

**DISTRICT COURT OF NASSAU COUNTY
FIRST DISTRICT - CIVIL ONE**

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INTRUDER DETECTION SYSTEMS, INC.,

Index No. 21068/08

Plaintiff

PRESENT:

-against-

HON. BONNIE P. CHAIKIN

DESPINA TSOUMPARIOTIS,

Defendant

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DECISION AND ORDER AFTER TRIAL

In this action, plaintiff seeks damages arising from defendant's alleged breach of an alarm monitoring agreement between the parties dated November 22, 2004. It is alleged that the defendant failed to terminate the agreement in accordance with its terms, and is thereby liable for the sum of 80% of the unexpired term, or \$1,954.94, together with interest from the date of the purported breach, i.e. December 1, 2005 and legal fees pursuant to the agreement totaling \$654.13.

At trial, the plaintiff called Jean Kahn, its office manager for ten years who was personally familiar with the facts and circumstances surrounding the termination of this agreement. She was forthright and credible, and established the plaintiff's prima facie case.

According to plaintiff's witness, the defendant was offered three options for termination, she could have transferred the service to her new residence, had the new owners pick up the service, or paid 50% of the balance due. According to plaintiff's witness, the defendant refused all three options. Although the defendant did not admit to this conversation, the Court does find it credible.


The defendant then testified that she called the plaintiff company when she was about to change residences and advised plaintiff she would no longer require their services. Defendant testified that she was told that all she owed was \$26.02 and that she sent a check for that amount,

believing the contract was terminated. The defendant's testimony was unavailing in light of the written agreement. Accord and satisfaction is an affirmative defense that the defendant bears the burden of proving by a preponderance of the credible evidence. Defendant's testimony was insufficient to sustain this burden.

CONCLUSION

By a preponderance of the credible evidence adduced at trial through testimony and documents, the Court finds for plaintiff for the amount demanded in the complaint, and in accordance with paragraph 13 of the written agreement, includes the award of attorney's fees. Submit judgment.

The foregoing constitutes the Order and Decision of this Court.


Bonnie P. Chaikin
District Court Judge

Dated: April 5, 2010

cc.: Kirschenbaum & Kirschenbaum, PC, Attorneys for plaintiff

Friedman Harfenist Kraut & Perlstein LLP, Attorneys for Defendant