

Civil Court of the City of New York  
County of Queens

Part 30

Index Number 4737/17

Motion Cal # 4 Motion Seq. # \_\_\_\_\_

Papers Submitted to Special Term on: 2/1/18

D&W CENTRAL STATION FIRE ALARM  
CO., INC.,

**DECISION/ORDER**

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

Petitioner,  
against  
SAFARI BEACH CLUB, LLC,  
Respondent.

Papers	Numbered
Order to Show Cause and Affidavits Annexed...	<u>1</u>
	<u>2</u>

**CIVIL COURT**  
**of the**  
**City of New York**  
**MAR 27 2018**  
**ENTERED**  
**QUEENS COUNTY**

Upon the foregoing cited papers, the Decision/Order on Respondent's motion seeking to vacate a default judgment pursuant to CPLR 5015 and upon such vacatur, entering an Order pursuant to CPLR 7511(b)(1)(i) vacating an arbitration award and ordering a new hearing, is as follows:

The instant dispute arises out of a series of alarm monitoring contracts entered into between the parties. On December 1, 2016, Petitioner served Respondent with a copy of its demand for arbitration. On December 5, 2016, Petitioner filed three copies of same at Arbitration Services, Inc, who sent notice of said filing to Respondent. In an email, sent December 21, 2016, Peter Sicilian, a manager and member of Respondent notified Petitioner's counsel that he had received the arbitration documents and needed to forward them to Respondent's attorney. Thereafter, Respondent failed to file an answer in the arbitration. On January 24, 2017, Petitioner wrote to Arbitration Services, Inc., requesting a default arbitration award, a copy of which was also mailed to Respondent. In an arbitration award dated February 8, 2017, Petitioner's request for a default arbitration award was granted by Allan L. Pullin, Arbitrator, in the amount of \$21,569.05, a copy of which was mailed to each party. In a letter dated February 13, 2017, Petitioner forwarded a copy of the arbitration award to Respondent, demanding payment of the arbitration award and advising Respondent that a proceeding to confirm the arbitration award would be filed. On March 1, 2017, Petitioner served its Notice of Petition to Confirm Arbitration Award and Petition upon Respondent. Said Petition was granted by the Hon. Donna-Marie Golia, JCC in a decision dated March 21, 2017. Judge Golia's decision was served upon the Respondent on June 6, 2017. All of the above mailings were sent to Safari Beach Club, LLC at 40-05 Bell Blvd., Bayside, NY 11361, the address specified in the underlying contract. Thereafter, on December 5, 2017, Petitioner was granted a judgment as against Respondent in the amount of \$24,539.57. Respondent now seeks to vacate this Court's grant of a default judgment to Petitioner and upon such vacatur, seeks an Order pursuant to CPLR 7511(b)(1)(i) vacating an arbitration award and ordering a new hearing.

To vacate a judgment, defendant must demonstrate both a reasonable excuse for its

default and the existence of a meritorious defense to the action, Presbyterian Hosp. in City of New York v New York Cent. Mut. Ins. Co., 277 AD2d 299 (2d Dept, 2000). As discussed in Omega Contracting, Inc. v. Maropakos Contracting, Inc., 160 A.D.2d 942 (2d. Dept. 1990), It is well established that the decision as to whether to grant or to refuse an adjournment is within the sound discretion of the arbitrator and that it is only when that discretion is abused that misconduct results (see, CPLR 7511[b][1][I]). Such an abuse of discretion may occur where the refusal to grant an adjournment results in the foreclosure of the presentation of material and pertinent evidence (see, State Farm Mut. Auto. Ins. Co. v. Provus, 149 A.D.2d 498 (2d. Dept. 1989). The Court notes that pursuant to CPLR 7511(a), that an application to vacate or modify an arbitration award may be made by a party within ninety days of its delivery to him and as such, Respondent's application is untimely on its face.


In support of its motion, Respondent submits the affidavit of Peter Sicilian, which alleges as follows: Respondent and Petitioner were parties to a series of alarm monitoring and related contracts. Respondent alleges that Petitioner repeatedly defaulted in its obligations under the contracts, resulting in violations and fines being assessed against the subject premises. As a result of said disagreements, Respondent withheld payment under the contract, resulting in the subject arbitration. Respondent alleges that he repeatedly notified Petitioner's counsel by phone that they required an adjournment of the arbitration based upon Mr. Sicilian's girlfriend's ill health, but neither party submits any extrinsic evidence of same. He further alleges that he did not receive any notice of Petitioner's petition to confirm the arbitration award.

In opposition, Petitioner submits a record of all of the documents served upon Respondent over the course of the arbitration and confirmation proceedings. Petitioner also submits a series of emails which show that Respondent has been aware of the arbitration decision since at least March, 2017. Even if the Court determines that Respondent was not aware of the arbitration award until June 6, 2017, when Respondent was served with Judge Golia's decision, Respondent's motion is still untimely by over three months. Furthermore, while the refusal to grant an adjournment may, under limited circumstances, be a reason to vacate an arbitration award, here Respondent never requested an adjournment from the arbitrator nor ever appeared in the arbitration. Respondent does not even appear to have forwarded the demand for arbitration to its attorney. Rather, respondent has neglected to participate in this action over the course of over a year.

Respondent's motion is hereby denied in its entirety. This constitutes the decision and Order of the Court.

March 27, 2018

Date

  
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HON. LARRY L. LOVE  
Judge, Civil Court