

Civil Court of the City of New York  
County of Queens

Part: 35

Index Number 107879/2007

Motion Cal # 15 Motion Seq #

Submitted October 4, 2007

**DECISION/JUDGMENT**

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

New York Merchants Protective Co., Inc.

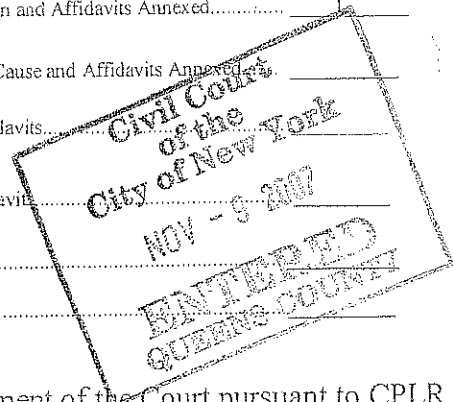
Petitioner,

*against*

Radhames Santana d/b/a Ocoa Deli & Grocery

Respondent,

Papers	Numbered
Notice of Petition and Affidavits Annexed.....	1
Order to Show Cause and Affidavits Annexed.....	
Answering Affidavits.....	
Replying Affidavits.....	
Exhibits.....	
Other.....	



Upon the foregoing cited papers, the instant petition for a Judgment of the Court pursuant to CPLR §7510 confirming an arbitration award is granted on default as follows:

New York Merchants Protective Co., Inc. petitions the Court pursuant to CPLR §7510 to confirm an arbitration award arising from a breach of contract dispute rendered against respondent Radhames Santana d/b/a Ocoa Deli & Grocery in the sum of \$4,896.90 plus additional counsel fees of \$750.00. Petitioner includes with its petition a verification by Wayne Wahrsager as president of New York Merchants Protective Co., Inc. Petitioner also attached with its submitted papers an affidavit of service which indicates that service was effectuated by serving the notice of petition and petition upon a person of suitable age, one Luis Tejada, identified as a business associate of the respondent Radhames Santana.

The underlying dispute arises from a written agreement which petitioner claims was entered into between the respondent and the petitioner on or about October 10, 2003. Petitioner includes with the petition a copy of said agreement dated October 10, 2003 which was signed by the respondent Radhames Santana on or about October 10, 2003. Said contract contains a provision entitled "Legal Action" which provides that any disputes arising under the contract may, at the option of either party, be determined by arbitration administered by the National Arbitration Association. This section also provides that "Should NYMP [New York Merchants Protective Co., Inc.] prevail in any litigation between the parties Subscriber shall pay NYMP's legal fees"

Petitioner attaches a copy of an affirmed arbitration award in favor of the petitioner dated July 27, 2007 for the total sum of \$4,896.90, with an affidavit of service indicating that the "Notice of Award" was mailed to the respondent on July 30, 2007. Said award indicates that a Demand for Arbitration was filed and served upon the respondent, that "[t]he above named Respondent was duly and properly served with Notice of these proceedings" and that the respondent was "in default for failure to Answer". As such, the petitioner has

established that a copy of the arbitration award was served upon the respondent pursuant to CPLR §7507 and that the instant petition was made within one year of the delivery of the arbitration award (see CPLR §7510)

Petitioner attaches a copy of the "Demand for Arbitration" which identifies the nature of the dispute as "BREACH OF CONTRACT" and states that the "Claim or Relief Sought" is \$8,607.51. Petitioner also attaches an affidavit of service by one John Chiafair, who states that the Demand for Arbitration and Statement of Claims were served upon the respondent by regular and certified mail on June 6, 2007.

CPLR §7506[b] requires that "[t]he arbitrator shall appoint a time and place for the hearing and notify the parties in writing personally or by registered or certified mail not less than eight days before the hearing." However, where parties have entered into an agreement which provides for arbitration in accordance with the rules of a private organization, such as the National Arbitration Association, "the threshold question for the court confirming the award is whether those rules have been adhered to" (Matter of MBNA Am. Bank, N.A. v. Turull, 2007 NY Slip Op 27264 [2<sup>nd</sup> Dept App. Term]).

Upon review of the rules of the National Arbitration Association ([www.natarb.com](http://www.natarb.com) and [www.arbitr8ors.com](http://www.arbitr8ors.com)) which reads in relevant part as follows:

**6. Initiating Arbitration By Demand, Answer And Counterclaim**

Initiation of an Arbitration when provided for in arbitration agreement shall be initiated in the following manner:

- a. The initiating party (hereinafter Claimant) shall, within the time period, if any, specified in the arbitration agreement, give written notice to the other party (hereinafter Respondent) of its Demand to arbitrate (demand), which notice shall contain a statement setting forth the nature of the dispute, the monetary amount involved, if any, other relief sought, and
- b. shall file at the office of ASI three copies of the Demand and three copies of the agreement providing for arbitration, three copies of a detailed statement of Claimant's claim and factual allegations supporting Claimant's position, together with the appropriate filing fee as provided for in the schedule of fees set forth herein.

...

**f. If no answering statement is filed within the stated time Respondent shall be deemed to be in default.**

**23. Arbitration In The Absence Of A Party**

**Unless the law provides to the contrary, the arbitration may proceed in the absence of any party who, after due notice pursuant to these rules, fails to appear at a hearing or is otherwise unable or unwilling to participate in the hearing. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.**

Petitioner also attaches with its submitted papers an affirmation by its attorney, who states that "this action is billed on a contingency basis of 33% of all monies collected".

Accordingly, the instant petition to confirm the arbitration award and for attorney's fees is granted on default to the extent that the arbitration award rendered for the Petitioner is hereby confirmed in the total amount of \$4,896.90.

The foregoing constitutes the Decision and Judgment of the Court.

*October 29, 2007*

Date

*Robert D. Kalish*

HON. Robert D. Kalish

Judge, Civil Court