

AKF Inc. v Le Nid Consortium Intl., Inc.

2025 NY Slip Op 34718(U)

December 4, 2025

Supreme Court, New York County

Docket Number: Index No. 654016/2024

Judge: Judy H. Kim

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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. JUDY H. KIM PART 04

Justice

-----X

AKF INC., d/b/a FUNDKITE,

Petitioner,

- v -

LE NID CONSORTIUM INTERNATIONAL, INC., KYLIE ANNE SCHUYLER, LE NID ASIA, INC., LE NID USA, INC., LE NID, INC., LE NID BRANDS, INC., CREMILY INC.,

Respondents.

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INDEX NO. 654016/2024

MOTION DATE 08/08/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 18, 19, 20, 21, 22, 23, 24

were read on this motion to CONFIRM/DISAPPROVE AWARD.

Upon the foregoing documents, the petition to confirm a Final Arbitration Award issued on August 6, 2024, in favor of petitioner and against respondents (the “Award”) is granted.

FACTUAL BACKGROUND

On October 18, 2023, petitioner AKF Inc. entered into a Revenue Purchase Agreement (“RPA”) with Le Nid Consortium International, Inc. d/b/a Le Nid International/LNCI (“Le Nid”) in which petitioner agreed to pay \$581,671.00 to purchase \$830,357.00 of Le Nid’s future receipts (NYSCEF Doc. No. 1, petition at ¶21). On February 20, 2024, petitioner entered into another RPA with Le Nid in which it agreed to pay \$352,615.00 to purchase \$503,475.00 of Le Nid’s future receipts (*id.* at ¶22). Respondent Kylie Anne Schuyler, Le Nid’s owner, personally guaranteed Le Nid’s performance under both Revenue Purchase Agreements (*id.* at 23).

On May 21, 2024, petitioner’s weekly debit of receipts from Le Nid’s account designated in both RPAs was declined due to insufficient funds.

On June 3, 2024, petitioner mailed a written Notice of Intent to Arbitrate to respondents by certified mail, per section 4.14 of the RPAs. On July 2, 2024, petitioner submitted its dispute with respondents to arbitration before Mediation and Civil Arbitration, Inc. d/b/a RapidRuling (“Rapid”). The next day, petitioner served a Commercial Demand for Arbitration form, along with its supporting documents, on respondents by UPS Next Day Air Saver, per Rule 32.1, of Rapid Rules.

Respondents did not appear at the arbitration. On August 6, 2024, Arbitrator Amanda Becker issued a Final Arbitration Award (the “Award”) in favor of petitioner and against respondents, jointly and severally, in the amount of \$426,945.21, as well as petitioner’s costs of confirming the Award by a court of competent jurisdiction, attorneys’ fees in the liquidated amount of thirty-three percent of the outstanding balance respondents owed to petitioner, and pre-judgment interest at a rate of nine percent per annum (NYSCEF Doc No. 15, Award).

Petitioner subsequently commenced this special proceeding to confirm the Award. Respondents answered and cross-moved to vacate the Award. Respondents argue that vacatur is appropriate because the Notice of Intent to Arbitrate and Commercial Demand for Arbitration were mailed to Le Nid’s business address, which they were not checking because “[t]he business was largely inactive,” and the RPAs are, in any event, “illegal as usurious agreement[s] void under New York law.”

DISCUSSION

CPLR 7510 provides that “[t]he court shall confirm an 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 seventy-five hundred eleven of this article (CPLR 7510). It is undisputed that this special proceeding is timely. Rather, respondents argue vacatur is appropriate

under CPLR 7511. That statute provides, in pertinent part, that an arbitration award “shall be vacated on the application of a party who ... 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” (CPLR 7511[b][1]). Respondent argues that the Award should be vacated because of misconduct in procuring the award and the arbitrator exceeded her power in making the Award. The Court disagrees.

Respondent’s papers reflect that their asserted ignorance of the arbitration was not due to any act by petitioner, which mailed the notices of the arbitration in the manner contemplated in the RPAs, but due to respondents’ oversight. Neither does the record support a finding that the RPAs are usurious loans. “To determine whether a transaction constitutes a usurious loan ... [t]he court must examine whether the plaintiff is absolutely entitled to repayment under all circumstances. ... [by] weigh[ing] three factors ... (1) whether there is a reconciliation provision in the agreement; (2) whether the agreement has a finite term; and (3) whether there is any recourse should the merchant declare bankruptcy” (*Principis Capital, LLC v I Do, Inc.*, 201 AD3d 752, 754 [2d Dept 2022] [internal citations and quotations omitted]). The RPAs include reconciliation clauses (in section 1.3), do not set a finite term (section 1.2), and provides that petitioner has no recourse if Le Nid filed a Chapter 7 liquidation or otherwise ceased operations in the ordinary course of business (section 1.2). Accordingly, the Arbitrator did not render the Award in “manifest

disregard of the law” or otherwise exceeded her power in making the Award (*AKF, Inc. v Windows & Beyond Interiors, LLC*, 2025 NY Slip Op 30447[U], 3-4 [Sup Ct, NY County 2025] [internal citations omitted]).

The Arbitrator did, however, exceed her power in granting petitioner attorney’s fees “in the liquidated amount of thirty-three percent of the outstanding Balance due and owing to Claimant” without reference to any provision in the RPAs entitling petitioner to same (*see AKF Inc. v Limitless Wireless Inc.*, 2025 WL 3298047 [Sup Ct, NY County 2025]; *see also AFK Inc. v Leo Kieu Sole Prop*, 2024 WL 3745175 [Sup Ct, NY County 2024]). Accordingly, the cross-motion to vacate the Award is granted in part, to the limited extent that the Award is modified to remove that portion granting petitioner attorney’s fees of thirty-three percent of the outstanding balance due petitioner, and is otherwise denied.

Accordingly, it is

ORDERED and **ADJUDGED** that the petition to confirm the Award is granted, in part, and respondents’ cross-motion to vacate the Award is granted to the extent that the Award is modified to remove that portion granting petitioner attorney’s fees of thirty-three percent of the outstanding balance, and is otherwise denied; and it is further

ORDERED and **ADJUDGED** that the award by Mediation and Civil Arbitration, Inc d/b/a RapidRuling in the matter entitled *AKF, Inc. d/b/a Fundkite v Le Nid Consortium International, Inc. d/b/a Le Nid International/LNCI, Kylie Anne Schuyler, Le Nid Asia, Inc., Le Nid Usa, Inc., Le Nid Usa, Inc., Le Nid, Inc., Le Nid Brands, Inc., and Cremily Inc.*, MCA Claim No.: 45828/2024, dated August 6, 2024, is confirmed as modified; and it is further

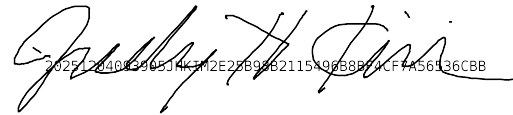
ORDERED and **ADJUDGED** that the Clerk of the Court shall enter judgment in favor of petitioner and against respondents, jointly and severally, in the sum of \$426,945.21, plus interest

at the rate of nine percent per annum from August 6, 2024, as computed by the Clerk, together with costs and disbursements as taxed by the Clerk, upon the submission of proper proof thereof; and it is further

ORDERED that petitioner shall, within twenty days from entry of this decision, order, and judgment, serve a copy of this order with notice of entry on respondents and the Clerk of the Court, who is directed to enter judgment accordingly; and it is further

ORDERED that such service upon the Clerk 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 “E-Filing” page on the court’s website).

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



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12/4/2025

DATE

HON. JUDY H. KIM, 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