

At a term of the Appellate Term of the Supreme Court
of the State of New York for the 2nd, 11th & 13th Judicial Districts

JAN 28 2011

MICHELLE WESTON, J.P.
JAIME A. RIOS
MARSHA L. STEINHARDT, JJ.

OCTOBER 13, 2010 TERM
2010-00326 Q C

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DAVIS ALARMS, INC.,

Appellant,

-against-

Lower Court #
88555-09

HOWARD CHAZANOFF
Also Known as HOWIE CHAZANOFF,

Respondent.
-----X

The above named appellant having appealed to this court from a **DECISION** of the **CIVIL COURT, CITY OF NEW YORK, QUEENS COUNTY** dated **NOVEMBER 13, 2009**, deemed an appeal from a **JUDGMENT** of the same court, entered on **DECEMBER 29, 2009** and the said appeal having been **submitted** by **GENE W. ROSEN, ESQ.** counsel for the appellant and **NO BRIEF SUBMITTED** for the respondent and due deliberation having been had thereon; it is hereby,


ORDERED AND ADJUDGED that the judgment is reversed, without costs, and judgment is directed to be entered confirming the arbitrator's award of \$5,146.56 and adding thereto an additional sum of \$1,500, representing additional attorney's fees awarded to petitioner by the court in its November 13, 2009 order.

Weston, J.P., Rios and Steinhardt, JJ., concur.

GENE W. ROSEN, ESQ.
KIRSCHENBAUM & KIRSCHENBAUM, PC.
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GARDEN CITY, NEW YORK 11530

ENTER:

HOWARD CHAZANOFF
1668 BROADWAY
NEW YORK, NEW YORK 11019


PAUL KENNY
CHIEF CLERK
APPELLATE TERM

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM : 2nd, 11th and 13th JUDICIAL DISTRICTS

-----X

PRESENT : WESTON, J.P., RIOS and STEINHARDT, JJ.

-----X

DAVIS ALARMS, INC.;

Appellant,

-against-

JAN 28 2011

NO. 2010-326 Q C

DECIDED

HOWARD CHAZANOFF
Also Known as HOWIE CHAZANOFF,

Respondent.

-----X

Appeal from a decision of the Civil Court of the City of New York, Queens County (Maureen A. Healy, J.), dated November 13, 2009, deemed from a judgment of the same court entered December 29, 2009 (see CPLR 5520 [c]). The judgment, in effect, modified an arbitrator's award by reducing the amount awarded to petitioner from the sum of \$5,146.56 to the principal sum of \$3,755.52, and confirmed the award as modified.

ORDERED that the judgment is reversed, without costs, and judgment is directed to be entered confirming the arbitrator's award of \$5,146.56 and adding thereto

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an additional sum of \$1,500, representing additional attorney's fees awarded to petitioner by the court in its November 13, 2009 order.

Petitioner commenced this special proceeding to confirm an arbitrator's award. Respondent had failed to appear at the arbitration, and the arbitrator had issued an award in favor of petitioner in the total sum of \$5,146.56, which included attorney's fees, interest and costs. The Civil Court modified the award by deducting the amount of attorney's fees, interest and costs awarded to petitioner, and awarded petitioner an additional sum of \$1,500, representing additional attorney's fees incurred in maintaining the proceeding to confirm the arbitration award. The Civil Court clerk failed to add the additional \$1,500 when the judgment was entered.

On appeal, petitioner contends that the Civil Court was not authorized to modify the award under the circumstances presented. We agree. CPLR 7510 states that "[t]he court shall confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in section 7511." No party moved to vacate or modify the award pursuant to CPLR 7511, and the criteria for modifying the award pursuant to CPLR 7511 (c) are not met in this case.

"Once a case is referred to arbitration, 'all questions of fact and of law are within the judicially unreviewable purview of the arbitrator'" (Matter of Raisler Corp. [New York

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City Hous. Auth.], 32 NY2d 274, 282 [1973], quoting Matter of S & W Fine Foods [Office Empls. Intl. Union, Local 153, AFL-CIO], 8 AD2d 130, 131 [1959], affd 7 NY2d 1018 [1960]). The Civil Court was without authority to modify the arbitrator's award on the proffered ground (see also Davis Alarms, Inc. v Diamond Cutters, Inc., 25 Misc 3d 130[A], 2009 NY Slip Op 52120[U] [App Term, 2d, 11th & 13th Jud Dists 2009]; New York Merchants Protective Co., Inc. v Salloom Import & Export Corp., 18 Misc 3d 129[A], 2007 NY Slip Op 52458[U] [App Term, 2d & 11th Jud Dists 2007]). Accordingly, we reverse the judgment and direct that judgment be entered confirming the arbitrator's award of \$5,146.56 and awarding petitioner the additional \$1,500, representing the additional attorney's fees awarded by the court in its November 13, 2009 order.

Weston, J.P., Rios and Steinhardt, JJ., concur.