

**APPELLATE TERM OF THE SUPREME COURT
OF THE STATE OF NEW YORK FOR THE 2ND, 11TH & 13TH JUDICIAL DISTRICTS**

Submitted - January 5, 2017 Term

MICHAEL L. PESCE, P.J.
MICHELLE WESTON
THOMAS P. ALIOTTA, JJ.

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DECISION & ORDER

D&W Central Station Fire Alarm Co., Inc., Appellant,
v 112 Fulton Group, Inc., Respondent.

Appellate Term Docket No.
2015-2106 Q C

Lower Court # 22806/14
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Kirschenbaum & Kirschenbaum, P.C.,

112 Fulton Group, respondent pro se (no brief filed).

Appeal from a judgment of the Civil Court of the City of New York, Queens County (Jodi Orlow, J.), entered July 24, 2015. The judgment, insofar as appealed from, upon granting a petition to confirm an arbitration award, implicitly dismissed petitioner's cause of action for additional attorney's fees.

ORDERED that the judgment, insofar as appealed from, is reversed, without costs, petitioner's cause of action for additional attorney's fees is reinstated, and the matter is remitted to the Civil Court for the entry of an amended judgment which shall include an award to petitioner of the sum of \$750, representing the reasonable additional attorney's fees incurred by petitioner in confirming the arbitration award.

After obtaining an award in an arbitration proceeding at which respondents failed to appear, petitioner commenced this proceeding, seeking to confirm the arbitration award (*see* CPLR 7510) and an award of additional attorney's fees in the sum of \$750, representing the reasonable fees incurred in litigating the petition. The Civil Court confirmed the award but implicitly dismissed petitioner's cause of action for the additional attorney's fees. Petitioner appeals from so much of a judgment entered July 24, 2015 as implicitly dismissed its cause of action for additional attorney's fees.

April 7, 2017

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In light of the express provision in the parties' contract entitling petitioner to attorney's fees if it is the prevailing party in "any litigation" between the parties (*see Matter of New York Merchants Protective Co., Inc. v RW Adart Poly, LLC*, 108 AD3d 554, 557 [2013]; *McLaughlin, Piven, Vogel Sec., Inc. v Ferrucci*, 67 AD3d 405, 406 [2009]; *see also Hooper Assoc. v AGS Computers*, 74 NY2d 487, 492 [1989]; *Myron Assoc. v Obstfeld*, 224 AD2d 504 [1996]), petitioner can recover the reasonable attorney's fees it incurred in litigating the petition (*see e.g. D & W Cent. Sta. Fire Alarm Co., Inc. v United Props. Corp.*, 34 Misc 3d 85, 87 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2012]; *National Safeway Sys., Inc. v Pelham 7-11 LLC*, 30 Misc 3d 142[A], 2011 NY Slip Op 50319[U], *2 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2011]; *Internet Sec. Sys., Inc. v Hauer*, 30 Misc 3d 142[A], 2011 NY Slip Op 50317[U], *2 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2011]; *United Burglar Alarm, Inc. v Teodorovich*, 30 Misc 3d 142[A], 2011 NY Slip Op 50316[U], *2 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2011]). In view of the foregoing, and as we find that the sum of \$750 represented the reasonable attorney's fees incurred, we reverse the judgment, insofar as appealed from, reinstate petitioner's cause of action for additional attorney's fees, and remit the matter to the Civil Court for the entry of an amended judgment which shall include an award to petitioner of the sum of \$750, representing the reasonable additional attorney's fees incurred by petitioner in confirming the arbitration award.

Pesce, P.J., Weston and Aliotta, JJ., concur.

ENTER:


Paul Kenny
Chief Clerk