

**National Academy of Tel. Arts & Sciences v  
Academy of Tel. Arts & Sciences**

2008 NY Slip Op 32389(U)

August 18, 2008

Supreme Court, New York County

Docket Number: 0600865/2008

Judge: Richard B. Lowe

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

PRESENT: HON. RICHARD B. LOWE, II

PART 56

Index Number : 600865/2008

NATIONAL ACADEMY OF TELEVISION

vs

ACADEMY OF TELEVISION ARTS

Sequence Number : 001

VACATE OR MODIFY AWARD

INDEX NO. \_\_\_\_\_

MOTION DATE 5/13/08

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

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

PAPERS NUMBERED

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

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, It is ordered that this motion

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

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION

**FILED**  
AUG 28 2008  
COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 8/18/08

HON. RICHARD B. LOWE, II

J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUPREME COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK: PART 56

-----X  
NATIONAL ACADEMY OF TELEVISION  
ARTS & SCIENCES,

Petitioner,

Index No.: 600865/08

-against-

DECISION AND ORDER

ACADEMY OF TELEVISION ARTS &  
SCIENCES,

Respondent.

-----X  
**Hon. Richard B. Lowe, III:**

In motion sequence 001 an order and judgement is sought on a petition pursuant to CPLR §§ 7510 and 7511 granting a petition to confirm in part and vacate in part an arbitration award signed on March 12, 2008. In motion sequence 002, respondent seeks an order pursuant to CPLR § 3211(a)(1), (5), and (7) dismissing the petition and awarding attorneys fees.

**Background**

The underlying facts of this case have been extensively detailed in our earlier opinion, Index No.: 116906/07, filed March 3, 2008, and therefore need no reiteration. The matter was initially before this court on a motion to vacate an interim order of an arbitration panel. That earlier motion was denied, and is presently on appeal.

The current motion seeks to confirm in part and vacate in part the final arbitration award, which, among other things, specifically incorporates by reference the interim order whose denial of vacatur is being appealed. One of the items Petitioner seeks to vacate is that incorporation.

Respondent moves to dismiss the petition and seeks attorneys' fees. It is noted that there

is a contemporaneous motion in the Los Angeles Superior Court to confirm this final arbitration award, filed two days after the instant motion was filed in New York. In the California action, petitioner has sought a stay, pending the outcome of this decision and the appeal of the interim order. The California court granted the stay on July 9, 2008, pending the outcome of the New York appeal.

### DISCUSSION

As noted in our earlier decision, pursuant to the arbitration agreement, California law is to be applied.

According to California law, “perfecting an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order.” California Code of Civil Procedure § 916 (a).

One example of a situation in which a stay is required is where the trial court proceeding directly or indirectly seeks to enforce, vacate or modify the appealed judgment or order. *Varian Medical Systems, Inc. v Delfino*, 35 Cal 4<sup>th</sup> 180, 189, 106 P3d 958, 964 (2005). Other examples include situations in which the trial court is called upon to execute the appealed order (*Williams v Wells fargo Bank & Union Trust Co.*, 17 Cal2d 104, 109 P2d 649 [1941]), vacate the appealed judgment (*Betz v Pankow*, 16 Cal App 4<sup>th</sup> 931 [1<sup>st</sup> App Dist 1993]), or issue a subsequent order that effectively enforces the appealed order (*Socialist Workers etc. Committee v Brown*, 53 Cal App 3d 879 [2d App Dist 1975]).

Generally, a proceeding is considered to affect the effectiveness of the appeal if the

proceeding would be inconsistent with the possible outcome of the appeal; in such a situation, further proceedings should be stayed. *Varian Medical Systems, Inc.* 15 Cal 4<sup>th</sup> at 190.

In the instant case, were this court to render a decision on these motions, the outcome could be inconsistent with the ultimate appellate decision. Therefore, under California law, as evidenced by the California court granting a stay of the contemporaneous action filed there, the court exercises its discretion to stay the proceedings until the appeal has been decided.

This conclusion is in accord with New York law as well. CPLR § 2201 allows a New York court to stay the proceedings “in a proper case, upon such terms as may be just.” Unless a stay would violate the law, New York courts have discretion to grant a stay in cases where there is an pending action elsewhere. *See Britt v. Int’l Bus Services, Inc.*, 255 AD2d 143, 144 (1<sup>st</sup> Dept 1998). Typically, such stays are granted when they will avoid multiplicity of litigation and the waste of judicial resources. *Trieber v Hopson*, 27 AD2d 151, 152 (3d Dept 1967).

Based on the foregoing, in order to avoid the multiplicity of litigation and the waste of precious judicial resources, the court stays these proceedings pending the outcome of the appeal.

**CONCLUSION**

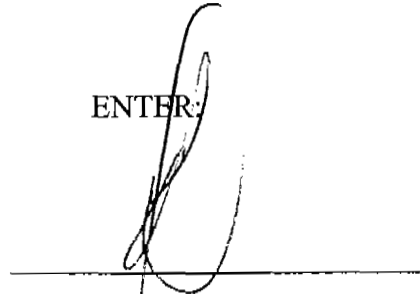
It is hereby

ORDERED that the Petitioner’s motion to confirm in part and vacate in part the arbitration award, and Respondent’s motion to dismiss are stayed, except for an application by order to show cause to vacate or modify this stay upon the final determination of the appeal of this court’s earlier order, Index No.: 116906/07, pending before the Appellate Division, First

Department.

Dated: August 18, 2008

ENTER:



J.S.C.

HON. MICHAEL D. LOWE, III

**FILED**  
AUG 28 2008  
COUNTY CLERK'S OFFICE  
NEW YORK