

**Bryant v Triborough Bridge & Tunnel Auth.**

2025 NY Slip Op 31744(U)

May 13, 2025

Supreme Court, New York County

Docket Number: Index No. 450144/2023

Judge: Hasa A. Kingo

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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. HASA A. KINGO PART 05M**

*Justice*

-----X

SHEANEE BRYANT,

Plaintiff,

- v -

TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY,  
ALFREDO HERNANDEZ, M.T.A. BRIDGES AND  
TUNNELS, METROPOLITAN TRANSIT AUTHORITY, THE  
CITY OF NEW YORK, DONATUS OYARAME, AMERICAN  
UNITED TRANSPORTATION INC.,UBER  
TECHNOLOGIES, INC.,UBER USA, LLC., SECHS-NY,  
LLC,RAISER-NY LLC

Defendant.

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**INDEX NO.** 450144/2023  
**MOTION DATE** 12/12/2024,  
N/A  
**MOTION SEQ. NO.** 002 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 95

were read on this motion to VACATE - DECISION/ORDER/JUDGMENT/AWARD.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 96, 97, 98, 99, 100, 101, 102, 103, 104

were read on this motion for DISMISSAL.

Plaintiff Sheanee Bryant (“Plaintiff”) moves to vacate this court’s May 22, 2024 order compelling arbitration and staying the action (Seq. 002). Defendants Uber Technologies, Inc., Uber USA, LLC, Sechs-NY, LLC and Rasier-NY, LLC (“Uber”) cross-move to confirm the arbitration award rendered October 22, 2024 by Arbitrator Lorraine D. Mandel and to enter judgment dismissing all claims against Uber (Seq. 003). Plaintiff seeks relief under CPLR § 5015(a)(1) to set aside the stay in order to proceed in court; Uber seeks relief under 9 U.S.C. § 9 and CPLR §§ 7510 and 7514 to convert the arbitral dismissal into a final judicial judgment.

**BACKGROUND AND PROCEDURAL HISTORY**

This action arises from a November 12, 2021 motor-vehicle collision in the Bronx in which Plaintiff, a passenger, was allegedly injured by the negligence of independent driver Donatus Oyarame, whom she engaged through Uber’s Rider App. On September 23, 2022, Plaintiff commenced suit in Bronx County Supreme Court, asserting negligence and vicarious liability claims against Oyarame, American United Transportation, Inc., the Triborough Bridge & Tunnel

Authority, the Metropolitan Transportation Authority, the City of New York, and Uber and its related entities. Venue transferred to New York County on December 7, 2022.

Because Plaintiff used the Rider App on or after February 1, 2021, she indisputably accepted Uber's Terms of Use, which contain a broad arbitration clause covering disputes "arising out of or relating to" her use of the service. On May 31, 2023, Uber served The Dearie Law Firm—Plaintiff's counsel of record—with a Notice of Intention to Arbitrate pursuant to CPLR § 7503(c). When Uber moved on March 21, 2024 to stay litigation and compel arbitration (Seq. 001), no opposition was filed, and this court granted the motion on May 22, 2024.

Meanwhile, Plaintiff's counsel changed. On February 16, 2024, the Law Offices of Michael S. Lamonsoff filed a separate proceeding to compel The Dearie Law Firm to execute a substitution of counsel. No formal substitution or notice of appearance was ever filed in this action. On September 11, 2024, Plaintiff (through Lamonsoff's office) filed Seq. 002 seeking vacatur of the stay order on grounds of excusable default, improper service, and meritorious defenses to arbitration. Unbeknownst to this court until then, the American Arbitration Association had held preliminary hearings, and on October 22, 2024 Arbitrator Mandel granted Uber's dispositive motion under AAA Consumer Rule R-33, dismissing all claims with prejudice. The AAA transmitted the Final Order on November 13, 2024. Having neither sought vacatur nor modification of the arbitral award, on March 4, 2025 Uber filed Seq. 003 to confirm that award and enter judgment. Both motions have been fully submitted.

## ARGUMENTS

Plaintiff contends first that her failure to oppose Seq. 001 was excusable because counsel's transition delayed receipt of the complete file until July 17, 2024—well after the May 22 stay—and because The Dearie Law Firm obstructed file transfer despite court order. She cites *Bayer v. Domino Media, Inc.*, 147 AD2d 413 (1st Dept 1989), for the principle that law-office transitions and document delays can constitute excusable default. Second, Plaintiff asserts that service of the stay motion and of the CPLR § 7503(c) notice was improper, as they were directed to counsel no longer authorized to represent her. Third, she argues that she possesses meritorious defenses: Uber's arbitration clause is procedurally unconscionable, not reasonably conspicuous, and there exist triable issues of fact whether she ever saw or agreed to it; and even if a time to object expired, waiver does not apply because the agreement itself is invalid.

