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

JUL 2 2010

MARSHA L. STEINHARDT, J.P.
MICHAEL L. PESCE
JAIME A. RIOS, JJ.

MAY 12, 2010 TERM
2009-01626 Q C

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D&W CENTRAL STATION FIRE ALARM CO., INC.,

Appellant,

-against-

Lower Court #
13210/08

ZARA ZIARI,

Respondent.

-----X

The above named appellant having appealed to this court from an **ORDER** of the **CIVIL COURT, CITY OF NEW YORK, QUEENS COUNTY** entered on **DECEMBER 11, 2008** 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 order is reversed without costs, so much of the petition as sought to confirm the arbitration award is granted, the cross petition to vacate the award is denied, and the matter is remitted to the Civil Court for a determination of the amount of attorney's fees, if any, to be awarded to the petitioner, and for the entry of a judgment thereafter.

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

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

ENTER:



PAUL KENNY
CHIEF CLERK
APPELLATE TERM

JAWAN FINLEY, ESQ.
MALLILO & GROSSMAN, ESQS.
163-09 NORTHERN BOULEVARD
FLUSHING, NEW YORK 11358

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

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

-----X

D&W CENTRAL STATION FIRE ALARM CO., INC.,

Appellant,

-against-

JUL 2 2010

NO. 2009-1626 Q C

DECIDED

ZARA ZIARI,

Respondent.

-----X

Appeal from an order of the Civil Court of the City of New York, Queens County (Maureen A. Healy, J.), entered December 11, 2008. The order denied a petition seeking, among other things, to confirm an arbitration award and granted a cross petition to vacate the award.

ORDERED that the order is reversed without costs, so much of the petition as sought to confirm the arbitration award is granted, the cross petition to vacate the award is denied, and the matter is remitted to the Civil Court for a determination of the amount of attorney's fees, if any, to be awarded to petitioner, and for the entry of a judgment thereafter.

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Petitioner commenced this proceeding to confirm an arbitration award rendered in its favor (CPLR 7510). Petitioner also sought to recover attorney's fees incurred in post-arbitration litigation, pursuant to the provisions of the contract entered into between the parties. Respondent, who had defaulted in the arbitration proceeding, cross-petitioned to vacate the arbitration award (CPLR 7511). The Civil Court denied the petition and granted the cross petition, based upon the absence of proof that the award was served pursuant to CPLR 7507 "by registered or certified mail, return receipt requested." The instant appeal by petitioner ensued.

Petitioner's application to confirm the arbitrator's award was timely (see CPLR 7510), and respondent failed to advance any of the statutory grounds for vacatur of the award set forth in CPLR 7511 (b). Moreover, it was error for the Civil Court to sua sponte raise the issue of service of the award pursuant to CPLR 7507 (see Matter of MBNA Am. Bank, N.A. v Stehly, 19 Misc 3d 12 [App Term, 2d & 11th Jud Dists 2008]). In any event, we note that service of the award was proper, as it was made in accordance with CPLR 7507, which provides that delivery of the award may be made "in the manner provided in the agreement," and the agreement incorporated the rules of the arbitration association, which authorized the manner of service employed. Accordingly, the order is reversed, so much of the petition as sought to confirm the arbitration award is granted, the cross petition to vacate the award is denied, and the matter is remitted to the Civil Court for a determination of the amount of attorney's fees,

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if any, to be awarded to petitioner, and for the entry of a judgment thereafter (CPLR
7514 [a]).

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