

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

ASB
16

DEC 08 2010

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

OCTOBER 13, 2010 TERM
2009-02191 Q C

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NEW YORK MERCHANTS
PROTECTIVE CO., INC.,

Appellant,

-against-

Lower Court #
103557-08

GREEN FOREST MARKET, INC.
and JUAN FERNANDEZ,

Respondents.
-----X

The above named appellant having appealed to this court from an **ORDER** of the **CIVIL COURT, CITY OF NEW YORK, QUEENS COUNTY** dated **MARCH 31, 2009**, deemed an appeal from a **JUDGMENT** of the same court, entered on **JUNE 10, 2009** and the said appeal having been **submitted** by **GENE W. ROSEN, ESQ.** counsel for the appellant and **argued** by **RESPONDENT IN PERSON** and due deliberation having been had thereon; it is hereby,

ORDERED AND ADJUDGED that the judgment is reversed, without costs, so much of the order dated March 31, 2009 as adhered to the court's prior decision which, in effect, modified an arbitrator's award by reducing the amount awarded to the petitioner from the sum of \$5,845.93 to the principal sum of \$4,595.93 and confirmed the award as modified is vacated, and judgment is directed to be entered confirming the arbitrator's award of \$5,845.93.

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

GENE W. ROSEN, ESQ.
KIRSCHENBAUM & KIRSCHENBAUM, P.C.
200 GARDEN CITY PLAZA, STE. 500
GARDEN CITY, N.Y. 11530

GREEN FOREST MARKET INC.
552 SENECA AVENUE
RIDGEWOOD, N.Y. 11385

ENTER:



PAUL KENNY
CHIEF CLERK
APPELLATE TERM

JUAN FERNANDEZ
69-11A 188TH STREET, #3A
FRESH MEADOWS, N.Y. 11365

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

NEW YORK MERCHANTS
PROTECTIVE CO., INC.,

Appellant,

-against-

DEC 08 2010

NO. 2009-2191 Q C

DECIDED

GREEN FOREST MARKET, INC.
and JUAN FERNANDEZ,

Respondents.

-----X

Appeal from an order of the Civil Court of the City of New York, Queens County (Maureen A. Healy, J.), dated March 31, 2009, deemed from a judgment of the same court entered June 10, 2009 (see CPLR 5520 [c]). The judgment, entered pursuant to so much of the order dated March 31, 2009 as adhered to the court's prior decision which, in effect, modified an arbitrator's award by reducing the amount awarded to petitioner from the sum of \$5,845.93 to the principal sum of \$4,595.93 and confirmed the award as modified, awarded petitioner the principal sum of \$4,595.93.

ORDERED that the judgment is reversed, without costs, so much of the order dated March 31, 2009 as adhered to the court's prior decision which, in effect, modified

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an arbitrator's award by reducing the amount awarded to petitioner from the sum of \$5,845.93 to the principal sum of \$4,595.93 and confirmed the award as modified is vacated, and judgment is directed to be entered confirming the arbitrator's award of \$5,845.93.

Petitioner commenced this special proceeding to confirm an arbitrator's award. Respondents failed to appear at the arbitration, and the arbitrator issued an award in favor of petitioner against respondents jointly and severally in the total sum of \$5,845.93, which included attorney's fees in the sum of \$1,250. By decision dated January 29, 2009, the Civil Court, in effect, modified the award by deducting the amount awarded for attorney's fees, on the ground that the attorney's fees were excessive, and directed the entry of a judgment confirming the award as modified. By order dated March 31, 2009, the Civil Court, insofar as is relevant to this appeal, adhered to its prior decision. A judgment was subsequently entered awarding petitioner the principal sum of \$4,595.93. Petitioner's appeal from so much of the order dated March 31, 2009 as adhered to the prior decision is deemed to be from the judgment entered pursuant thereto (see CPLR 5520 [c]).

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

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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 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]). Since 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]), we reverse the judgment, vacate so much of the order as adhered to the prior decision and direct that judgment be entered confirming the arbitrator's award of \$5,845.93.

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