

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

D57301  
G/afa

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - June 22, 2018

ALAN D. SCHEINKMAN, P.J.  
WILLIAM F. MASTRO  
BETSY BARROS  
FRANCESCA E. CONNOLLY, JJ.

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2017-03852

DECISION & ORDER

In the Matter of John DeNobile, etc., et al., respondents,  
v Thomas Panetta, etc., et al., appellants.

(Index No. 604199/14)

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Garfunkel Wild, P.C., Great Neck, NY (Leonard M. Rosenberg and Dayna B. Tann of counsel), for appellants.

Knuckles, Komosinski & Manfro, LLP, Elmsford, NY (John E. Brigand of counsel), for respondents.

In a proceeding pursuant to CPLR article 75 to disqualify the law firm of Nixon Peabody LLP, from representing Thomas Panetta and Thomas Panetta M.D. Vascular Surgery, PLLC, in an arbitration proceeding, Thomas Panetta and Thomas Panetta M.D. Vascular Surgery, PLLC, appeal from an order of the Supreme Court, Nassau County (Jack L. Libert, J.), entered March 29, 2017. The order denied the motion of Thomas Panetta and Thomas Panetta M.D. Vascular Surgery, PLLC, pursuant to CPLR 7503(b) to permanently stay the arbitration proceeding insofar as asserted against them.

ORDERED that the order is affirmed, with costs.

We agree with the Supreme Court's determination to deny the motion of Thomas Panetta and Thomas Panetta M.D. Vascular Surgery, PLLC, pursuant to CPLR 7503(b) to permanently stay the subject arbitration proceeding insofar as asserted against them, as their participation in the arbitration process without a reservation of rights manifested a preference

November 14, 2018

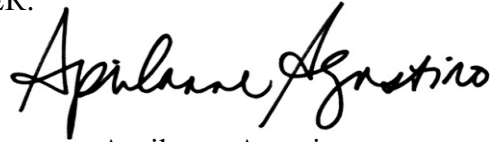
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inconsistent with the subsequent effort to stay arbitration (see *Matter of Allstate Ins. Co. v Khait*, 227 AD2d 551; *Matter of Carbone/Orrino Agency [Carbone]*, 210 AD2d 221).

SCHEINKMAN, P.J., MASTRO, BARROS and CONNOLLY, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino  
Clerk of the Court