

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

-----X	:	Index No. _____
JET AVIATION FLIGHT SERVICES, INC.,	:	
	:	
Petitioner,	:	VERIFIED PETITION TO
	:	CONFIRM ARBITRATION
-against-	:	AWARD
	:	
HARBINGER CAPITAL PARTNERS, LLC,	:	
	:	
Respondent.	:	
-----X	:	

Jet Aviation Flight Services, Inc. (“Jet Aviation”), by and through its undersigned attorneys, pursuant to the Federal Arbitration Act, 9 U.S.C. §1 *et seq.*, as amended, and CPLR §7510, respectfully petitions this Court to confirm an arbitration award in its favor and against Defendant Harbinger Capital Partners, LLC (“Harbinger”). In support of its Petition, Jet Aviation states as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this matter pursuant to New York Constitution Article 6, §7 granting general jurisdiction to the Supreme Court of New York and CPLR §7501 conferring jurisdiction over New York Courts to enforce arbitration.
2. Pursuant to CPLR §7502(a)(i), venue is proper in New York County, because Respondent Harbinger has its principal place of business in New York County, and is, therefore, the county where one of the parties resides or is doing business.

PARTIES

3. Petitioner Jet Aviation is a Maryland corporation having its principal place of business at 112 Charles A. Lindberg Drive, Teterboro, New Jersey 07608. Jet Aviation is one of the world’s leading aircraft management, flight support, and charter companies.

4. Respondent Harbinger is a Delaware limited liability company with its principal place of business at 450 Park Avenue, 30th Floor New York City, New York 10022.

5. Harbinger is a private investment firm located in New York specializing in event and distressed strategies.

FACTS AND STATEMENT OF CLAIMS

6. On or about July 22, 2016, Jet Aviation and Harbinger (collectively, “Parties”) executed an Aircraft Services Agreement (“Agreement”) under which Harbinger engaged Jet Aviation to provide aircraft maintenance, logistics, and management services for its Gulfstream Aerospace GV aircraft, Serial No. 612, Registration No. N88DZ (“Aircraft”).

7. Under the Agreement, Jet Aviation agreed to first pay for operating expenses and non-recurring expenses incurred by Harbinger before re-invoicing the same to Harbinger at Jet Aviation’s net out-of-pocket cost. *See Exhibit 1*, §9.6, at p. 14. Jet Aviation would then “issue to [Harbinger] an invoice detailing all charges to [Harbinger’s] account for the preceding month, which invoice shall include supporting invoices, statements, and charge slips as applicable. This invoice will be due 30 days from the invoice date.” *Id.*

8. Jet Aviation dutifully carried out its duties, provided services, and incurred expenses under the Agreement, including but not limited to aircraft maintenance, logistics, management services, and other fees and costs, from February 2018 through November 2018. Harbinger, however, failed to pay invoices issued by Jet Aviation, leading to the imposition of late fees.

9. Following Harbinger’s repeated failures to satisfy its payment obligations, Jet Aviation submitted the dispute for arbitration before the American Arbitration Association

("AAA") on August 20, 2019 pursuant to the arbitration clause in the Agreement. The Agreement states:

16.2 In the event of a dispute or controversy under or relating to this Agreement other than a dispute or controversy seeking injunctive or equitable relief, it shall be submitted to arbitration for resolution, which arbitration shall be conducted in New Jersey, before one arbitrator, in accordance with the rules of the American Arbitration Association then in effect. The decision of the arbitrator shall be binding on the parties and judgment upon the award or arbitration rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall limit its judgment to the matters permitted to be submitted to it under the express terms of the Agreement. The expense of the arbitrator shall be borne equally between the parties hereto.

See **Exhibit 1**, § 16.2, at pp. 23-24.

10. A copy of Jet Aviation's Demand for Arbitration pursuant to the foregoing provision, and the accompanying Exhibits of this demand are attached hereto as **Exhibit 2**.

11. The Agreement further allows for the prevailing party in any such action or arbitration to recover "reasonable attorneys' fees and expenses incurred in connection therewith, including investigative and expert fees, and all other actual arbitration and court costs." **Exhibit 1**, §16.6, p. 24.

12. Jet Aviation intends to recover attorneys' fees incurred pursuant to the Arbitration at issue as well as its instant efforts to confirm the Award. Jet Aviation will supplement its request for attorneys' fees with affidavits detailing the sums incurred at the appropriate juncture.

