

**Matter of West 34th St. Apts. Corp. v Panorama Intl.
Contr., Inc.**

2025 NY Slip Op 32946(U)

July 30, 2025

Supreme Court, Kings County

Docket Number: Index No. 519136-2025

Judge: Peter P. Sweeney

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, PART 73

Index No.: 519136-2025
Motion Date: 7-21-25
Mot. Seq. No.: 1, 2, 3

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In the Matter of the Application of

WEST 34TH STREET APTS. CORP.,

Petitioner,

DECISION/ORDER

For an interim stay, and vacatur of a pending arbitration,
pursuant to, inter alia, CPLR § 7502(c) and CPLR § 7511

-against-

PANORAMA INTERNATIONAL CONTRACTING, INC.,

Respondent.
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The following papers, which are e-filed with NYCEF as items 1-38, were read on this
petition and motions:

The petitioner, WEST 34TH STREET APTS. CORP., commenced this proceeding
seeking a judgment pursuant to CPLR §§ 7502(c) and 7511 and other provisions: (a) cancelling
and vacating an existing arbitration proceeding underway by the parties named above, due to
alleged arbitrator bias; (b) staying the arbitration proceeding pending the determination of this
application; and (c) granting such other and further relief that this Court deems just and proper
(motion sequence nos. 1 and 2). In motion sequence no. 3, the respondent, PANORAMA
INTERNATIONAL CONTRACTING, INC., moves for an Order: a) dismissing the proceeding
pursuant to CPLR 404(a) and/or 7511, on the ground that it is premature and unripe for
adjudication; (b) for sanctions, pursuant to 22 NYCRR 130-1.1(c)(2), claiming the filing of the
instant petition was undertaken primarily to delay or prolong the resolution of the parties pending

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dispute; and (c) for such other and further relief as the Court deems just, equitable and proper under the circumstances.

The Court will first address respondent's cross-motion. This proceeding was commenced by order to show cause signed by the Court on June 12, 2025. The order directed that the petition and accompanying papers be served on respondent by personal service on or before June 20, 2025. In its motion to dismiss, one of the arguments advanced by the respondent is that the proceeding should be dismissed because service pursuant to the order to show cause was never made. Significantly, the petitioner does not deny that the respondent was never served in the manner specified in the order to show cause. Indeed, the record is devoid of an affidavit of service demonstrating that the respondent was served in any manner, let alone in the manner directed by the Court.

It is well settled that the "method of service provided for in an order to show cause is jurisdictional in nature and must be strictly complied with" (*Matter of El Greco Socy. of Visual Arts, Inc. v. Diamantidis*, 47 A.D.3d 929, 929, 852 N.Y.S.2d 165). In this case, the petitioner has the burden of proving that jurisdiction over the respondent was obtained (*see Frankel v. Schilling*, 149 A.D.2d 657, 659, 540 N.Y.S.2d 469). By failing to submit an affidavit of a process server attesting that respondent was served in the manner prescribed by the order to show cause, the petitioner clearly failed to meet this burden. Thus, the proceeding must be dismissed (*see Matter of Rotanelli v. Board of Elections of Westchester County*, 109 A.D.3d 562, 563, 970 N.Y.S.2d 471; *U.S. Bank N.A. v. Feliciano*, 103 A.D.3d 791, 959 N.Y.S.2d 453; *Crown Waterproofing, Inc. v. Tadco Constr. Corp.*, 99 A.D.3d 964, 965, 953 N.Y.S.2d 254; *Lobo v. Soto*, 73 A.D.3d 1135, 1135–1136, 900 N.Y.S.2d 900).

The petitioner contends that it was unnecessary to complete service in the manner set forth in the order to show cause because respondent's counsel filed a notice of appearance prior to June 20, 2025, the deadline set forth in the order to show cause for completing service. At oral argument, petitioner's counsel maintained that respondent's motion to dismiss for lack of personal jurisdiction was made several days after respondent's counsel filed a notice of appearance, and that by filing the notice of appearance, without simultaneously moving to

dismiss for lack of jurisdiction, the respondent consented to the jurisdiction of the court and waived the defense of lack of personal jurisdiction. The Court finds petitioner's argument unavailing.

While a party may appear in a proceeding by serving a notice of appearance (CPLR 320(a)), and that such appearance may in some cases be equivalent to personal service of the summons upon him, such is not the case when "an objection to jurisdiction under [CPLR 3211(a)(8)] is asserted by motion or in the answer as provided in rule 3211" (CPLR 320(b)). CPLR 3211(a)(8) permits a party to move to dismiss a proceeding for lack of personal jurisdiction. CPLR 3211(e) governs the time period in which a party must make a pre-answer motion pursuant to CPLR 3211(a)(8) and provides that such a motion must be made at any time before service of the responsive pleading is required. Here, the respondent's motion was made on June 26, 2025, only six days after June 20, 2025, the deadline for serving the respondent. The motion was undoubtedly timely. The petitioner has not cited any authority for the proposition that a party who serves a bare notice of appearance as opposed to a responsive pleading without simultaneously moving to dismiss waives his right to make a timely motion to dismiss for lack of personal jurisdiction pursuant to CPLR 3211(a)(8).

Accordingly, it is hereby

ORDERED that the motion by respondent PANORAMA INTERNATIONAL CONTRACTING, INC. (Motion Sequence No. 3) to dismiss the proceeding for lack of personal jurisdiction is granted; and it is further

ORDERED that the petition is dismissed in its entirety, without prejudice; and it is further

ORDERED that the remaining branches of respondent's motion, including its request for sanctions, are denied; and it is further

ORDERED that Motion Sequence Nos. 1 and 2 are denied as moot in light of the dismissal of the proceeding.

This constitutes the decision and order of the Court.

Dated: July 30, 2025

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020

**KINGS COUNTY CLERK
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