Uber responds that Plaintiff's counsel never filed any formal substitution or notice of appearance, leaving The Dearie Law Firm as counsel of record until judgment; that public NYSCEF access gave new counsel constructive notice of all filings, so there was no excuse for missing the stay motion; and that conclusory "law-office failure" is insufficient under *Wells Fargo Bank, N.A. v. Cervini*, 84 AD3d 789 (2d Dept 2011). With respect to service, Uber points out full compliance with 22 NYCRR § 202.5-b by mail and NYSCEF, and the certified-mail arbitration notice. On the merits of arbitration, Uber notes that New York courts routinely enforce click-through arbitration clauses, citing *Wu v. Uber Techs., Inc.*, 219 AD3d 1208 (1st Dept 2023) (affirmed), and *Brooks v. Lang Yang*, 216 AD3d 505 (1st Dept 2023). Finally, Uber argues Seq. 002 is moot, as arbitration has concluded in its favor, and that Seq. 003 must be granted because both the FAA and CPLR mandate confirmation absent timely vacatur or modification.

## DISCUSSION

To secure vacatur under CPLR § 5015(a)(1), a movant must demonstrate both a reasonable excuse for default and a potentially meritorious defense (*Kolgjo v. City of New York*, 248 AD2d 512, 512 [2d Dept 1998]). Generalized assertions of law-office failure are inadequate without detailed factual predicate (*Wells Fargo Bank, N.A.*, 84 AD3d at 789–90, *supra*). Here, Plaintiff's new counsel never filed any substitution or appearance, despite constructive notice via NYSCEF. The alleged delay stretches months, not days, and was within counsel's control. In *Bayer*, 147 AD2d 413, *supra*, the delay was "slight" and medically necessitated; no similar exigency exists here. Moreover, attorneys bear a duty to monitor electronic filings (*see Friedman v. State Univ. of New York at Binghamton*, 2006 WL 2882980, at \*3 [N.D.N.Y. Oct. 5, 2006]). Plaintiff's claimed surprise is therefore neither reasonable nor excusable. At oral argument on May 13, 2025, Plaintiff's counsel was unable to identify any steps taken to inform Uber of the firm transition. Indeed, counsel acknowledged that the successor firm had unfettered access to all NYSCEF filings and could readily have monitored the case's status—and thereby notified opposing counsel of the attorney change—yet neglected to do so. This lapse is utterly inexcusable.

Plaintiff's improper-service argument fares no better. Uber served Seq. 001 by both mail and NYSCEF on the counsel of record—exactly as CPLR § 2103 and 22 NYCRR § 202.5-b require. Absent a timely, valid substitution of counsel, service remains effective (*Eugene Di Lorenzo, Inc. v. A.C. Dutton Lbr. Co.*, 67 NY2d 138, 142 [1986][defective service invalidates jurisdiction; proper service confers jurisdiction]).

Turning to the second prong—meritorious defense—Plaintiff relies solely on federal precedents *Specht v. Netscape*, 306 F.3d 17 (2d Cir. 2002), and *Nguyen v. Barnes & Noble, Inc.*, 763 F.3d 1171 (9th Cir. 2014). Yet New York's Appellate Division, First Department, has repeatedly enforced Uber's arbitration clause as an adhesion-contract clickwrap, rejecting challenges to conspicuousness so long as the TOS appear via hyperlink and assent is required (*Wu*, 219 AD3d at 1209–10, *supra*; *Brooks*, 216 AD3d at 507, *supra*). The Second Circuit's decision in *Katz v. Cellco Partnership*, 794 F.3d 341, 345–46 (2d Cir. 2015), reaffirmed that the FAA requires stays where agreements exist and are invoked. Plaintiff cites no New York case undermining that line of authority or establishing triable issues as to her assent. Accordingly, she cannot show a meritorious defense to arbitration.

Finally, Plaintiff's motion became moot once arbitration concluded with dismissal of all claims on October 22, 2024. A stay of litigation is a temporary aid to arbitration; once the arbitral tribunal has decided the merits, the stay order no longer controls any live judicial proceeding.

Uber's motion to confirm the award is governed by 9 U.S.C. § 9 and CPLR § 7510, which require confirmation absent vacatur or modification proceedings under FAA §§ 10–11 or CPLR § 7511. No such proceedings were ever timely commenced, and the one-year window has passed (*Florasynt v. Pickholz*, 750 F.2d 171, 176 [2d Cir. 1984]). Judicial review is "severely limited" to ensuring the award "draws its essence" from the agreement and is not "completely irrational" (*Scandinavian Reins. Co. v. Saint Paul Fire & Marine Ins. Co.*, 668 F.3d 60, 72 [2d Cir. 2012]; *D.H. Blair & Co., Inc. v. Gottdiener*, 462 F.3d 95, 110 [2d Cir. 2006]). Arbitrator Mandel issued

a reasoned, law-based dismissal applying New York negligence principles to the undisputed facts. No evidence suggests misconduct, exceedance of authority, or any basis to disturb the award.

Based on the foregoing, it is hereby

ORDERED that Plaintiff’s motion to vacate the stay order (Seq. 002) is denied for failure to establish excusable default or meritorious defense, and because it is moot following final arbitration; and it is further

ORDERED that Uber’s motion to confirm the arbitration award is granted; the award is confirmed pursuant to 9 U.S.C. § 9 and CPLR § 7510, and judgment is entered dismissing all claims against Uber with prejudice; and it is further

ORDERED that the Clerk is directed to enter judgment and close both Seq. 002 and Seq. 003.

This constitutes the decision and order of the court.

5/13/2025  
DATE

HASA A. KINGO, J.S.C.

CHECK ONE:

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

APPLICATION:

CHECK IF APPROPRIATE: