

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

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Submitted - March 19, 2007

STEPHEN G. CRANE, J.P.
GABRIEL M. KRAUSMAN
GLORIA GOLDSTEIN
MARK C. DILLON, JJ.

2005-09528

DECISION & ORDER

In the Matter of Curtis McRae, appellant, v
New York City Transit Authority, respondent.

(Index No. 12636/05)

Curtis McRae, Brooklyn, N.Y., appellant pro se.

Martin B. Schnabel, Brooklyn, N.Y. (Baimusa Kamara of counsel), for respondent.

In a proceeding pursuant to CPLR article 75 to vacate an arbitration award dated December 28, 2004, the petitioner appeals from an order and judgment (one paper) of the Supreme Court, Kings County (Jones, J.), dated September 6, 2005, which granted the respondent's motion, in effect, pursuant to, inter alia, CPLR 3211(a)(5) to dismiss the proceeding and, in effect, dismissed the proceeding.

ORDERED that the order and judgment is affirmed, without costs or disbursements.

A proceeding to vacate an arbitration award must be commenced within 90 days of receipt of the arbitrators' determination (*see* CPLR 7511[a]). Here, the petitioner's union received a copy of the arbitrator's determination, at the latest, on December 30, 2004, the operative date from which to measure the 90-day statute of limitations (*see Matter of Case v Monroe Community Coll.*, 89 NY2d 438, 441-442; *Matter of Pender v New York State Off. of Mental Retardation & Dev. Disabilities*, 27 AD3d 756, 757). This proceeding, however, was commenced by the filing of a petition on or about April 25, 2005. Therefore, the proceeding was untimely commenced (*see Matter of Pender v New York State Off. of Mental Retardation & Dev. Disabilities, supra*; *Matter of Rodriguez v New York City Tr. Auth.*, 269 AD2d 600, 601).

April 24, 2007

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In light of the foregoing, we need not reach the petitioner's remaining contentions.

CRANE, J.P., KRAUSMAN, GOLDSTEIN and DILLON, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court