance of the evidence", the Arbitrators, on November 26, 2024, determined that law firm is entitled to fees in the amount of \$44,610.23 (see NYSCEF Doc. No. 02, Arbitration Award, dated November 26, 2024). The Arbitrators further found that client previously paid \$27,250.00 to law firm, and therefore owed a

² Rule 137 provides, "This Part establishes the New York State Fee Dispute Resolution Program, which provides for the informal and expeditious resolution of fee disputes between attorneys and clients through arbitration and mediation. In accordance with the procedures for arbitration, arbitrators shall determine the reasonableness of fees for professional services, including costs, taking into account all relevant facts and circumstances. Mediation of fee disputes, where available, is strongly encouraged."

balance of \$17,360.23 (see id.). Accordingly, the Arbitrators directed client to pay \$17,360.23 to law firm (see id.).

Thereafter, client did not move to vacate or modify the award pursuant to CPLR § 7511,³ and the time to move for said relief expired on February 24, 2025. Now, law firm timely moves, unopposed, to confirm the November 26, 2024, Arbitration Award (see NYSCEF Doc. Nos. 01-04, Notice of Petition and Exhibits).

ANALYSIS

Judicial confirmation of an arbitration award is a prerequisite to its entry as a judgment (see CPLR § 7514[a]). An arbitrator's award, wherein the arbitrator evaluates the evidence and identifies the salient issues, is final and definite (see Matter of Isernio y Blue Star Jets, LLC, 140 AD3d

³ Section 7511 of the CPLR provides, as pertinent here, "(a) An application to vacate or modify an award may be made by a party within ninety days after its delivery to him.

(b) (1) The award shall be vacated on the application of a party who either participated in the arbitration or was served with a notice of intention to arbitrate if the court finds that the rights of that 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."

480 [1st Dept 2016])). Under New York law, arbitration awards are entitled to substantial deference, and are subject to extremely limited judicial review (see Wien & Malkin LLP v Helmsley-Spear, Inc., 6 NY3d 471, 479-480 [2006] [finding that "it is well settled that judicial review of arbitration awards is extremely limited"])). "A final and definite award will not be vacated unless it is violative of a strong public policy, or is totally irrational, or exceeds a specifically enumerated limitation on the arbitrator's power" (Matter of Isernio, 140 AD3d at 480, citing Montanez v New York City Hous. Auth., 52 AD3d 338, 339 [1st Dept 2008] [internal quotation marks omitted]).

Here, despite a showing of personal service upon client pursuant to CPLR § 308 (see NYSCEF Doc No. 06, Affidavit of Personal Service and Affidavit of Mailing), client has defaulted on the instant application. Therefore, having reviewed the arbitration award and finding that none of the exceptions to confirming the award apply, the court grants the instant application and confirms the November 26, 2024, arbitration award.

Accordingly, it is hereby

ORDERED that petitioner OUTTEN & GOLDEN LLP's petition (mot. seq. no. 001) to confirm the November 26, 2024,

arbitration award is granted, and the arbitration award is confirmed entirely; it is further

ORDERED that petitioner OUTTEN & GOLDEN LLP shall have judgment and recover the amount of \$17,360.23 from respondent FRANK KIM; it is further

ORDERED that the Clerk shall enter judgment accordingly.

04/21/2025
DATE

Emily Morales-Minerva
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: