

AKF Inc. v Limitless Wireless Inc.

2025 NY Slip Op 34573(U)

November 20, 2025

Supreme Court, New York County

Docket Number: Index No. 654888/2024

Judge: Nicholas W. Moyne

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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. NICHOLAS W. MOYNE PART 41M

Justice

INDEX NO. 654888/2024

AKF INC. d/b/a FUNDKITE,

Petitioner,

- v -

LIMITLESS WIRELESS INC., AHMAD KHALED
BADAREEN, LIMITLESS WIRELESS INC / METRO BY T-
MOBILE, LIMITLESS WIRELESS INC. / METRO BY T-
MOBILE, ELITE WIRELESS IL LLC, EVOLUTION ELITE
GROUP LLC, EVOLUTION ELITE GROUP
LLC, EVOLUTION ELITE GROUP LLC,

Respondent.

MOTION DATE 09/18/2024,
03/07/2025,
04/01/2025,
08/28/2025

MOTION SEQ. NO. 001 002 003
004

DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for INJUNCTION/RESTRAINING ORDER

The following e-filed documents, listed by NYSCEF document number (Motion 002) 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 44, 45, 46, 50, 51, 52, 64, 65, 66, 67

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

The following e-filed documents, listed by NYSCEF document number (Motion 003) 48, 49, 53, 54, 55, 56, 57, 58, 57-1, 59, 60, 61, 62, 63

were read on this motion to/for ENFORCEMENT

The following e-filed documents, listed by NYSCEF document number (Motion 004) 68, 69, 70, 71

were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS

Upon the foregoing documents, it is

Motion sequence 001 is petitioner's Order to Show Cause ("OSC") seeking a preliminary injunction in aid of arbitration. Motion sequence 002 is petitioner's petition to confirm an arbitration award, which is opposed by respondent Ahmad Khaled Badareen ("Badareen"), who cross-moves to vacate the arbitration award. Motion sequence 003 is Badareen's motion to stay enforcement of the arbitration award. Motion sequence 004 is Badareen's motion to quash a subpoena and for a protective order.

As an initial matter, motion sequence 001 has been rendered moot. This motion sought an order restraining certain funds pending arbitration. The arbitration has now been conducted. Therefore, the motion is moot. Accordingly, motion sequence 001 is denied and the restraining order is vacated.

Petitioner, AKF Inc. ("AKF"), entered into a revenue purchase agreement (NYSCEF Doc. No. 29) with respondent Limitless Wireless Inc. ("Limitless"), the other respondents were guarantors under the agreement. Pursuant to the agreement, AKF purchased \$128,188 in Limitless' future revenue for \$87,800, of which only \$82,347 was disbursed to Limitless after AKF's fees were deducted. Pursuant to the agreement, AKF would periodically debit Limitless' bank account. Starting on July 31, 2024, the debits from Limitless' account were declined due to insufficient funds. Thereafter, the instant proceeding was commenced, initially to restrain funds pending arbitration of the dispute, and then, after arbitration had occurred, to confirm the arbitration award. On November 25, 2024, the petitioner withdrew their petition (motion sequence 001) as to non-answering defendants Elite Wireless IL LLC, Evolution Elite Group LLC, Evolution Elite Group LLC, and Evolution Elite Group LLC without prejudice (NYSCEF Doc. No. 22). On December 4, 2024, the arbitrator issued the final arbitration award (NYSCEF Doc. No. 37) which granted AKF an award of \$83,917.24 plus the costs of confirming the award and attorneys fees in the liquidated amount of 33% of the outstanding balance against defendants LIMITLESS WIRELESS INC. D/B/A METRO BY TMOBILE / LIMITLESS WIRELESS, AHMAD KHALED BADAREEN, LIMITLESS WIRELESS INC / METRO BY T-MOBILE, and LIMITLESS WIRELESS INC. / METRO BY T-MOBILE jointly and severally. Thereafter, plaintiff filed the petition to confirm the arbitration award (motion sequence 002). Respondent Badareen cross-moved to vacate the arbitration award.

