

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

D12850
C/mv

_____AD3d_____

Argued - October 12, 2006

ANITA R. FLORIO, J.P.
GABRIEL M. KRAUSMAN
ROBERT J. LUNN
JOSEPH COVELLO, JJ.

2005-11064

DECISION & ORDER

In the Matter of David Deutsch, respondent,
v Herman Stern, appellant, et al., defendant.

(Index No. 9182/04)

Smith, Buss & Jacobs, LLP (Mischel & Horn, P.C., New York, N.Y. [Scott T. Horn and William Thompson] of counsel), for appellant.

Berger & Sklaw, LLP, New York, N.Y. (Laurence M. Sklaw of counsel), for respondent.

In a proceeding pursuant to CPLR article 75 to confirm an arbitration award, Herman Stern appeals, as limited by his brief, from so much of a judgment of the Supreme Court, Kings County (Harkavy, J.), entered November 15, 2005, as, upon an order of the same court dated June 2, 2005, granting the petition and denying his cross petition to vacate the award, is in favor of the petitioner and against him in the sum of \$664,845.50.

ORDERED that the appeal is dismissed, with costs.

The petitioner correctly contends that the appellant waived his right to appeal, as the arbitration agreement between the parties provided that the arbitrators' decision would not be subject to appeal. This provision is enforceable and binding (*see e.g. Goldenberg v Goldenberg*, 25 AD2d 670, *affd* 19 NY2d 759).

FLORIO, J.P., KRAUSMAN, LUNN and COVELLO, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court

November 28, 2006

MATTER OF DEUTSCH v STERN