

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

D21554  
O/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - November 20, 2008

WILLIAM F. MASTRO, J.P.  
HOWARD MILLER  
RUTH C. BALKIN  
WILLIAM E. McCARTHY, JJ.

2008-02417

DECISION & ORDER

In the Matter of All Metro Health Care Services, Inc.,  
et al., respondents, v Glenn Edwards, appellant.

(Index No. 17183/07)

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Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer, P.C., New York, N.Y. (Barbara Moses, Richard F. Albert, and Lawrence M. Barnes of counsel), for appellant.

Cole, Schotz, Meisel, Forman & Leonard, P.A., New York, N.Y. (Leo V. Leyva, Steven L. Klepper, and Damian L. Albergo of counsel), and Paul, Weiss, Rifkind, Wharton & Garrison, LLP, New York, N.Y. (Amos B. Elberg of counsel), for respondent 1818 Mezzanine Fund II, L.P. (one brief filed).

In a proceeding pursuant to CPLR article 75 to stay arbitration of certain claims pursuant to a stock purchase agreement, the appeal is from a judgment of the Supreme Court, Nassau County (LaMarca, J.), entered February 22, 2008, which granted the petition.

ORDERED that the judgment is affirmed, with costs.

“Arbitration is essentially a creature of contract in which the parties themselves charter a private tribunal for the resolution of their disputes and are free to enlarge, restrict, modify, amend or terminate their agreement to arbitrate” (*Matter of Instituto De Resseguros Do Brasil v First State Ins. Co.*, 221 AD2d 266, 266; *see Matter of Schlaifer v Sedlow*, 51 NY2d 181, 185). In general, where, as here, there is a broad arbitration clause, “all questions with respect to the validity and effect of subsequent documents purporting to work a modification or termination of the substantive provisions of their original agreement are to be resolved by the arbitrator” (*Inryco, Inc. v Parsons*

*& Whittmore Contrs. Corp.*, 55 NY2d 666, 667). However, the parties herein entered into a subsequent agreement containing a provision that effectively imposed a condition precedent on the arbitration clause in the arbitration provision, satisfaction of which is required before the appellant could “commence any action or proceeding[,]” including the arbitration proceeding at issue, against, inter alia, the petitioners herein. Notwithstanding a broad arbitration clause, the threshold determination of whether a condition precedent to arbitration exists and whether it has been complied with, is for the court to determine (*see Matter of Cassone*, 63 NY2d 756, 759; *Matter of County of Rockland [Primiano Constr. Co.]*, 51 NY2d 1, 7; *Matter of Fasano v Fasano*, 134 AD2d 589). Accordingly, the Supreme Court properly granted the petition to stay arbitration.

MASTRO, J.P., MILLER, BALKIN and McCARTHY, 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