Respondent Badareen admits that he received the notice of intent to arbitrate but contends that the arbitration award should be vacated because he did not receive proper notice of the arbitration, and personal tragedies – the death of one child, another child hospitalized, and the need to care for his pregnant wife – made it impossible for him to participate in the arbitration. Pursuant to CPLR § 7511(b), where, as here, the movant was served with a notice of intention to arbitrate, the award may be vacated if the court finds that the rights of that party were prejudiced by: corruption, fraud or misconduct in procuring the award; or partiality of an arbitrator appointed as a neutral; or an arbitrator exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made; or failure to follow the procedure of this article (CPLR Article 75). Badareen's contention that he did not have proper notice of the arbitration is belied by the October 17, 2024 email from Rapid Ruling, the arbitration company, indicating that an answer to the demand for arbitration was due within fourteen days of the email, and a November 12, 2024 email from Rapid Ruling indicating that AKF had requested an uncontested award and that opposition was due within seven days of the date of the email (see NYSCEF Doc. No. 55). These emails were sent to the same email address that Badareen had used for communications with petitioner's counsel (see NYSCEF Doc. No. 61). As such, Mr. Badareen had notice of the arbitration and the steps he needed to complete to participate in the arbitration. Accordingly, the arbitrator had the ability to render a

decision. As tragic as Mr. Badareen's personal circumstances were, unfortunately they do not constitute grounds for vacatur of the arbitration award pursuant to CPLR § 7511. "Only those grounds for resisting confirmation of an award specified in CPLR 7511 may be the basis for vacating or modifying an arbitration award" (*Geneseo Police Benev. Ass'n, Council 82 v Vil. of Geneseo*, 91 AD2d 858, 858 [4th Dept 1982], *affd sub nom. Matter of Geneseo Police Benevolent Assn. Council 82 v Vil. of Geneseo*, 59 NY2d 726 [1983]). However, to the extent that the arbitration award grants AKF "an award of all of Claimant's costs of confirming this Final Arbitral Award by a Court of competent jurisdiction, attorneys' fees in the liquidated amount of thirty-three percent of the outstanding Balance due and owing to Claimant" (Arbitration Award, NYSCEF Doc. No. 37) the arbitrator did exceed their power. In determining the amount of reasonable attorney fees, a court is required to consider the following factors: "time and labor required, the difficulty of the questions involved, and the skill required to handle the problems presented; the lawyer's experience, ability and reputation; the amount involved and benefit resulting to the client from the services; the customary fee charged by the Bar for similar services; the contingency or certainty of compensation; the results obtained; and the responsibility involved" (*see In re Freeman's Estate*, 34 NY2d 1 [1974]). Accordingly, awarding attorney's fees of 33% of the outstanding balance without analyzing any of the relevant factors is unwarranted. In light of the fact that the arbitrator granted a default fee of 25% of the outstanding balance, which pursuant to the contract is a good faith estimate of AKF's additional costs associated with Limitless' failure to comply with the terms of the agreement, and the arbitration award included \$3,174.74 in attorney's fees and expenses, an additional award of attorney's fees is unwarranted. This is a fairly routine matter, with petitioner having hundreds of similar cases pending in this court, with the petitions utilizing nearly identical boiler plate language, and handled by the same counsel. Furthermore, petitioner's counsel has not provided an affirmation setting forth their entitlement to attorney's fees citing the relevant factors. Accordingly, the cross-motion seeking to vacate the arbitration award is granted to the extent that the award is modified to remove that portion of the award which granted additional attorney's fees of 33% of the outstanding balance, and is otherwise denied. The petitioner's motion to confirm the arbitration award must be granted and the award, as modified by this order, is confirmed.

In light of the court's decision, set forth hereinabove, granting in part the petition to confirm the arbitration award and denying in part the cross-motion to vacate the award, respondent's motion (motion sequence 003) seeking to stay enforcement of the arbitration award is denied.

Respondent Badareen moves (motion sequence 004) to quash a subpoena, and for a protective order prohibiting petitioner from issuing subpoenas to non-party family members or financial institutions. He contends that a subpoena dated August 20, 2025 seeks the private financial records of a non-party family member. Respondent did not attach a copy of the subpoena he is seeking to quash to his motion papers. He contends that the subpoena is overbroad, irrelevant, harassing, and its only effect is to cause prejudice and intimidation rather than to obtain evidence material to this proceeding. With limited exceptions, the person subpoenaed is the one who must move to quash it (*see Matter of Selesnick*, 115 Misc 2d 993, 994 [Sup Ct Westchester County

