

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D12535  
O/hu

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - September 22, 2006

ROBERT W. SCHMIDT, J.P.  
THOMAS A. ADAMS  
MARK C. DILLON  
JOSEPH COVELLO, JJ.

2005-10885

DECISION & ORDER

In the Matter of Ferenc Fodor, appellant, v  
MBNA America Bank, N.A., respondent.

(Index No. 15182/05)

---

Gruenberg & Kelly, P.C., Ronkonkoma, N.Y. (Michael Della Università of counsel),  
for appellant.

Wolpoff & Abramson, LLP, Rochester, N.Y. (Allen D. Friedman of counsel), for  
respondent.

In a proceeding pursuant to CPLR article 75 to vacate an arbitration award, the  
petitioner appeals from an order of the Supreme Court, Suffolk County (Whelan, J.), dated October  
18, 2005, which denied the petition and granted the respondent's cross motion to confirm the award.

ORDERED that the order is affirmed, with costs.

We agree with the Supreme Court that a notice of arbitration was properly served on  
the petitioner by certified mail, return receipt requested, in accordance with the rules of the arbitration  
forum and CPLR article 75. The petitioner's claim that he never received the notice is insufficient  
to rebut the presumption of receipt created by the signed certified mail return receipt card (*see Matter  
of State Farm Mut. Auto. Ins. Co.*, 3 AD3d 418, 419).

Contrary to the petitioner's contentions, the respondent established that a binding  
written agreement to arbitrate was in effect between the parties (*see Tsadilas v Providian Natl. Bank*,  
13 AD3d 190; *Edelist v MBNA Am. Bank*, 790 A2d 1249 [Del 2001]). In addition, the petitioner has

November 8, 2006

Page 1.

MATTER OF FODOR v MBNA AMERICA BANK, N.A.

not demonstrated any of the other grounds under CPLR 7511(b) for vacatur of the award. Accordingly, the Supreme Court properly confirmed the arbitration award and denied the petition to vacate.

SCHMIDT, J.P., ADAMS, DILLON and COVELLO, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer  
Clerk of the Court