

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Hon. Sherry Klein Heitler
Administrative Order

Application of MOSES GREENFIELD,

Petitioner,

For an Order Pursuant to
Article 75 of the CPLR
Confirming an Arbitration Award,

against

INDEX NO. 603880/09

BARUCH HERZFELD,

Respondent.

Administrative Order:

By letter dated February 10, 2010, counsel for respondent Baruch Herzfeld requests that this special proceeding to confirm an arbitration award be transferred from I.A.S. Part 55 (Solomon, J.) into the Commercial Division pursuant to the Rules of the Commercial Division. Petitioner's counsel consents to a transfer.

Although the Request for Judicial Intervention was filed in this proceeding on December 30, 2009, it was not assigned to a non-commercial part until January 28, 2010. Respondent's counsel asserts that he was not served with the RJ, and thus did not realize that the case was not in the Commercial Division. Under these circumstances, the request is deemed timely.

Uniform Rule 202.70(b) (1) and (7) provides that actions in which the principal claims are for breach of contract, where the breach is alleged to arise out of business dealings, including partnership arrangements, or the claims involve the internal affairs of business organizations, should be heard in the Commercial Division, provided the \$150,000 monetary threshold for New York County is met or equitable or declaratory relief is sought. The Commercial Division also hears "[a]pplications to . . . confirm or disaffirm arbitration awards and related injunctive relief pursuant to CPLR Article 75 involving any of the foregoing enumerated commercial issues – without consideration of the monetary threshold" (Uniform Rule 202.70 [b] [12]).

This is a special proceeding, brought pursuant to CPLR Article 75, to confirm an arbitration award issued by Beth Din of America concerning the parties' dispute

regarding the ownership of SkyMax Dominicana S.A. (SkyMax). The underlying arbitration concerns a term sheet dated May 4, 2006 whereby the respondent Herzfeld agreed to buy a 17.5% interest in SkyMax for \$50,000 at closing and another \$350,000 in 20 monthly payments. According to the Beth Din award dated November 10, 2009, Herzfeld paid the \$50,000 and went to the Dominican Republic to work on behalf of SkyMax, but never made any of the monthly payments. Greenfield asserted in the arbitration that Herzfeld had no partnership interest in SkyMax, while Herzfeld sought an award of \$10 million for the value of his interest in the company.

There is no question that the underlying arbitration proceeding involves commercial issues and that the instant proceeding belongs in the Commercial Division pursuant to Uniform Rule 202.70 (b) (1), (7), and (12).

Accordingly, the request for a transfer to the Commercial Division is granted. The Motion Support Office is directed to reassign this case at random to a Justice of the Commercial Division. (The petition is currently returnable in the Motion Submission Part on February 24, 2010.)

Dated: February 19, 2010

ENTER: , A.J.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION