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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

JAN 28 2011

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

OCTOBER 13, 2010 TERM
2010-00145 Q C

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INTERNET SECURITY SYSTEMS, INC.,

Appellant,

-against-

Lower Court #
122028-09

MOSES HAUER Also known as MOSHE HAUER,

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 **DECEMBER 17, 2009**, deemed an appeal from a **JUDGMENT** of the same court, entered on **DECEMBER 30, 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 \$10,670.09 and adding thereto an additional sum of \$1,500, representing additional attorney's fees incurred by the petitioner in confirming and enforcing the arbitration award.

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

GENE W. ROSEN, ESQ.
KIRSCHENBAUM & KIRSCHENBAUM, P.C.
200 GARDEN CITY PLAZA, STE. 500
GARDEN CITY, NEW YORK 1530

ENTER:



PAUL KENNY
CHIEF CLERK
APPELLATE TERM

MOSES HAUER
580 WYTHE AVENUE, APT. 3B
BROOKLYN, NEW YORK 11211

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

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

INTERNET SECURITY SYSTEMS, INC.,
Appellant,

-against-

JAN 28 2011
NO. 2010-145 Q C
DECIDED

MOSES HAUER Also Known as MOSHE HAUER,
Respondent.
-----X

Appeal from a decision of the Civil Court of the City of New York, Queens County (Maureen A. Healy, J.), dated December 17, 2009, deemed from a judgment of the same court entered December 30, 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 \$10,670.09 to the principal sum of \$8,670.09, 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 \$10,670.09 and adding thereto an additional sum of \$1,500, representing additional attorney's fees incurred by petitioner in confirming and enforcing the arbitration award.

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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 \$10,670.09, which included attorney's fees and costs. The Civil Court modified the award by deducting the amount of attorney's fees awarded to petitioner, on the ground that the attorney's fees were excessive, and implicitly denied petitioner's demand for additional attorney's fees incurred in confirming the arbitration award.

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 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

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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]).

Furthermore, petitioner established its entitlement to the attorney's fees it incurred in commencing this special proceeding to confirm the award. Thus, the Civil Court erred in implicitly denying petitioner's demand for these additional attorney's fees. Accordingly, we reverse the judgment and direct that judgment be entered confirming the arbitrator's award of \$10,670.09 and adding thereto the sum of \$1,500 for additional attorney's fees.

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