

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

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_____AD3d_____

Argued - December 1, 2006

ROBERT W. SCHMIDT, J.P.
FRED T. SANTUCCI
ROBERT A. LIFSON
JOSEPH COVELLO, JJ.

2005-03804

DECISION & ORDER

In the Matter of David Mounier, appellant, v
American Transit Insurance Company, respondent.

(Index No. 33120/04)

David Mounier, New York, N.Y., appellant pro se.

Marjorie E. Bornes, New York, N.Y., 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, Kings County (Harkavy, J.), dated March 11, 2005, which denied the petition and confirmed the arbitration award.

ORDERED that the order is affirmed, with costs.

The arbitration award under review was not arbitrary, capricious, or irrational (*see* CPLR 7511[b][1][iii]; *Matter of Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 214, 223; *Friedman v Gleeson*, 300 AD2d 404). Moreover, the appellant waived any objection to the alleged misconduct or partiality of the arbitrator on the basis of purported ex parte communications with the respondent's counsel (*see Matter of Reilly v Progressive Ins. Co.*, 5 AD3d 776, 777; *Matter of Crystal City Police Benevolent Assn. [City of Corning]*, 91 AD2d 843). In any event, the appellant failed to meet his burden of proving, by clear and convincing evidence, that any impropriety on the part of the arbitrator prejudiced his rights or the integrity of the arbitration process (*see Matter of Hausknecht v Comprehensive Med. Care of N.Y.*, 24 AD3d 778, 780, citing *Matter*

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of *James A. Smith Contr. v Stahl*, 162 AD2d 688; *Matter of Montague Pipeline Tech. Corp. v Grace-Lansing & Grace Indus.*, 238 AD2d 510). Accordingly, the Supreme Court properly denied the appellant's petition and confirmed the arbitration award (*see* CPLR 7511[e]).

SCHMIDT, J.P., SANTUCCI, LIFSON and COVELLO, 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