

Sedgwick CMS v Bratton

2025 NY Slip Op 31385(U)

March 27, 2025

Supreme Court, New York County

Docket Number: Index No. 659096/2024

Judge: Emily Morales-Minerva

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. EMILY MORALES-MINERVA PART 42M

Justice

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INDEX NO. 659096/2024

SEDGWICK CMS, AVIS BUDGET GROUP, INC.,

MOTION DATE 03/31/2025

Petitioners,

MOTION SEQ. NO. 001

- v -

JABERRI BRATTON

Respondent,

**DECISION + ORDER ON
MOTION**

EBONY DIXON, STATE FARM INSURANCE COMPANY

Proposed Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 6
were read on this motion to/for STAY.

APPEARANCES:

Pillinger Miller & Tarallo, Elmsford, New York (Davis S. Aronowitz, Esq., of counsel) for petitioners.

HON. EMILY MORALES-MINERVA:

Petitioners SEDGWICK CMS and AVIS BUDGET GROUP, INC. commenced this special proceeding, pursuant to article 75 of the CPLR, for an order staying uninsured motorist arbitration between respondent JABERRI BRATTON and AVIS BUDGET GROUP, INC., on the ground that JABERRI BRATTON failed to satisfy a

"condition precedent" for arbitration (New York State Courts Electronic Filing System [NYSCEF] Doc. No. 01, ¶¶ 17, 19).¹

For the reasons discussed below, the petition is dismissed for lack of proper service.

It is black letter law that a "notice or demand [to arbitrate] shall be served in the same manner as a summons or by registered or certified mail, return receipt requested" (CPLR § 7503 [c]). Further, a party served with said notice or demand, as petitioners here, may move "to stay such arbitration within 20 days after service of such notice, or else [they shall be] precluded from objecting" to the arbitration (Matter of Progressive Ins. Co. v. Callahan, 232 AD3d 903, 904-905 [2d Dept 2024], quoting Matter of Great N. Ins. Co. v Schwartzapfel, 216 AD3d 781, 781 [2d Dept 2023]; see also CPLR § 7503 [c]).

The petition and notice of petition to stay arbitration:

"shall be served in the same manner as a summons or by registered or certified mail, return receipt requested. Service of the application may be made upon the adverse party, or upon his attorney if the attorney's name appears on the demand for arbitration or notice of intention to arbitrate"

(CPLR § 7503 [c] [emphasis added]).

¹CPLR § 7503 (b) provides: "a party who has not participated in the arbitration or has been served with an application to compel arbitration, may apply to stay arbitration on the ground that a valid agreement was not made or has not been complied with or that the claim sought to be arbitrated is barred by limitation under subdivision (b) of section 7502" (emphasis added).

Service by mail "shall be timely if such application is posted within the prescribed period" of 20 days (CPLR § 7503 [c] [emphasis added]).

Finally, in a special proceeding to stay arbitration, the court cannot obtain jurisdiction over nonparties served with "the petition and notice of petition by either mail or certified mail" (see American Transit Ins. Co. v Carillo, 307 AD2d 220, 220 [1st Dept 2003] [explaining "[o]nce added to the proceeding by the court as an additional respondent, proper service could only have been effectuated. . . by court-ordered service of a supplemental notice of petition, and a supplemental petition, pursuant to CPLR § 1003"]).

Here, petitioners submit to the court an affidavit of service, dated November 21, 2024, indicating that the deponent served the petition and notice of petition on non-parties ANDREW PARK, PC, AMERICAN ARBITRATION ASSOCIATION, EBONY DIXON and STATE FARM INSURANCE, by "certified mail, RRR" (NYSCEF Doc. No. 06). However, petitioners offer no proof of service on respondent JABERRI BRATTON, who neither appears nor submits opposition to this motion.

This blatant "[n]oncompliance with the explicit service requirements of CPLR 7503 (c) renders the proceeding jurisdictionally defective, requiring dismissal" (Metropolitan Cas. & Prop. Ins. Co. v. Suggs, 268 AD2d 240, 240 [1st Dept

2002], citing Matter of Yak Taxi v Teke, 41 NY2d 1020 [1977]; Matter of DeCharo [Cutco Indus.], 183 AD2d 670 [1st Dept 1992]).

Accordingly, it is

ORDERED that AVIS BUDGET GROUP, INC. and SEDGWICK CLAIMS MANAGEMENT SERVICES petition (motion sequence no. 001) is dismissed entirely.

03/27/2025
DATE


EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE