

Walking on Wood, Inc. v Aghassipour

2025 NY Slip Op 34438(U)

November 19, 2025

Supreme Court, New York County

Docket Number: Index No. 655292/2020

Judge: Debra A. James

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES

PART 59

Justice

-----X

WALKING ON WOOD, INC.,

Petitioner,

- v -

KHASHAYER XERXES AGHASSIPOUR,

Respondent.

-----X

INDEX NO. 655292/2020

MOTION DATE 02/24/2025

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 44

were read on this motion to/for STAY.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 47, 48, 49, 50, 51, 52, 53, 54

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

Upon the foregoing documents, it is

ORDERED that the motion, pursuant to CPLR 4403, of respondent Khashayer Xerxes Aghassipour to confirm the Referee Report dated January 2, 2025, of Judicial Hearing Officer Alan C. Marin (NYSCEF Doc No 46) (mot seq no 002) is granted; and it is further

ORDERED that the petition, pursuant to CPLR § 7503(b), to stay arbitration (mot seq no 001) is denied; and it is further

ORDERED that petitioner Walking On Wood, Inc. shall arbitrate its claims against respondent Khashayer Xerxes Aghassipour in accordance with the employment agreement of 2018; and it is further

ORDERED that the herein proceedings are stayed, except for an application to vacate or modify such stay; and it is further

ORDERED that both parties may stipulate or, by show cause order, either party may move to restore this proceeding to the calendar and to vacate or modify the herein stay upon the final determination of the arbitrator(s).

DECISION

In evaluating whether to confirm the findings and conclusions of the report issued by Judicial Hearing Officer ("JHO") Marin (the "Report"), the court must determine two core issues: (1) the proper standard for reviewing a "hear and report" order under CPLR Article 4, and (2) whether the JHO correctly found that the parties entered into an implied-in-fact contract that includes an agreement to arbitrate (the "2018 Agreement").

In addition, the court must consider whether the fraud alleged by the petitioner Walking on Wood, Inc. negates the existence of such a contract or render the arbitration unenforceable. As explained below, the JHO's findings were supported by the record and consistent with New York law, and the recommendation should be confirmed.

I. A JHO's "Hear and Report" Recommendation is Entitled to Deference Absent Legal Error or Clear Factual Misjudgment

Where a JHO is appointed to "hear and report," the court retains ultimate decision-making authority but generally defers to

the JHO's factual findings unless they are clearly erroneous or against the weight of the evidence. See CPLR 4403, Wells Fargo Bank, N.A. v Laronga, 219 AD3d 1559, 1561 (2d Dept 2023). This standard applies when the JHO has held an evidentiary hearing, made credibility determinations, and issued detailed findings. Flagstar Bank, F.S.B. v Konig, 153 AD3d 790 (2d Dept 2017) ("The report of a referee should be confirmed whenever the findings are substantially supported by the record, and the referee has clearly defined the issues and resolved matters of credibility.").

Here, the JHO conducted a full hearing on October 31, 2024 and made detailed findings regarding contract formation and party conduct. See NYSCEF Doc. No. 49, JHO Report, pp. 2-7. As such findings are amply supported by the record and not contrary to law, they warrant confirmation. See Flagstar Bank, 153 AD3d at 790; CPLR 4403.

II. The JHO Properly Concluded That an Implied-in-Fact Contract Was Formed Through the Parties' Conduct

Under New York law, an implied-in-fact contract arises when the conduct of the parties demonstrates a meeting of the minds and a mutual intent to promise. See Maas v Cornell Univ., 94 NY2d 87, 93-94 (1999). Such a contract is enforceable when it contains essential elements including offer, acceptance, consideration, mutual assent, and intent to be bound. id.; Tractebel Energy Mktg., Inc. v AEP Power Mktg., Inc., 487 F3d 89, 98 (2d Cir 2007).

A party's conduct may manifest assent to the terms of an agreement where that party knows or has reason to know that the conduct gives rise to an inference of agreement. See Maas, 94 NY2d at 93-94 (citing Restatement (Second) of Contracts § 4 [A.L.I. 1981]) ("[a] promise . . . may be inferred wholly or partly from conduct.").

Here, the JHO found that both parties acted in accordance with the terms of the 2018 Agreement—including the updated salary, rent reimbursement, and role continuation of the respondent Khashayer Xerxes Aghassipour ("Aghassipour"), notwithstanding that Bojang Meftah ("Meftah"), the owner of Walking on Wood, Inc. (Walking on Wood) denies that he ever signed or saw the document. While the parties dispute whether Walking on Wood authorized Aghassipour to sign on Meftah's behalf, both parties intended Aghassipour to continue managing the New York office and remain lawfully employed in the United States through visa sponsorship. Walking on Wood hired an immigration attorney to assist with renewing visa of Aghassipour, as Walking on Wood was aware that a new agreement was required in order to preserve Aghassipour's employment rights following the expiration of the 2013 employment agreement. Meftah testified that while he did not know the exact amount of Aghassipour's salary, he was aware that it had increased over time "and rightly so." See NYSCEF Doc No 49, JHO Report, p. 6. The JHO concluded that Walking on Wood functionally operated

under the 2018 Agreement for nearly two years, including authorizing payments and approving work performed.

New York courts have confirmed that a contract implied in fact may result as an inference from the facts and circumstances of the case and is derived from the conduct of the parties. Maas, 94 NY2d at 93. Here, the parties' coordinated effort to renew Aghassipour's visa through an updated agreement, and their unbroken course of performance under the terms of the 2018 Agreement terms, support the JHO's conclusion that a binding contract was formed.

III. The Implied Agreement Included an Enforceable Arbitration Clause

Having found that an implied contract was formed, the next question is whether that agreement encompassed an obligation to arbitrate. Under New York law, a party may be compelled to arbitrate even in the absence of a signed contract if the parties' conduct demonstrates mutual assent to the terms of an agreement that includes an arbitration clause. See Ferrarella v Godt, 131 AD3d 563, 565-66 (2d Dept 2015) ("Once it is determined that the parties have agreed to arbitrate the subject matter in dispute, the court's role has ended and it may not address the merits of the particular claims."). In Tractebel, the Second Circuit applied New York law to enforce an agreement to arbitrate, holding that mutual assent could be inferred from the parties' consistent

adherence to the material terms. Tractebel, 487 F3d at 95-97 (explaining that the existence of a contract may be inferred from conduct recognizing it, and that courts must consider the totality of the parties' acts, relationship, and objectives to determine whether their behavior reflects mutual agreement).

Here, the JHO found that the 2018 Agreement included an arbitration clause identical in substance to that of the 2013 employment agreement, and that the parties continued to operate under the same terms for years. The JHO also credited testimony showing that the arbitration clause had never been contested during the parties' course of dealing. Walking on Wood produced no evidence that Meftah, its principal, objected to the arbitration provision before filing the underlying petition.

Under these facts, the JHO reasonably concluded that the implied agreement between the parties incorporated the arbitration clause as a material term.

CONCLUSION

The JHO's recommendations in the Report should be confirmed. The record supports the finding that the parties formed an implied-in-fact employment agreement based on their conduct and mutual understanding, and that such agreement incorporated an arbitration clause materially identical to that in the prior written contract. Walking on Wood's allegations of fraud are refuted by the existence and enforceability of the implied agreement, which includes the

agreement to arbitrate. As the JHO's findings are consistent with governing New York law and are not against the weight of the evidence, the petition to stay arbitration shall be denied and the parties directed to proceed with arbitration.

Debra A. James

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11/19/2025

DATE

DEBRA A. JAMES, 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