

At a term of the Appellate Term of the Supreme Court  
of the State of New York for the 2<sup>nd</sup>, 11<sup>th</sup> & 13<sup>th</sup> Judicial Districts

JAN 28 2011

MICHELLE WESTON, J.P.  
JAIME A. RIOS  
MARSHA L. STEINHARDT, JJ.

OCTOBER 13, 2010 TERM  
2010-00820 Q C

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NATIONAL SAFEWAY ALERT SYSTEMS, INC.  
Doing Business as SAFEWAY SECURITY SYSTEMS,

Appellant,

-against-

Lower Court #  
122027-09

PELHAM 7-11 LLC.,

Respondent.  
-----X

The above named appellant having appealed to this court from a **DECISION** of the **CIVIL COURT, CITY OF NEW YORK, QUEENS COUNTY** dated **DECEMBER 17, 2009**, deemed an appeal from a **JUDGMENT** of the same court, entered on **DECEMBER 30, 2009** and the said appeal having been **submitted** by **GENE W. ROSEN, ESQ.** counsel for the appellant and **NO BRIEF SUBMITTED** for the respondent and due deliberation having been had thereon; it is hereby,

**ORDERED AND ADJUDGED** that the judgment is reversed, without costs, and judgment is directed to be entered confirming the arbitrator's award of \$1,458.06 and adding thereto an additional sum of \$750, representing additional attorney's fees incurred by the petitioner in confirming and enforcing the arbitration award.

Weston, J.P., Rios and Steinhardt, JJ., concur.

GENE W. ROSEN, ESQ.  
KIRSCHENBAUM & KIRSCHENBAUM, P.C.  
200 GARDEN CITY PLAZA, STE. 500  
GARDEN CITY, NEW YORK 11530

ENTER:



PELHAM 7-11 LLC.  
3220 WESTCHESTER AVENUE  
BRONX, NEW YORK 10461

PAUL KENNY  
CHIEF CLERK  
APPELLATE TERM

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE TERM : 2nd, 11th and 13th JUDICIAL DISTRICTS

-----X

PRESENT : WESTON, J.P., RIOS and STEINHARDT, JJ.

-----X

NATIONAL SAFEWAY ALERT SYSTEMS, INC.  
Doing Business as SAFEWAY SECURITY SYSTEMS,

Appellant,

-against-

JAN 28 2011

NO. 2010-820 Q C

DECIDED

PELHAM 7-11 LLC,

Respondent.

-----X

Appeal from a decision of the Civil Court of the City of New York, Queens County (Maureen A. Healy, J.), dated December 17, 2009, deemed from a judgment of the same court entered December 30, 2009 (see CPLR 5520 [c]). The judgment, in effect, modified an arbitrator's award by reducing the amount awarded to petitioner from the sum of \$1,458.06 to the principal sum of \$983.06, and confirmed the award as modified.

ORDERED that the judgment is reversed, without costs, and judgment is directed to be entered confirming the arbitrator's award of \$1,458.06 and adding thereto

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an additional sum of \$750, representing additional attorney's fees incurred by petitioner in confirming and enforcing the arbitration award.

Petitioner commenced this special proceeding to confirm an arbitrator's award. Respondent had failed to appear at the arbitration, and the arbitrator had issued an award in favor of petitioner in the total sum of \$1,458.06, which included attorney's fees and costs. The Civil Court modified the award by deducting the amount of attorney's fees and costs awarded to petitioner and implicitly denied petitioner's demand for additional attorney's fees incurred in confirming the arbitration award.

On appeal, petitioner contends that the Civil Court was not authorized to modify the award under the circumstances presented. We agree. CPLR 7510 states that "[t]he court shall confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in section 7511." No party moved to vacate or modify the award pursuant to CPLR 7511, and the criteria for modifying the award pursuant to CPLR 7511 (c) are not met in this case.

"Once a case is referred to arbitration, 'all questions of fact and of law are within the judicially unreviewable purview of the arbitrator'" (Matter of Raisler Corp. [New York City Hous. Auth.], 32 NY2d 274, 282 [1973], quoting Matter of S & W Fine Foods [Office Empls. Intl. Union, Local 153, AFL-CIO], 8 AD2d 130, 131 [1959], affd 7 NY2d

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1018 [1960]). The Civil Court was without authority to modify the arbitrator's award on the proffered ground (see also Davis Alarms, Inc. v Diamond Cutters, Inc., 25 Misc 3d 130[A], 2009 NY Slip Op 52120[U] [App Term, 2d, 11th & 13th Jud Dists 2009]; New York Merchants Protective Co., Inc. v Salloom Import & Export Corp., 18 Misc 3d 129[A], 2007 NY Slip Op 52458[U] [App Term, 2d & 11th Jud Dists 2007]).

Furthermore, petitioner established its entitlement to the attorney's fees it incurred in commencing this special proceeding to confirm the award. Thus, the Civil Court erred in implicitly denying petitioner's demand for these additional attorney's fees. Accordingly, we reverse the judgment and direct that judgment be entered confirming the arbitrator's award of \$1,458.06 and adding thereto the sum of \$750 for additional attorney's fees.

Weston, J.P., Rios and Steinhardt, JJ., concur.