

**SHORT FORM ORDER**

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

**P R E S E N T : HON. JEFFREY S. BROWN  
JUSTICE**

-----X		<b>TRIAL/IAS PART 13</b>
<b>COMMERCIAL FIRE &amp; SECURITY INC.,</b>		<b>INDEX # 607966/17</b>
	<b>Petitioner,</b>	
	<b>-against-</b>	<b>Mot. Seq. 1</b>
		<b>Mot. Date 9.19.17</b>
<b>ANW AUTO SERVICE, INC. and TAQRIQ CHUDRY,</b>		<b>Submit Date 9.26.17</b>
	<b>Respondents.</b>	
-----X		<b>XXX</b>

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The following papers were read on this motion: E File Docs Numbered

Notice of Petition, Affidavits (Affirmations), Exhibits Annexed..... 2

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Commercial Fire & Security, Inc. commenced the instant petition pursuant to CPLR 7510 and 7514 to confirm the July 17, 2017 arbitration award granted upon default of the respondents in the amount of \$16,608.75 and for counsel fees in the amount of \$1,500.00. There is no opposition to this petition despite all necessary parties having been served. Service was completed by first class mail pursuant to Commercial Arbitration Rule 38(d) of the Arbitration Services, Inc. as well as the parties' agreement. (*Matter of New York Merchant's Protective Co., Inc. v. Mima's Kitchen, Inc.*, 114 AD3d 769 [2d Dept 2014]).

CPLR § 7510 provides that "[t]he court shall confirm an award upon application of a party within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in section 7511." CPLR § 7514 provides that a judgment shall be entered upon the confirmation of an award. "On the application to confirm, the court may entertain claims for recoverable interest . . . and any costs incurred in the judicial proceeding to confirm the award (as distinguished from costs incurred in the arbitration). See *Meehan v. Nassau Community College*, 1998, 242 A.D.2d 155, 159-60 [2d Dept]." (Vincent C. Alexander, McKinney's Practice

Commentaries, CPLR § 7510). In addition, “[u]nless a party seeks to vacate or modify the award, or the application to confirm is untimely, confirmation should be summarily granted.” (*Id.*).

The underlying arbitration arises out of a Commercial Security Equipment Lease between United States Merchants Protective Co., Inc. (USMP) and the respondents dated April 25, 2013. The agreement provides under a provision entitled Legal Action:

The parties agree that due to the nature of the services to be provided by USMP the payments to be made by Lessee for the term of this agreement are an integral part of USMP’s anticipated profits, and in the event of Lessee’s breach of this agreement it would be difficult, if not impossible to reasonably estimate USMP’s actual damages. Therefore, in the event of Lessee’s default of this agreement Lessee shall pay to USMP 80% of the balance due for the term of this agreement as liquidated damages. Additionally, in the event of Lessee’s breach of this agreement USMP may, at its option either remove the equipment or deem same sold to Lessee for 80% of the amount specified as the value of the equipment.

Should USMP prevail in any litigation between the parties Lessee shall pay USMP’s legal fees. Any action or dispute between the parties, including issues of arbitrability, shall, at the option of either party, be determined by arbitration administered by the Arbitration Services Inc. Under its Commercial Arbitration Rules. . . .

Attached to the petition is a contract assignment whereby all of USMP’s interest was assigned to Commercial Fire & Security, the petitioner. Also attached to the petition is an affidavit of counsel stating that her hourly rate is \$300.00 and approximately four hours were expended on this matter after receiving the arbitration award in order to obtain confirmation. Counsel states that additional fees will be incurred in serving and enforcing the judgment. Accordingly, although this action is billed on a contingency basis, petitioner requests \$1,500.00 in additional counsel fees. (*New York Merchants Protective Co. v. Antique Rugs Studio, Inc.*, 55 Misc. 3d 146(A) [App. Term., 2d Dept, 9 and 10 Judicial Dist 2017] [“In light of the express provision in the agreement in question entitling petitioner to attorney’s fees should it prevail in “any litigation” . . . petitioner can recover the reasonable attorney’s fees it incurred in litigating the petition [to confirm]. . . .”]).

Upon the foregoing papers, the petition is **granted**.

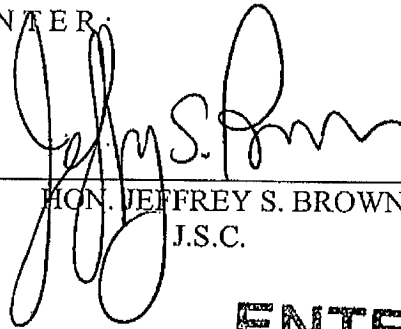
ORDERED, that the arbitration award dated July 17, 2017 is hereby confirmed; and it is further

ORDERED, that petitioner shall submit a proposed money judgment, on notice to the respondent, in the amount of \$16,608.75 with costs and interest from July 17, 2017 and \$1,500.00 in additional counsel fees.

This constitutes the decision and order of this court. All applications not specifically addressed herein are denied.

Dated: Mineola, New York  
October 16, 2017

ENTER:



HON. JEFFREY S. BROWN  
J.S.C.

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**ENTERED**

OCT 18 2017

NASSAU COUNTY  
COUNTY CLERK'S OFFICE