

**Matter of CMG Vending Enters., Inc. v 17 John
Rest. Corp.**

2008 NY Slip Op 31865(U)

June 30, 2008

Supreme Court, New York County

Docket Number: 0600387/2008

Judge: Nicholas Figueroa

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

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

PRESENT: HON. NICHOLAS F. GALEANOIA
Justice

PART _____

Index Number : 600387/2008
CMG VENDING ENTERPRISES, INC.,
vs.
17 JOHN REST. CORP.
SEQUENCE NUMBER : # 001
CONFIRM ARBITRATION AWARD

INDEX NO. 600387-08
MOTION DATE 3/31/08
MOTION SEQ. NO. #001
MOTION CAL. NO. _____

are read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____
Replying Affidavits _____

| PAPERS NUMBERED | |
|-----------------|-------|
| 1, 2, 3 | _____ |
| 4, 5 | _____ |
| 6 | _____ |

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

*So respondent's motion
is denied.*

FILED
JUL 02 2008
COUNTY CLERK'S OFFICE
NEW YORK

Dated: June 30, 2008

NT
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

In the Matter of the Application of CMG
VENDING ENTERPRISES, INC.,

Index No. 600387/08

Petitioner,

- against -

**DECISION
AND ORDER**

17 JOHN REST. CORP.
D/b/a JOHN STREET BAR & GRILL and
WILLIAM STEFANDEL, JR.,

Respondents.

FILED

JUL 02 2008

Nicholas Figueroa, J.:

**COUNTY CLERK'S OFFICE
NEW YORK**

Petitioner seeks a judgment confirming an arbitration award against Respondents dated November 20, 2007. The award is for the principal amount of \$75,000, together with interest at six percent a year, beginning thirty days after the date of the award. The award also gave petitioner \$4,600 as counsel fees, \$1,250 for the tribunal's administrative fees, and \$950 for the arbitrator's compensation.

Respondents cross petition to vacate the award under CPLR §§7511(b)(2)(iii) and 7511(b)(1)(iv). The latter provision provides for vacatur of an arbitration award because "of failure to follow the procedure of this article, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without direction." The provision allows vacatur if "the agreement to arbitrate has not been complied with..."

Respondent Stefandel submits an affidavit in opposition to the petition and in support of the cross petition.

Stefandel admits that petitioner and respondents entered into written agreements, on April 7, 2004 and April 8, 2004, under which petitioner provided coin operated amusement and gaming devices, phonographs, and monetary loans and bonuses to respondents. He does not deny that the written agreement between them and petition contain arbitration provisions under which all disputes are to be resolved by arbitration.

Stefandel alleges, however, that he never received an arbitration demand, either personally or by certified mail. He asserts that he never participated in the arbitration process; rather, he states that, "any conversations held by the American Arbitration Association and 17 John Rest. Corp. were made by my partners, Mr. Cranston, who advises me that he refused to cooperate in the proceeding.

Cranston, in his affidavit, alleges that, "At no time was I, as an officer of the Corporation, served with a Demand for Arbitration by Petitioner." Rather, he asserts that he and Stefandel "received notice from our previous attorney William Spanakos, Esq., in February, 2007 that CMG through its attorney had sent him a Demand for Arbitration." He alleges neither he nor Stefandel authorized Spanakos "to accept service of any court papers...".

According to Cranston, respondents' present attorney advised them that the service on the prior attorney was a nullity. Therefore, he and Stefandel did not participate in the arbitration.

Cranston adds that the arbitration demand does not contain a provision informing respondents that they had twenty days to seek a stay; therefore, he asserts, the demand is defective and the award must be vacated.

Cranston also argues that the award erroneously reads that the parties entered into five separate arbitration agreements dated August 7, 2004 and August 8, 2004.

Petitioner, opposing the cross motion, argues that Spanakos stated, in a September 11, 2006 letter to petitioner's attorney, that, "Please be advised we represent 17 John Restaurant Corp."

Petitioner's attorney had telephone conversations with Spanakos on November 7, 2006 and November 28 2006, during which the attorneys discussed settlement of the matter. Petitioner's attorney corresponded with Spanakos on December 5, 2006 and January 5, 2007, in an attempt to resolve the matter. Earlier correspondence on September 26, 2006, from Spanakos to petitioner complains about a defect in a "jukebox you have installed in our client's premises". The letter asks petitioner to have its attorney call him in order to resolve the matter and avoid litigation.

Petitioner served its arbitration demand on Spanakos by certified mail on February 7, 2006 and again on February 20, 2007, by facsimile.

Subsequently, there were written communications among the American Arbitration Association, the attorneys and the parties. On July 30, 2007, the American Arbitration Association sent a letter to petitioner's attorney and respondents' new attorney herein, confirming "a telephone conversation with William Stefandel indicating he now has [sic] representations", appearance from that attorney.

On August 29, 2007, Stefandel replied to an e-mail message from the American Arbitration Association, asking for an adjournment of a conference call and stating that "I will also be putting a new attorney on this case..."

The facts in this case do not provide a basis for vacating an award. Therefore, the petition is granted and the cross-petition is denied.

Service on respondents' attorney does not make the arbitration demand invalid. Rather, it merely permitted respondents to challenge the arbitration, without having had to move to stay the arbitration within twenty days of receipt of the demand (*Matter of the Arbitration between Initial Trends, Inc., and Campus Outfitters*, 90 AD2d 716). Moreover, as respondents' former attorney wrote that he represented respondents, it would have been improper to serve respondents instead of

him (see *Matter of Insinga v. Liberty Mutual Life Insurance Company*, 265 AD2d 411).

Respondents concede that they received the arbitration demand from Spanakos. Moreover, by stating that they were obtaining new counsel, petitioners admit that they had counsel, whom they were replacing.

Similarly, the arbitration demand's lack of a provision warning respondents that they had twenty days to seek a stay does not make the demand ineffective. Again, this only permits them to challenge the arbitration proceeding now (see *Matter of the Arbitration between Leonard Blamowski and Munson Transportation, Inc.*, 91 NY 2d 190, 195, *Matter of Cooper v. Bruckner*, 21 AD 3d 758, 759).

There is no merit to the argument that the arbitration award refers to five agreements. The initial agreement contains an arbitration provision; the subsequent documents supplement the first one. In any event, it is hornbook law that a simple factual error in an arbitration award is not a ground for vacatur.

Accordingly, it is

ORDERED that the petition to confirm the arbitration award is granted, and it is further

ORDERED that the cross petition to vacate the arbitration award is denied, and it is further

ORDERED that the petitioner shall have judgment, consistent with the award, as follows:

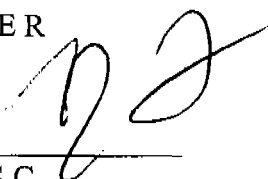
the principal amount of \$75,000, together with simple interest at the rate of six percent per annum, commencing December 30, 2007, until the award is satisfied; counsel fees of \$4,600; \$1,250 for administrative fees of the American Arbitration Association and \$950 as the arbitrator's compensation. Petitioner shall also have costs and disbursements as fixed by the Clerk, and it is further

ORDERED that the Clerk shall enter judgment consistent with this order and the arbitration award, on submission of proof of service of a copy of this order with notice of entry, at least five days prior to submission.

This constitutes the decision and order of the court.

Dated: June 30, 2008

ENTER



J.S.C.

FILED
JUL 02 2008
COUNTY CLERKS OFFICE
NEW YORK