

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

PRESENT:

HON. JACQUELINE W. SILBERMANN  
Administrative Judge

KENNETH GETTINGER,

Index No.: 601246/06

Petitioner,

- against-

ADMINISTRATIVE ORDER

SOLARIS CAPITAL ADVISORS,  
LLC and OWEN BROWN,

Respondents.

The following papers numbered 1 to \_\_\_\_\_ were read on this motion

| <u>Papers</u>  | <u>Numbered</u> |
|--|-----------------|
| Notice of Motion/Order to Show Cause - Affidavits - Exhibits . . . . . | _____           |
| Answering Affidavits - Exhibits . . . . .                              | _____           |
| Replying Affidavits . . . . .  | _____           |
| Exhibits. . . . .  | _____           |
| Other. . . . .   | _____           |

Cross-Motion:  Yes  No

By letter dated April 13th, respondents Solaris Capital Advisors, LLC and Owen Brown have applied for a transfer of this special proceeding from Part 50NM to the Commercial Division pursuant to Uniform Rule 202.70 The Request for Judicial Intervention (RJI) was filed on April 10, 2006, and the application is timely. Petitioner has not opposed this request. Counsel for respondents contends that "although petitioner's attorney designated this proceeding as an "other commercial case" on the RJI, it was assigned to the Hon. Charles J. Tejada, not to a commercial part." However, there is no indication that petitioner's counsel complied with Uniform Rule 202.70 (d) (2) which requires that the RJI be accompanied by a brief signed statement justifying the Commercial Division designation together with a copy of the pleading, and thus the designation was not a clerical error as counsel suggests. Respondents, too, have failed to support this application with a copy of the petition. In addition, the court is loathe to transfer a matter that is sub judice with Justice Tejada, who has already granted a temporary restraining order to the petitioner. This is merely an application for an injunction in aid of arbitration, and not a complex commercial matter involving discovery, further motion practice, and a trial. For these reasons, the request is denied.

Dated: April 24, 2006

ENTER: \_\_\_\_\_, A.J.

Check One:  FINAL DISPOSITION  NON-FINAL DISPOSITION