

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

D8633
C/mv

_____AD3d_____

Argued - October 3, 2005

BARRY A. COZIER, J.P.
DAVID S. RITTER
ROBERT A. SPOLZINO
ROBERT J. LUNN, JJ.

2004-10447

DECISION & ORDER

In the Matter of State Farm Mutual Automobile
Insurance Company, appellant, v Motor Vehicle
Accident Indemnification Corp., etc., respondent.

(Index No. 14322/04)

Martin, Fallon & Mullé, Huntington, N.Y. (Richard C. Mullé of counsel), for
appellant.

Kathleen M. Sweeney, New York, N.Y., for respondent.

In a proceeding pursuant to CPLR article 75 to vacate an arbitration award dated April
16, 2004, entered upon its default, the petitioner appeals from an order of the Supreme Court,
Queens County (Rios, J.), dated October 13, 2004, which denied the petition to vacate the award.

ORDERED that the order is affirmed, with costs.

CPLR 7511(b) sets forth the exclusive grounds upon which an arbitration award may
be vacated (*see Boggin v Wilson*, 14 AD3d 523; *Kwasnik v Willo Packing Co.*, 61 AD2d 791; *see*
also Hackett v Milbank, Tweed, Hadley & McCloy, 86 NY2d 146, 154; *Matter of Lurie v Sobus*, 289
AD2d 578; *Materia v Josephthal & Co.*, 133 AD2d 146; *Matter of Torano [Motor Veh. Acc. Indem.*
Corp.], 19 AD2d 356, 358, *affd* 15 NY2d 882). The petitioner failed to establish any of those
grounds (*see Matter of Domotor v State Farm Mut. Ins. Co.*, 9 AD3d 367). In particular, because
the petitioner was properly served with a notice of intention to arbitrate, but nonetheless failed to

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participate in the arbitration, there no basis upon which to vacate the arbitration award rendered against it upon its failure to participate (*see* CPLR 7511[b][2]; *Matter of Lurie v Sobus, supra* at 579; *Matter of Interboro Mut. Indem. Ins. Co. v Legros*, 205 AD2d 537; *cf. Matter of Hanover Ins. Co. v Cannon Express Corp.*, 1 AD3d 358, 359). Accordingly, the Supreme Court properly denied the petition to vacate the arbitration award.

COZIER, J.P., RITTER, SPOLZINO and LUNN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court