

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

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_____AD3d_____

Submitted - May 28, 2009

MARK C. DILLON, J.P.
JOSEPH COVELLO
FRED T. SANTUCCI
ARIEL E. BELEN, JJ.

2008-07921
2008-10525

DECISION & ORDER

In the Matter of Freda Leichter Kessler, appellant,
v Emanuel Towns, etc., respondent.

(Index No. 3350/08)

Nixon Peabody LLP, Rochester, N.Y. (David H. Tennant of counsel), for appellant.

Emanuel Towns, Brooklyn, N.Y., respondent pro se.

In a proceeding pursuant to CPLR article 75 to vacate an arbitration award dated January 18, 2008, the petitioner appeals from (1) a judgment of the Supreme Court, Westchester County (Smith, J.), dated July 3, 2008, which, in effect, denied the petition and dismissed the proceeding, and (2) an order of the same court dated October 7, 2008, which denied her motion for leave to renew and reargue.

ORDERED that the judgment is affirmed; and it is further,

ORDERED that the appeal from so much of the order dated October 7, 2008, as denied leave to reargue is dismissed, as no appeal lies from an order denying leave to reargue; and it is further,

ORDERED that so much of the order dated October 7, 2008, as denied leave to renew is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the respondent.

November 10, 2009

MATTER OF KESSLER v TOWNS

Page 1.

The Supreme Court properly exercised its discretion in denying that branch of the petitioner's motion which was for leave to renew since she failed to offer a reasonable excuse as why she did not present the alleged new facts on the prior motion (*see Spectrum Painting Contrs, Inc. v Kreisler Borg Florman Gen. Constr. Co., Inc.*, 54 AD3d 748, *Renna v Gullo*, 19 AD3d 472). In any event, the additional facts would not have justified a change in the court's original determination (*see* CPLR 2221[e]). The petition was properly dismissed since the petitioner failed to demonstrate any of the grounds enumerated under CPLR 7511 for vacating an arbitration award (*see* CPLR 7511; *see also* *Matter of Blamoski [Munson Transp.]*, 91 NY2d 190; *Matter of Cardeon v New York Cent. Mut. Fire Ins. Co.*, 17 AD3d 1037).

The petitioner's remaining contentions are without merit.

DILLON, J.P., COVELLO, SANTUCCI and BELEN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court