

NEW YORK MERCHANTS PROTECTIVE  
CO. INC.,

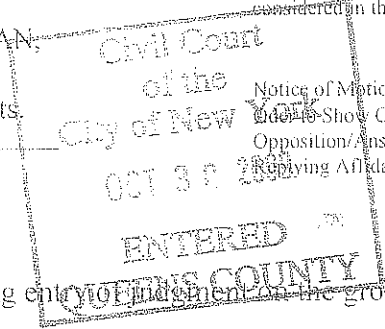
Petitioner,  
against

TOKYO TIME, INC. and ABDUR RAHMAN,

Respondents.

**DECISION/ORDER**

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



| Papers   | Numbered |
|--|----------|
| Notice of Motion-Cross Motion/Affidavits ..... | 1        |
| Order Show Cause and Affidavits Annexed....    | 2        |
| Opposition/Answering Affidavits.....           | 3        |
| Replying Affidavits .....                      |          |

Petitioner seeks an order directing entry of judgment on the ground that respondents defaulted under a stipulation of settlement agreement, or, in the alternative, an order restoring the petition to confirm arbitration award.

Petitioner maintains that it entered into an equipment and servicing agreement for an alarm system with respondents on March 24, 2004. After respondents breached that agreement, petitioner contends that it received a default arbitration award in its favor on July 19, 2006 in the amount of 12,444.67 and a default judgment confirming that award on February 20, 2007 in the amount of 13,355.01. Petitioner argues that it agreed to vacate that judgment based upon, among other things, the respondents' agreement to pay \$3,128.74 and resume its obligations under the initial agreement. Petitioner now maintains that, to date, respondents have failed to adhere to the terms of that stipulation of settlement.

In opposition, respondents maintain petitioner failed to inspect the system within seven days of receipt of the first installment and therefore, they "were paying for nothing."

A stipulation of settlement entered into in open court has the binding effect of a contract (*Furgano v Epstein*, 106 AD2d 609 [2d Dept 1984]). It is well settled that a stipulations of settlement will not be cast aside unless there is cause sufficient to invalidate a contract, such as fraud, collusion, mistake or accident (*Hallack v State of New York*, 64 NY2d 224 [1984]).

In this case, petitioner established that respondents failed to comply with the terms of the stipulation of settlement. Petitioner consented to vacate of the default judgment based upon the parties agreement that respondents would pay \$3,128.74 to petitioner; resume its obligations under the initial contract; and allow petitioner's technicians on the premises to inspect the alarm system. Even though respondents agreed to pay \$1,550.00 by 6/15/07 and \$1,578.74 by 8/1/07, petitioner did not receive the first payment until 7/2/07. Respondents also failed to remit the second installment and never resumed the payments required under the initial agreement. Respondents' argument that the system was not working


is unpersuasive because petitioner's affiant, Wayne Wahrsager (President of New York Merchants Protective Co.), stated that his technicians attempted to inspect the system on three different occasions: July 3, 2007, August 9, 2007, and August 23, 2007. Mr. Wahrsager also stated that on August 15, 2007 one of respondents' employees indicated during a phone conversation with his office that they could not allow a technician on the premises. Respondents failed to deny or address any of these issues and has not submitted any evidence tending to demonstrate that the stipulation should be invalidated.

Furthermore, respondents contentions regarding the validity or lack thereof of the underlying arbitration award, made for the first time in its opposition papers, are procedurally improper and will not be considered.

Accordingly, the court clerk shall enter judgment in favor of petitioner and against respondents in the amount of \$11,805.01, which is the amount of the original judgment (13,355.01) less \$1,550.00 paid under the stipulation of settlement by respondents. The judgment amount shall include interest from February 20, 2007.

This constitutes the Decision and Order of the court.

Dated: October 29, 2009



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HON. INGRID JOSEPH  
Judge, Civil Court