

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

D24438
C/kmg

_____AD3d_____

Submitted - September 8, 2009

STEVEN W. FISHER, J.P.
RUTH C. BALKIN
L. PRISCILLA HALL
LEONARD B. AUSTIN, JJ.

2008-09981

DECISION & ORDER

In the Matter of Liberty Mutual Insurance Company,
respondent, v Effie Zacharoudis, appellant, et al.,
proposed additional respondents.

(Index No. 7662/08)

Randall S. Ferguson, Roslyn Heights, N.Y., for appellant.

In a proceeding pursuant to CPLR article 75 to permanently stay arbitration of a claim for uninsured motorist benefits, Effie Zacharoudis appeals, as limited by her brief, from so much of an order of the Supreme Court, Nassau County (Davis, J.), entered August 15, 2008, as denied her cross motion to dismiss the petition as untimely, determined that the proceeding was timely commenced, and directed a framed-issue hearing.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, the cross motion to dismiss the petition as untimely is granted, and the proceeding is dismissed as time-barred.

CPLR 7503(c) requires that an application to stay arbitration be made within 20 days after service of a notice of intention to arbitrate (*see Matter of Fiveco, Inc. v Haber*, 11 NY3d 140, 144; *Matter of Land of Free v Unique Sanitation*, 93 NY2d 942, 943; *Matter of Steck [State Farm Ins. Co.]*, 89 NY2d 1082, 1084; *Matter of Spsychalski [Continental Ins. Cos.]*, 45 NY2d 847, 849). “Unless a party makes an application for a stay of arbitration within the statutory 20-day period, CPLR 7503(c) generally precludes the party from objecting to the arbitration thereafter” (*Matter of Hermitage Ins. Co. v Escobar*, 61 AD3d 869; *see Matter of Fiveco, Inc. v Haber*, 11 NY3d at 144; *Matter of Land of Free v Unique Sanitation*, 93 NY2d at 943; *Matter of Steck [State Farm Ins. Co.]*,

September 29, 2009

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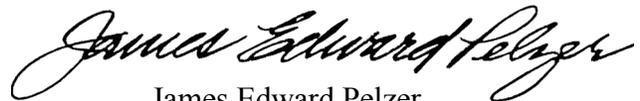
MATTER OF LIBERTY MUTUAL INSURANCE COMPANY v ZACHAROUDIS

89 NY2d at 1084; *Matter of State Farm Ins. Co. v Williams*, 50 AD3d 807, 809).

The instant proceeding was commenced more than 20 days after service upon the petitioner insurer by its insured of two separate notices of intention to arbitrate. Accordingly, contrary to the Supreme Court's determination, the cross motion should have been granted and the proceeding dismissed as time-barred (*see Matter of Hermitage Ins. Co. v Escobar*, 61 AD3d at 670; *Matter of Travelers Indem. Co. v Castro*, 40 AD3d 1005, 1006; *Matter of Government Empls. Ins. Co. v Castillo-Gomez*, 34 AD3d 477, 479).

FISHER, J.P., BALKIN, HALL and AUSTIN, 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