

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: Honorable, JAMES P. DOLLARD IAS PART 13  
Justice

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Application of DEVORA JEWELRY,  
INC., d/b/a NISSAN JEWELERS and  
NASSIR MANZOROLHAGH,

Index No.: 5688/03

Petitioner,

Motion Date: Apr.16,2003

Motion Cal.No.: 7

For an Order Pursuant to  
Article 75 of the CPLR  
Staying Arbitration of a  
Certain Controversy,

-against-

DAVIS ALARM, INC.,

Respondent.

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The following papers numbered 1 to 10 read on this petition by Devora Jewelry, Inc., d/b/a Nissan Jewlers and Nassir Manzoralhagh (Devora and Nassir) for an order staying the arbitration proceeding instituted by the respondent against Devora and Nassir and all proceedings therein pursuant to CPLR §7503(b), upon the ground that a valid arbitration agreement was not complied with.

|  | <u>PAPERS<br/>NUMBERED</u> |
|--|----------------------------|
| Order to Show Cause-Affidavit-Exhibit..... | 1 - 5                      |
| Affirmation in Opposition.....             | 6 - 8                      |
| Reply Affirmation.....                     | 9 - 10                     |

Upon the foregoing papers it is ordered that this petition is dismissed.

The underlying action in this matter was commenced in the Civil Court of the City of New York, County of Queens under Index No. 62675/00 on or about August 23, 2000 for breach of a standard alarm lease agreements dated April 4, 2000 and August 16, 1996.

There was some underlying motion practice in Civil Court and on October 24, 2002 the plaintiff Davis Alarm Inc. in that Civil Court action moved for an order striking defendant's jury demand and directing that the case be placed on the calendar for a non-jury trial. That motion resulted in an order by Hon. Anthony V. Gazzara, JCC which stated "the motion is granted to the extent that defendant's jury demand is stricken, and this case any any counterclaims are dismissed from this court and ordered to be submitted to arbitration before the National Arbitration Association, pursuant to the contract agreement." Devora and Nissan filed a Notice of Appeal on January 8, 2003. Pursuant to the aforesaid order, Davis Alarms, Inc. commenced an arbitration proceeding against Devora and Nissan by serving them with a Demand for Arbitration on February 18, 2003.

Devora and Nissan now petition this Court for an Order staying the arbitration proceeding and all proceedings therein pursuant to CPLR §7503(b). Their argument is essentially that Davis waived its right to arbitration "by embarking on an intense and aggressive motion practice and discovery and inspection" and that there was no ironclad binding arbitration. CPLR §7503(b) addresses applications to stay arbitration. It reads in relevant part that when "a party who has not participated in the arbitration and who has not made or been served with an application to compel arbitration, may apply to stay arbitration on the ground that a valid argument was not made..." However, the Civil Court has ordered that the matters at issue between the parties be submitted to arbitration (See New York City Civil Court Act, Section 206(a)). That order is res adjudicata.

Dated: June ,2003

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J.S.C.