

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

D12830
Y/cb

_____AD3d_____

Argued - November 13, 2006

THOMAS A. ADAMS, J.P.
GLORIA GOLDSTEIN
STEVEN W. FISHER
ROBERT A. LIFSON, JJ.

2006-01038

DECISION & ORDER

MBNA America Bank, N.A., appellant, v
Sabrina Anastasio, respondent.

(Index No. 80124/05)

Wolpoff & Abramson, LLP, Rochester, N.Y. (Allen D. Friedman and Sandra Chung
of counsel), for appellant.

In a proceeding pursuant to CPLR article 75 to confirm an arbitration award dated November 17, 2004, the petitioner appeals from an order of the Supreme Court, Richmond County (Vitaliano, J.), dated December 16, 2005, which denied its motion for leave to renew its prior motion to confirm the award, which had been dismissed by order of the same court dated September 16, 2005.

ORDERED that the order is reversed, on the law and in the exercise of discretion, without costs or disbursements, the motion for leave to renew is granted, and upon renewal, the petitioner's motion to confirm the award dated November 17, 2004, is granted.

The Supreme Court properly dismissed the petitioner's initial motion to confirm the arbitration award dated November 17, 2004, since the award was not affirmed (*see* CPLR 7507). However, the Supreme Court improvidently exercised its discretion in denying the petitioner's motion for leave to renew after the petitioner promptly rectified that inadvertent procedural error (*see DeLeonardis v Brown*, 15 AD3d 525, 526; *cf. Gillis v Toll Land XIII Ltd. Partnership*, 309 AD2d 734, 735; *Wester v Sussman*, 304 AD2d 656, 656-657). "The addition of the [affirmation] to the

December 5, 2006

Page 1.

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

award was a ministerial act which not only did not invalidate the award, but was necessary in order for it to be enforced” (*Abreu v Nationwide Mut. Ins. Co.*, 87 AD2d 572; see *Matter of Alava v Consolidated Edison Co. of N.Y.*, 183 AD2d 713, 714).

ADAMS, J.P., GOLDSTEIN, FISHER and LIFSON, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court