

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

D18450
X/hu

_____AD3d_____

Argued - February 11, 2008

ROBERT A. SPOLZINO, J.P.
ANITA R. FLORIO
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON, JJ.

2007-05000
2007-10718

DECISION & ORDER

In the Matter of James J. Cupero, respondent, v
Milton S. Herman, appellant.
(Proceeding No. 1)

In the Matter of Milton S. Herman, appellant, v
James J. Cupero, respondent.
(Proceeding No. 2)

(Index Nos. 5396/02, 37/07)

Norton & Christensen, Goshen, N.Y. (Henry N. Christensen, Jr., of counsel), for appellant.

McCullough, Goldberger & Staudt, LLP, White Plains, N.Y. (Charles A. Goldberger and Patricia W. Gurahian of counsel), for respondent.

In related proceedings pursuant to CPLR article 75, inter alia, to confirm an arbitration award, Milton S. Herman appeals (1) from so much of an order of the Supreme Court, Orange County (Owen, J.), dated March 2, 2007, as granted the motion of James J. Cupero to confirm the arbitration award and denied his cross motion to modify the award, and (2) from so much of a judgment of the same court entered April 11, 2007, as, upon the order, is in favor of Cupero and against him in the principal sum of \$230,860.

ORDERED that the appeal from the order is dismissed; and it is further,

April 8, 2008

Page 1.

MATTER OF CUPERO v HERMAN
MATTER OF HERMAN v CUPERO

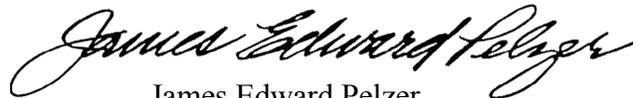
ORDERED that the judgment is affirmed insofar as appealed from, with one bill of costs.

The appeal from the intermediate order must be dismissed because the right of direct appeal therefrom terminated with the entry of judgment in the proceedings (*see Matter of Aho*, 39 NY2d 241, 248). The issues raised on appeal from the order are brought up for review and have been considered on appeal from the judgment (*see CPLR 5501[a][1]*).

The record does not support the appellant's contentions that there were mathematical miscalculations in the arbitrators' award that he sought to modify under CPLR 7511(c)(1). Thus, there was no basis for modification under CPLR 7511(c)(1) (*see Matter of Israel Aircraft Indus. [DDY-Wing Aviation]*, 284 AD2d 281; *Levy v Spanier*, 155 AD2d 517; *Matter of City of Troy [Village of Menands]*, 48 AD2d 733; *cf. Matter of Paul v Insurance Co. of N. Am.*, 81 AD2d 671). Accordingly, the motion to confirm was properly granted and the cross motion to modify was properly denied.

SPOLZINO, J.P., FLORIO, ANGIOLILLO and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court