

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

D17586
O/kmg

_____AD3d_____

Argued - December 13, 2007

A. GAIL PRUDENTI, P.J.
STEPHEN G. CRANE
STEVEN W. FISHER
WILLIAM E. McCARTHY, JJ.

2007-01602

DECISION & ORDER

In the Matter of Globus Coffee, LLC, respondent,
v SJN, Inc., etc., appellant.

(Index No. 008985/06)

Coughlin Duffy, LLP, New York, N.Y., for appellant.

Thaler & Gertler, LLP, East Meadow, N.Y. (Richard G. Gertler of counsel), for respondent.

In a proceeding pursuant to CPLR article 75 to confirm an arbitration award, SJN, Inc., appeals from an order and judgment (one paper) of the Supreme Court, Nassau County (Alpert, J.), entered December 14, 2006, which granted the petition, denied its cross motion to vacate the award, and awarded the petitioner the total sum of \$555,648.05.

ORDERED that the order and judgment is affirmed, with costs.

Contrary to the appellant's contention, the arbitrators did not exceed their authority by rendering an award in favor of Globus Coffee, LLC (hereinafter Globus) (*see* CPLR 7511[b][1][iii]). The arbitrators rejected the appellant's contention that the arbitration was barred by the doctrine of res judicata based on Globus's failure to present its claims in a previous arbitration. "[T]he effect, if any, to be attributed to an earlier arbitration award in subsequent arbitration proceedings is a matter for the arbitrator's determination" (*Vilceus v North River Ins. Co.*, 150 AD2d 769, 770; *see Matter of City School Dist. of City of Tonawanda v Tonawanda Educ. Assn.*, 63 NY2d 846, 848; *Board of Educ. of Patchogue-Medford Union Free School Dist. v Patchogue-Medford Congress of Teachers*, 48 NY2d 812, 813; *Matter of Town of Newburgh v Civil Serv. Empls. Assn.*,

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272 AD2d 405; *Lopez v Parke Rose Mgt. Sys.*, 138 AD2d 575, 577). Further, res judicata is not a basis on which a court may, under CPLR 7511, vacate an arbitration award (see *Matter of City School Dist. of City of Tonawanda v Tonawanda Educ. Assn.*, 63 NY2d at 848; *Vilceus v North River Ins. Co.*, 150 AD2d at 770).

PRUDENTI, P.J., CRANE, FISHER and McCARTHY, JJ., concur.

2007-01602

DECISION & ORDER ON MOTION

In the Matter of Globus Coffee, LLC, respondent,
v SJN, Inc., etc., appellant.

(Index No. 008985/06)

Motion by the petitioner on an appeal from an order and judgment (one paper) of the Supreme Court, Nassau County, entered December 14, 2006, inter alia, to dismiss the appeal. By decision and order on motion of this Court dated October 15, 2007, that branch of the motion which was to dismiss the appeal was held in abeyance and referred to the Justices hearing the appeal for determination upon the argument or submission thereof.

Upon the papers filed in support of the motion, the papers filed in opposition thereto, and upon the argument of the appeal, it is

ORDERED that the branch of the motion which is to dismiss the appeal is denied.

PRUDENTI, P.J., CRANE, FISHER and McCARTHY, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court