

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

D21124
G/kmg

_____AD3d_____

Submitted - October 23, 2008

A. GAIL PRUDENTI, P.J.
WILLIAM F. MASTRO
STEVEN W. FISHER
MARK C. DILLON, JJ.

2007-08826

DECISION & ORDER

In the Matter of Paul Varsames, et al., respondents,
v Joseph DiMauro, appellant, et al., defendant.

(Index No. 2997/07)

McMillan Constabile, LLP, Larchmont, N.Y. (Stewart A. McMillan of counsel), for appellant.

DelBello Donnellan Weingarten Wise & Weiderkehr, LLP, White Plains, N.Y. (Daniel G. Walsh of counsel), for respondents.

In a proceeding pursuant to CPLR article 75 to permanently stay arbitration, Joseph DiMauro appeals from an order of the Supreme Court, Westchester County (O. Bellantoni, J.), entered August 15, 2007, which granted the petition and permanently stayed arbitration.

ORDERED that the order is affirmed, with costs.

A party will not be compelled to arbitrate absent evidence affirmatively establishing the parties' "clear, explicit and unequivocal" agreement to arbitrate their disputes (*God's Battalion of Prayer Pentecostal Church, Inc. v Miele Assoc., LLP*, 6 NY3d 371, 374, quoting *Matter of Waldron [Goddess]*, 61 NY2d 181, 183; see *Matter of Fiveco, Inc. v Haber*, 11 NY3d 140, 144; *Schubtex, Inc. v Allen Snyder, Inc.*, 49 NY2d 1, 6; *Matter of State Farm Mut. Auto. Ins. Co. v Juma*, 44 AD3d 963). Here, no agreement to arbitrate was entered into by the petitioners and the appellant. Accordingly, the petitioners were entitled to a permanent stay of arbitration.

November 18, 2008

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In light of our determination, we need not reach the parties' remaining contentions.

PRUDENTI, P.J., MASTRO, FISHER and DILLON, 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