

Bragg v Skyline P.C.
2020 NY Slip Op 34133(U)
December 10, 2020
Supreme Court, New York County
Docket Number: 652482/2020
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

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INDEX NO. 652482/2020

KYLE BRAGG, AS TRUSTEE AND THE TRUSTEES OF THE BUILDING SERVICE 32BJ HEALTH FUND, BUILDING SERVICE 32BJ PENSION FUND, THOMAS SHORTMAN TRAINING & SCHOLARSHIP FUND, BUILDING SERVICE 32BJ LEGAL FUND AND THE BUILDING, SERVICE 32BJ SUPPLEMENTAL RETIREMENT AND SAVING FUND

MOTION DATE 07/21/2020

MOTION SEQ. NO. 001

Petitioners,

- v -

DECISION + ORDER ON MOTION

SKYLINE PROFESSIONAL CORP.,

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8 were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT

ORDER

Upon the foregoing documents, it is

ORDERED and ADJUDGED that the petition is granted, on default, and the award rendered in favor of petitioner and against respondent is confirmed; and it is further

ADJUDGED that petitioners Kyle Bragg, as Trustee and the Trustees of the Building Service 32BJ Health Fund, Building Service 32BJ Pension Fund, Thomas Shortman Training & Scholarship Fund, Building Service 32BJ Legal Fund and the Building Service 32BJ Supplemental Retirement and Saving Fund, having an address at _____, do recover from respondent Skyline Professional Corp., having an address at _____,

the amount of \$ \$75,402.99, plus interest at the rate of 9% per annum from the date of January 10, 2020, as computed by the Clerk in the amount of \$ _____, together with costs and disbursements in the amount of \$ _____ as taxed by the Clerk, for the total amount of \$ _____, and that the petitioner have execution therefor.

DECISION

In this proceeding brought under CPLR 7510, petitioners Kyle Bragg, as Trustee and the Trustees of the Building Service 32BJ Health Fund, Building Service 32BJ Pension Fund, Thomas Shortman Training & Scholarship Fund, Building Service 32BJ Legal Fund and the Building Service 32BJ Supplemental Retirement and Saving Fund seek to confirm an arbitration award against respondent Skyline Professional Corp.

Background

Respondent is in the business of providing window cleaning services at residential and commercial properties (NYSCEF Doc No. 1, petition ¶ 1). Respondent is a party to a collective bargaining agreement (CBA) with union Local 32BJ, Service Employees International Union (the Union) (id., ¶ 2). The CBA obligates respondent to make certain contributions to jointly administered employee benefit funds, including the Building Service 32BJ Health Fund, the Building Service 32BJ Pension Fund, the Thomas Shortman Training & Scholarship Fund, the Building Service 32BJ Legal Fund,

and the Building Service 32BJ Supplemental Retirement and Saving Fund (collectively, the Funds) (*id.*, ¶¶ 3-4). Respondent executed the CBA on July 7, 2016 (NYSCEF Doc No. 2, petition, exhibit A at 32).

When a dispute arose over respondent's failure to make timely contributions to the Funds, petitioners brought the dispute to an arbitrator, in accordance with Section 12, entitled "Disputes and Arbitration," of the CBA (NYSCEF Doc No. 1, ¶¶ 3-5). Section 12 (B) (1) provides, in part, that "[t]here shall at all times be a Contract Arbitrator to decide all differences arising between the parties as to interpretation, application or performance of any part of this Agreement and such other issues as the parties are expressly required to arbitrate before him under the terms of this Agreement" (NYSCEF Doc No. 2 at 11). In addition, Section 12 (B) (6) reads, in part, as follows:

"Should either party fail to abide by an arbitration award within two (2) weeks after such award is sent by registered or certified mail to the parties, either party may, in its sole and absolute discretion, take any action necessary to secure such award, including, but not limited to, suits at law"

(*id.*). The CBA designated the Office of the Contract Arbitrator-Building Service Industry as the "Contract Arbitrator" for all disputes (*id.* at 12).

An arbitration hearing was held on December 18, 2019 before arbitrator Gary Kendellen (Kendellen) at the Office of the Contract

Arbitrator (NYSCEF Doc No. 3, petition, exhibit B at 1). Respondent did not attend (*id.*). Kendellen issued a decision dated January 10, 2020 granting an arbitration award in favor of the Funds for \$75,402.99 (*id.* at 1-2). Kendellen also noted that, in the event respondent failed to comply with the award, the Funds could recover their attorneys' fees and costs in any legal proceedings commenced by the Funds to confirm any portion of the award (*id.* at 1). The Office of the Contract Arbitrator mailed the arbitration award by certified mail to respondent (NYSCEF Doc No. 1, ¶ 8).

When respondent failed to pay any portion of the award, petitioners commenced this proceeding on June 15, 2020. Petitioners now move for a default judgment against respondent. Submitted on the motion is the petition, the CBA and Kendellen's decision, and an affidavit from David Murphy (Murphy), the Critical Issues Administrator for the Funds. Respondent has not submitted any opposition.

Discussion

A court's authority to review an arbitration award is limited (see Matter of Steyn v CRTV, LLC, 175 AD3d 1, 7 [1st Dept 2019]). Generally, an arbitrator's award will not be overturned in the absence of fraud, corruption or other misconduct (see Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co., 89 NY2d 214, 223 [1996]). To that end, CPLR 7510 provides 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."

As an initial matter, the court finds that service of the petition upon respondent was proper. The affidavit of service shows that petitioner served the notice of petition upon respondent by certified mail to respondent's last known address at 307 East 44th Street, Suite 1102, New York, New York 10017 (NYSCEF Doc No. 8 at 1). Generally, "[a]bsent an agreement to the contrary, the simple mailing of a notice of petition and petition by ordinary mail is not a method of service authorized by the CPLR for the commencement of a proceeding pursuant to CPLR article 75" (Matter of New York Merchants Protective Co. v Mima's Kitchen, Inc., 114 AD3d 796, 797 [2d Dept 2014]; see CPLR 403 [c]). As is relevant here, Section 12 (B) (5) of the CBA states that "[i]n any proceeding to confirm an award, service may be made by registered or certified mail within or without the State of New York as the case may be" (NYSCEF Doc No. 2 at 11). Thus, respondent consented to service by registered or certified mail as the designated method of service for the petition. The method of service by which parties have agreed to be bound must be complied with according to the exact terms thereof in order that the requirements of due process be satisfied" (Matter of Republique Francaise (Cellosilk Mfg. Co.), 309 NY 269, 279 [1955], rearg denied 309 NY 803 [1955]).

Petitioner has demonstrated that service by mail was properly effectuated (see Matter of New York Merchants Protective Co., 114 AD3d at 797).

Petitioner has also demonstrated the merits of the claim. It relies on an affidavit from David Murphy (Murphy), the Critical Issues Administrator for the Funds. Murphy attests that, upon information and belief, the Office of the Contract Arbitrator mailed respondent a copy of the original award on or about January 10, 2020 (NYSCEF Doc No. 4, Murphy aff, ¶ 4). He further attests that upon his review of petitioner's records and files at the Union's office, the amount awarded to petitioners remains due and unpaid (id., ¶¶ 7-8). The present application was made within one year of the date of the award, and there is no indication that respondent has moved to vacate or modify the award on any of the grounds set forth in CPLR 7511.

12/10/2020

DATE

Debra A. James
DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE