

AKF, Inc. v Zero Effort Nutrition, L.P.

2025 NY Slip Op 32084(U)

June 9, 2025

Supreme Court, New York County

Docket Number: Index No. 651229/2025

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12M

Justice

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AKF, INC. D/B/A FUNDKITE,

Plaintiff,

- v -

ZERO EFFORT NUTRITION, L.P., Z.E.N. FOODS,
INC., MARY ANN ROSSANO

Defendant.

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INDEX NO. 651229/2025

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 13, 14
were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR

Factual Background

Petitioner and Respondents entered into a Revenue Purchase Agreement ("RPA"). (NY St
Cts Elec Filing [NYSCEF] Doc No. 2). Pursuant to that agreement, Respondent sold \$238,000 in
future receipts to Petitioner, in exchange for \$163,015.(Id. at 1). Respondent was required to
deposit all receipts into a designated account ending in *6494 ("Designated Account"). (Id § 1,1,
Id. at 19).

Petitioner alleges that Respondents breached the agreement by putting a block on the
Designated Account, denying Petitioner Access. (NYSCEF Doc No. 6). Petitioner additionally
provides a Notice of Breach in which it informed Respondent of the alleged breach. (NYSCEF
Doc No. 7).

Petitioner submits an Order to Show Cause seeking a preliminary injunction in aid of arbitration under CPLR § 7502(c), restraining Respondents' funds held at Wells Fargo Bank N.A. in the amount of \$262,623.14.

Respondent submits no opposition in connection to Petitioner's Order to Show Cause.

Standard Under CPLR § 7502(c)

The standard test for a party seeking a preliminary injunction requires that the moving party demonstrate "(1) likelihood of success on the merits; (2) irreparable injury absent the injunction; and (3) a balancing of the equities in its favor." (*35 N.Y. City Police Officers v. City of New York*, 34 A.D.3d 392, 394, 826 N.Y.S.2d 22 (1st Dept. 2006)). However, unlike the typical three-part test for a preliminary injunction, CPLR § 7502(c) allows provisional relief only where the award "may be rendered ineffectual without such provisional relief." The First Department has held that a movant under CPLR § 7502(c) must satisfy both that standard and the traditional three-prong test. (*Matter of Patrolmen's Benevolent Assn. v. City of New York*, 112 A.D.3d 116 (1st Dept 2013)).

Ineffectuality of an Arbitration Award

Courts have found provisional relief appropriate where the respondent is insolvent or has engaged in conduct that risks dissipation of assets. (*See Port Auth. of N.Y. & N.J. v. Weiss & Hiller, P.C.*, 168 A.D.3d 648, 648, 94 N.Y.S.3d 245 (1st Dept. 2019); *Matter of Sojitz Corp. v. Prithvi Info. Solutions Ltd.*, 82 A.D.3d 89, 94, 921 N.Y.S.2d 14 (1st Dept. 2011)).

Petitioner has satisfied this requirement by showing that Respondent has blocked access to the Designated Account set forth in the Revenue Purchase Agreement, demonstrating a likelihood that any arbitration award may be deemed ineffectual absent a preliminary injunction.

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Likelihood of Success on the Merits

Petitioner has shown likelihood of success by submitting a validly signed Revenue Purchase Agreement and documentation demonstrating that Respondent has not complied by blocking access to the Designated Account in the RPA. Petitioner also submits documentation that Respondent was put on notice of the breach and was given an opportunity to cure. Respondent has not submitted any opposition. Accordingly, Petitioner has satisfied the requirement to show a likelihood of success on the merits.

Irreparable Harm

Petitioner's allegation and proffered evidence of the blocked access to Respondent's account, demonstrates the real risk that Respondents may dissipate assets before arbitration concludes. Moreover, claims of monetary harm are not precluded from injunctive relief under CPLR § 7502(c). (*See County Natwest Sec. Corp. v. Jesup, Josephthal & Co.*, 180 A.D.2d 468, 469, 579 N.Y.S.2d 376 (1st Dept. 1992)). As Respondent has not submitted any opposition, the Court finds that Petitioner has demonstrated a likelihood of irreparable harm absent a preliminary injunction.

Balance of the Equities

In evaluating the balance of equities, Courts consider the "relative prejudice to each party accruing from a grant or denial of the requested relief." (*Barbes Rest. Inc. v. ASRR Suzer 218, LLC*, 140 A.D.3d 430, 432, 33 N.Y.S.3d 43 (1st Dept. 2016)). Petitioner has also demonstrated that the balance of equities weighs in its favor. The risk of an ineffective arbitration award and Petitioner's compliance with the agreement would prejudice Petitioner. Respondent has not opposed the motion, and as such has not demonstrated that the equities are balanced in their

favor. Moreover, CPLR § 7502(c) provides that such relief will expire within 30 days unless arbitration is commenced, thereby limiting prejudice to Respondents.

Accordingly; it is hereby

ORDERED that Petitioner's Order to Show Cause is granted; and it is further

ORDERED that pending the resolution of the parties' arbitration and until further Order of the Court all funds in any accounts held by the Respondents at Wells Fargo Bank N.A. , are restrained up to the amount of \$262,623.14.

6/9/2025

DATE

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

Leslie A. Stroth
HON. LESLIE A. STROTH
J.S.C.