

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

-----X
FAIR LAWN A.S.C., LLC,

Petitioner,

-against-

GERARD TUTT,

Respondent.
-----X

LEONARD D. STEINMAN, J.

**IAS Part 12
Index No. 600284/2020
Motion Seq. No. 001**

DECISION AND ORDER

The following submissions, in addition to any memoranda of law submitted by the parties, have been reviewed in preparing this Decision and Order:

Petitioner’s Notice of Petition, Affirmation & Exhibits.....1

Petitioner seeks an order pursuant to CPLR §§7510 and 7514 confirming a November 12, 2019 arbitration award rendered in its favor. It is also seeks counsel fees incurred in this proceeding to confirm the award. A review of the documentation presented reveals that all necessary parties have been served with notice of this application. No opposition has been submitted to the petition.

Petitioner and respondent entered into a written agreement providing that any controversy or claim arising out of it would be resolved through arbitration. Respondent was deemed to be in default for failing to answer a demand for arbitration and on November 12, 2019, the arbitrator issued a written decision awarding: 1) judgment in the amount of \$51,110¹; 2) a constructive trust as to certain insurance checks in the sum of \$20,596 and the proceeds thereof, which were intended for the payment of petitioner’s facility charges; 3) a restraining order against respondent restraining him from transferring, disbursing, pledging or hypothecating the aforementioned checks or their proceeds; and 4) enjoining respondent from depositing, cashing, transferring or hypothecating any future checks received by him

¹ The amount awarded includes interest, attorneys’ fees and costs of the proceedings.

which were meant to act as reimbursement to petitioner for its facility charges and directing respondent to deliver to petitioner in a timely fashion any additional checks received by him.

Petitioner also seeks an additional \$5,000 in attorney's fees for bringing this proceeding and enforcement of the judgment. A portion of these fees are for services that have not yet been performed.

Accordingly, it is hereby

ORDERED, that the petition is granted, and it is further

ORDERED, that the November 12, 2019 arbitration award is hereby confirmed; and it is further

ORDERED, that petitioner is entitled to interest from November 12, 2019 at the rate of 9% per annum plus its costs and disbursements in this action; and it is further

ORDERED, that in the event petitioner waives its request for counsel fees it shall submit a proposed Judgment, on notice. In the event petitioner does not waive its request for counsel fees it is;

ORDERED, that subject to the approval of the Justice there presiding and provided a Note of Issue has been filed at least ten (10) days prior thereto, this matter shall appear on the calendar of CCP on **July 30, 2020 at 9:30 a.m.** for an Inquest to determine the amount of counsel fees to which petitioner is entitled, if any; and it is further

ORDERED, that a copy of this order shall be served on the Calendar Clerk and accompany the Note of Issue when filed. The failure to file a Note of Issue or appear as directed may be deemed an abandonment of the claim giving rise to the Inquest; and it is further

ORDERED, that the directive with respect to an Inquest is subject to the right of the Justice presiding in CCP to refer the matter to a Justice, Judicial Hearing Officer or a Court Attorney/Referee as he or she deems appropriate; and it is further


ORDERED, that the petitioner's counsel shall serve a copy of this order upon the respondent by overnight mail with proof of mailing within twenty (20) days of the NYSCEF posting of this Order.

Any relief requested not specifically addressed herein is denied.

This constitutes the Decision and Order of the court.

Dated: May 5, 2020
Sea Cliff, New York

ENTER:



LEONARD D. STEINMAN, J.S.C.
XXX