

Memorandum

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE MARGUERITE A. GRAYS IAS PART 4  
Justice

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HIGH RISE FIRE PROTECTION CORP.,  
d/b/a HIGH RISE FIRE AND SECURITY,

Index  
No.: 701592/2017  
  
Motion  
Dated: May 9, 2017

Plaintiff(s),

-against-

Motion  
Cal. No.: 1

3052 BRIGHTON FIRST LOFT LLC and  
NATHAN WEINBERGER.

Motion  
Seq. No.: 2

Defendant(s).

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**Hon. Marguerite A. Grays**

Petitioner moves this Court for an Order confirming the arbitration award dated December 28, 2016, and directing the entry of judgment against respondents in the sum of \$32,491.14, together with statutory interest from December 28, 2016, and costs and disbursements, together with attorneys' fees in the amount of \$5,000.00. This motion is granted.

Petitioner's moving papers annex a copy of the Arbitration Services, Inc., Award dated December 28, 2016, which is in writing, signed and affirmed by the arbitrator who made the award (CPLR §7507).

In opposition to petitioner's motion, respondents argues, *inter alia*, they were not served with notice of the arbitration hearing by the arbitrator pursuant to Commercial Arbitration Rule 13. Respondents further argue that the award should be vacated pursuant to CPLR §7511[b][i], inasmuch as petitioner procured the arbitration award through misconduct, to wit, failing to inform the arbitrator that petitioner had terminated the parties' agreements<sup>1</sup> by email dated February 11, 2014, in which petitioner informed respondents that

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<sup>1</sup>  
This action arises out of two Commercial Fire Alarm Monitoring Contracts between the parties pursuant to which respondent 3052 Brighton First Loft LLC, as owner of the subject premises, and Nathan Weinberger, as principal of 3052's managing agent, hired petitioner to monitor the commercial fire alarm system at 3052's premises. Due to petitioner's alleged failure to properly perform under the contracts, respondents stopped making the monthly payments to petitioner. The contracts provided for any claims arising thereunder to be settled at arbitration.


it had deactivated the central station monitoring on August 8, 2013, and would not reactivate same due to non-payment of the account.

Initially, the Court notes that respondents concede that any arbitration proceeding arising out of the parties Agreement is governed by the Commercial Arbitration Rules and not Article 75 of the CPLR. Thus, respondents's argument that the arbitration award should be vacated pursuant to CPLR §7511 is unavailing. Furthermore, respondent's claims that petitioner "undoubtedly" failed to make the arbitrator aware that petitioner had terminated the contract, and, in any event, that such termination had released respondent from any further obligation to pay petitioner under the parties' agreement, are respectively unsubstantiated in the record before the court and unsupported by the terms of the parties' agreement.

Furthermore, petitioner has demonstrated compliance with the relevant Arbitration Services, Inc. (ASI) Commercial Arbitration Rules: petitioner served notice of its Demand for Arbitration on respondents on March 9, 2015 (Rule 6a.), and ASI timely sent notice to respondents at various addresses of the Demand for Arbitration on March 10, 2015 (Rule 6c.). ASI's notice also informed respondent that they would be notified of the date, time and place of the hearing upon receipt of respondents' share of the arbitrator's fee, and that respondents' default would result in an inquest without further notice. Respondents do not dispute that they did not remit payment of their share of the arbitrator's fee and pursuant to Commercial Arbitration Rule 6f., if no answering statement is timely filed, then the respondent shall be deemed in default. Commercial Arbitration Rule 30 permits the arbitrator to make an award based on written papers where a respondent fails to appear. Such was the case herein.

Submit judgment.

Date: **SEP 29 2017**

  
MARGUERITE A. GRAYS  
J.S.C

FILED  
OCT 16 2017  
COUNTY CLERK  
QUEENS COUNTY