1982)). “The fact that the subpoenaed party may supply information regarding a third-party does not justify the intervention of the third-party. It must be further shown that the third-party has rights which are being violated” (*Id.*; see also *38-14 Realty Corp. v New York City Dept. of Consumer Affairs*, 103 AD2d 804, 804 [2d Dept 1984] [petitioner lacked standing to challenge subpoena issued to another entity even if they were a party to the contracts subpoenaed where petitioner had no proprietary interest in the subject documents and no privileged communications were involved]). “[A] subpoena may only be challenged by the person to whom it is directed or by a person whose property rights or privileges may be violated” (*Matter of Selesnick, supra*). Here, respondent has not indicated what privileges or property rights are being violated by the subpoena. Accordingly, Mr. Badareen lacks standing to quash the subpoena. Likewise, Mr. Badareen has not shown standing to quash the subpoena (NYSCEF Doc. No. 70) annexed to petitioner’s opposition, which was issued to JP Morgan Chase Bank. The subpoena seeks bank records from March 19, 2024 – the date that the parties entered into the revenue purchase agreement – to the date of the subpoena, for bank accounts held by the respondents in this action and for non-party JDN Wireless Corporation (which the Illinois Secretary of State lists respondent Badareen as the registered agent). Furthermore, in light of this court’s decision confirming, in part, the arbitration award, a protective order which would limit the petitioner’s right to seek out assets which could satisfy a judgment is not warranted. Accordingly, the respondent’s motion to quash a subpoena and for a protective order is denied.

For the reasons set forth hereinabove, it is hereby

ORDERED that the plaintiff’s Order to Show Cause (motion sequence 001) seeking a preliminary injunction is denied; and it is further

ORDERED that the injunction set forth in the Order to Show Cause dated September 19, 2024 (NYSCEF Doc. No. 14) is vacated; and it is further

ORDERED that the respondent’s cross-motion to vacate the arbitration award is granted to the extent that the award is modified to remove that portion of the award which granted the petitioner attorney’s fees of 33% of the outstanding balance, and the cross-motion is otherwise denied; and it is further

ORDERED that the petition (motion sequence 002) to confirm the arbitration award is granted in part; and it is further

ORDERED that the arbitration award, as modified herein, is confirmed; and it is further

ORDERED that respondent’s motion (motion sequence 003) to stay enforcement of the arbitration award is denied; and it is further

ORDERED that respondent Badareen’s motion (motion sequence 004) to quash a subpoena and for a protective order is denied; and it is further

ORDERED and ADJUDGED that the petitioner is to serve a copy of this order with notice of entry upon the Office of the County Clerk, who is directed to enter judgment in favor of petitioner, AKF INC., D/B/A FUNDKITE, and against respondents, LIMITLESS WIRELESS INC. D/B/A METRO BY T-MOBILE / LIMITLESS WIRELESS, AHMAD KHALED BADAREEN, LIMITLESS WIRELESS INC / METRO BY T-MOBILE, and LIMITLESS WIRELESS INC. / METRO BY T-MOBILE, who shall be jointly and severally liable, in the amount of \$83,917.24, plus interest at the rate of 9% per annum from the date of December 4, 2024, and costs and disbursements, as taxed by the Clerk of the Court upon the submission of proper proof thereof, and that plaintiff have execution therefor; and it is further

ORDERED that petitioner shall submit judgment directly to the Clerk of the Court, not chambers or the Part, unless otherwise directed by the Clerk of the Court; and it is further

ORDERED that any such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "efiling" page on this court's website).

This constitutes the decision and order of the court.

Motion Sequence 001

11/20/2025
DATE

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

Nicholas W. Moyne
NICHOLAS W. MOYNE, J.S.C.

Motion Sequence 002

11/20/2025
DATE

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

Nicholas W. Moyne
NICHOLAS W. MOYNE, J.S.C.

Motion Sequence 003

11/20/2025
DATE

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

Nicholas W. Moyne
NICHOLAS W. MOYNE, J.S.C.

GRANTED DENIED GRANTED IN PART OTHER
 APPLICATION: SETTLE ORDER SUBMIT ORDER
 CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

Motion Sequence 004

11/20/2025
DATE

Nicholas W. Moyne

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
 APPLICATION: GRANTED DENIED GRANTED IN PART OTHER
 CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE