

LCF Group, Inc. v Pena
2025 NY Slip Op 35615(U)
January 22, 2025
Supreme Court, Nassau County
Docket Number: Index No. 609047/2024
Judge: Ellen Tobin
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**SUPREME COURT: STATE OF NEW YORK
COUNTY OF NASSAU**

PRESENT: Hon. Ellen Tobin, A.J.S.C.

THE LCF GROUP, INC.,

Petitioner,

- against -

**ISMAEL PENA D/B/A DESIGNER DRYWALL
AND ISMAEL PENA,**

Respondents.

TRIAL/IAS PART 33

Index No. 609047/2024

Motion Seq. No. 001

DECISION AND ORDER

The following papers were read on this petition:

NYSCEF Doc. Nos.

Notice of Petition, Verified Petition and Exhibits..... 1-6

Petitioner The LCF Group, Inc. ("Petitioner") petitions the Court for an Order (1) pursuant to CPLR 7510, confirming the arbitration award dated September 11, 2023 (the "Arbitration Award");¹ (2) pursuant to CPLR 7514, directing entry of judgment in Petitioner's favor and against respondents Ismael Pena d/b/a Designer Drywall ("Designer Drywall") and Ismael Pena ("Pena" and together with Designer Drywall, "Respondents"), in the sum of \$15,527.62, plus an award of pre-judgment interest from September 11, 2023 (the date of the Arbitration Award), and Petitioner's costs in bringing this Petition; and (3) granting such other relief as the Court deems just (the "Petition"). Respondents did not respond to the Petition or appear in this proceeding.²

¹ The Arbitration Award was issued in the matter *The LCF Group, Inc. v. Ismael Pena d/b/a Designer Drywall and Ismael Pena*, MCA Claim No. 44946/2023 (Mediation & Civil Arbitration, Inc.) (the "Arbitration").

² The Arbitration Award states the parties entered into a Stipulation of Settlement on September 8, 2023, pursuant to which Respondents appeared in the Arbitration and acknowledged liability to Petitioner in the amount of \$15,527.62.

In support of the Petition, Petitioner filed affidavits of service documenting service on Respondents of the Notice of Petition, the Petition and the exhibits thereto (collectively, the “Petition Documents”) The affidavits of service show service on Respondent Designer Drywall on June 18, 2024 by delivery to Ismael Pena, the Owner of Designer Drywall, at the specified address in San Diego, California (NYSCEF Doc. No. 10). The affidavits of service also show service of the Petition Documents on respondent Pena on June 18, 2024 by personal delivery to Pena at the same address (NYSCEF Doc. No. 12).

Under CPLR 7510, the “court shall confirm an award upon application made within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in section 7511.” “[J]udicial review of arbitration awards is extremely limited” (*Wien & Malkin LLP v Helmsley-Spear, Inc.*, 6 NY3d 471, 479 [2006]). “In determining any matter arising under CPLR article 75, ‘the court shall not consider whether the claim with respect to which arbitration is sought is tenable, or otherwise pass upon the merits of the dispute’” (*Sheriff Officers Assn, Inc., ex rel. Ranieri v Nassau Cty.*, 113 AD3d 620, 621 [2d Dept 2014], quoting CPLR 7501). “An arbitration award must be upheld when the arbitrator offers even a barely colorable justification for the outcome reached” (*Wien & Malkin LLP*, 6 NY3d at 479 [citation and internal alteration omitted]). “[A]n arbitrator’s award should not be vacated for errors of law and fact committed by the arbitrator and the courts should not assume the role of overseers to mold the award to conform to their sense of justice” (*Id.*). “It is not for the courts to interpret the substantive conditions of the contract or to determine the merits of the dispute” (*Matter of United Fedn. of Teachers, Local 2, AFT, AFL-CIO v Bd. of Educ. of City School Dist. of City of N.Y.*, 1 NY3d 72, 82–83 [2003] [citation and alteration omitted]).

“Under CPLR 7511, the court may scrutinize an arbitration award only on the narrow grounds specified in subdivision (b) and only upon the application of a party. The list of potential objections in CPLR 7511(b) and (c) is exclusive” (*Middletown Enlarged City School Dist. v Schwartz*, 39 Misc 3d 1219(A), at *2 [Sup Ct, Orange County 2013, Bartlett, J.], citing *Geneseo Police Benevolent Assn., Council 82 v Village of Geneseo*, 91 AD2d 858 [4th Dept 1982], *affd* 59 NY2d 726 [1983]; *Erin Const. & Dev. Co. v Meltzer*, 58 AD3d 729, 730 [2d Dept 2009]).

Petitioner properly commenced this proceeding pursuant to CPLR article 7 within 1 year of the Arbitration Award. The documents filed by Petitioner show service of the Petition Documents on Respondents (*see* CPLR 403 [b], [c]; CPLR 7502 [a]; *Star Boxing, Inc v. DaimlerChrysler Motors Corp*, 17 AD3d 372, 372 [2d Dept 2005]; CPLR 311-a; CPLR 308 [1]). Respondents have not moved to vacate or modify the Arbitration Award and there is no basis to do so (*Harleysville Ins. Co./Nationwide Gen. Ins. Co. v. Est. of Boser*, 219 AD3d 469, 469-71 [2d Dept 2023]; *Middletown Enlarged City School Dist.*, 39 Misc.3d 1219(A), at *2). Based on the evidence presented herein, it is hereby:

ORDERED, that the Petition is **GRANTED**; and it is further

ORDERED, that the Arbitration Award dated September 11, 2023 is confirmed with an award of pre-judgment interest from September 11, 2023, and an award of costs and disbursements as taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED, that Petitioner shall serve Respondents with a copy of this Decision and Order with Notice of Entry within fourteen (14) days of entry of this Decision and Order and file proof of such service; and it is further

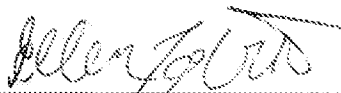
ORDERED, that Petitioner shall submit a proposed Judgment on notice to Respondents, to the Judgment Clerk of the Supreme Court, Nassau County, within 30 days of entry of this Decision and Order.

All other relief sought herein and not addressed or ruled on is **DENIED**.

This constitutes the Decision and Order of the Court.

DATED: Mineola, New York
January 22, 2025

ENTER:



HON. ELLEN TOBIN, A.J.S.C.

ENTERED

Jan 28 2025

NASSAU COUNTY
COUNTY CLERK'S OFFICE