13. The Parties waived oral hearings pursuant to AAA Rules and the Arbitrator issued his Award of Arbitrator on January 20, 2020. A copy of the Award, written, signed and affirmed by the arbitrator is attached hereto as **Exhibit 3**. CPLR §7507.

14. The Award was in favor of Jet Aviation against Harbinger and Harbinger is liable to Jet Aviation in the amount of \$796,010.69 (Seven Hundred Ninety-Six Thousand Ten Dollars and Sixty-Nine Cents) in damages. The Award further awarded Jet Aviation \$25,492.09 (Twenty

Five Thousand Four Hundred Ninety-Two Dollars and Nine Cents) in attorneys' fees, for a total of \$821,492.78 (Eight Hundred Twenty-One Thousand Four Hundred Ninety-Two Dollars and Seventy-Eight Cents) owed by Harbinger to Jet Aviation under the Award.

15. The Award further provides that Harbinger must reimburse Jet Aviation in the amount of \$7,120.00 (Seven Thousand One Hundred Twenty Dollars and Zero Cents) representing that portion of the American Arbitration Association fees and expenses in excess of the apportioned costs previously incurred by Jet Aviation in this matter.

16. Less than one year has expired since the date of the delivery of the Award. CPLR §7510.

17. The Award has not been vacated or modified under CPLR §7511.

RELIEF SOUGHT

WHEREFORE, Jet Aviation Flight Services, Inc. prays that this Court, pursuant to CPLR 7514:

1. Confirm the written Award of Arbitrator dated January 20, 2020, in all respects;
2. Enter JUDGMENT UPON THE CONFIRMATION OF SUCH AWARD AGAINST HARBINGER CAPITAL PARTNERS, LLC AND IN FAVOR OF JET AVIATION FLIGHT SERVICES in the amount of EIGHT HUNDRED TWENTY-EIGHT THOUSAND SIX HUNDRED TWELVE AND 78/100 DOLLARS (\$828,612.78) in conformity with the Award of Arbitrator dated January 20, 2020;
3. Award Petitioner as part of the Judgment its interest and costs incurred herein, including reasonable attorneys' fees and costs incurred herein in an amount to be proven by affidavit or affirmation submitted by Petitioner or Petitioner's attorneys; and
4. Grant such other and further relief as the Court deems just and proper.

DATED: New York, New York
February 12, 2020

HUSCH BLACKWELL LLP

By: /s/ Daniel P. Jaffe
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New York, NY 10165
(212) 485-9805
(314) 480-1505 (fax)

Attorneys for Petitioner

VERIFICATION

STATE OF NJ)
) ss.:
COUNTY OF HUDSON

Scott Fleming, Associate General Counsel of Petitioner, Jet Aviation Flight Services, Inc. ("Jet Aviation"), being duly sworn, deposes and states:

Deponent has read the foregoing Verified Petition to Confirm Arbitration Award and Exhibits 1 through 4 inclusive, and knows the contents thereof. The language of the foregoing Verified Petition to Confirm Arbitration Award was prepared in whole or in part by the attorneys for Petitioner. Deponent further states that the allegations and statements of, and Exhibits to, such Verified Petition to Confirm Arbitration Award are true to his knowledge, information and belief. Exhibits 1 through 3 inclusive consist of business records compiled and kept in the ordinary course of business at or about the time of the events recorded therein, by persons with personal knowledge of such events and pleadings prepared by counsel for Jet Aviation in connection with the arbitration referenced herein and the Award issued by the Arbitrator. The grounds for deponent's knowledge, information and belief are based on: (1) his personal knowledge gained through his duties and responsibilities as Associate General Counsel of Petitioner; (2) his review of documents; and (3) his communications with persons he believes have personal knowledge of the subject matter of this case.

FURTHER DEPONENT SAYETH NAUGHT.

EXECUTED this 6th day of February, 2020.

[Signature]
SCOTT FLEMING

Sworn to and subscribed before me a Notary Public in and for the aforesaid County and State, and acknowledged by said deponent and affiant, Scott Fleming, as his own free and voluntary act and deed, and as true and accurate, this 6 day of FEBRUARY, 2020.

NOTARY PUBLIC
Personally known ✓ OR Produced Identification _____
Type of identification produced: _____

My Commission Expires: 06/20/2024

Margarita Dorfman
NOTARY PUBLIC OF NEW JERSEY
Commission # 50107150
My Commission Expires 06/20/2024

