

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

D27455
C/hu

_____AD3d_____

Submitted - May 5, 2010

PETER B. SKELOS, J.P.
HOWARD MILLER
RANDALL T. ENG
L. PRISCILLA HALL
LEONARD B. AUSTIN, JJ.

2009-05825

DECISION & ORDER

In the Matter of Robert S. Perskin, respondent, v
Steve Bassaragh, etc., appellant.

(Index No. 23458/08)

Steve Bassaragh, Ozone Park, N.Y., appellant pro se.

In a proceeding pursuant to CPLR article 75 to confirm an arbitration award, Steve Bassaragh, sometimes known as Steven Bassaragh, appeals from a judgment of the Supreme Court, Queens County (Rosengarten, J.), entered May 27, 2009, which, upon an order of the same court dated March 24, 2009, granting the petition and confirming the arbitration award, is in favor of the petitioner and against him in the principal sum of \$5,000.

ORDERED that the notice of appeal from the order dated March 24, 2009, is deemed to be a premature notice of appeal from the judgment (*see* CPLR 5520[c]); and it is further,

ORDERED that the judgment is affirmed, without costs or disbursements.

In this proceeding to confirm an arbitration award, the appellant argued before the Supreme Court that he was not properly served with the order to show cause and petition (*see* CPLR 403[d]). The Supreme Court found that service had been properly made and confirmed the award.

Since the petition to confirm the arbitration award was “the first application arising out of an arbitrable controversy” (CPLR 7502[a]), the petitioner properly commenced this proceeding by the filing of an order to show cause and a petition and service thereof upon the appellant “in the

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same manner as a summons in an action” (CPLR 403[c]; *see Matter of MRC Receivables Corp. v Taylor*, 57 AD3d 1000, 1001). The affidavit of the process server herein constituted prima facie evidence of proper service pursuant to CPLR 308(2), and the appellant’s bare and unsubstantiated denial of service was insufficient to rebut the presumption of proper service created by the affidavit of service (*see Beneficial Homeowner Serv. Corp. v Girault*, 60 AD3d 984; *Roberts v Anka*, 45 AD3d 752, 753-754; *Jefferson v Netusil*, 44 AD3d 621, 621-622). As service was properly made upon the appellant, and he failed to raise any of the grounds for vacating or modifying the arbitration award (*see CPLR 7511[b], [c]*), the Supreme Court properly confirmed the award (*see CPLR 7510*).

Moreover, upon confirmation of the award, the Supreme Court properly awarded interest and costs (*see Matter of Meehan v Nassau Community College*, 242 AD2d 155, 159-160).

The appellant’s remaining contentions are not properly before this Court.

SKELOS, J.P., MILLER, ENG, HALL and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court