

**Freedman Normand Friedland LLP v
Axos Nev., LLC**

2026 NY Slip Op 30434(U)

February 4, 2026

Supreme Court, New York County

Docket Number: Index No. 655332/2025

Judge: James E. d'Auguste

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. James d'Auguste

PART 55

Justice

-----X

INDEX NO. 655332/2025

FREEDMAN NORMAND FRIEDLAND LLP,

MOTION DATE

Petitioner,

MOTION SEQ. NO. 001 002

v.

AXOS NEVADA, LLC and AXOS BANK,

DECISION + ORDER ON MOTION

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001, 002) 3, 7, 8, 10,11, 12, 13, 14, 15, 16, 17, 18, 29, 20, 21, 22 23, 24, 25

were read on these motions to/for

STAY/DISMISS

Petitioner Freedman Normand Friedland LLP ("FNF") commenced this special proceeding seeking to stay an arbitration (the "Arbitration") between respondents herein, Axos Nevada, LLC and Axos Bank (collectively, "Axos"), the claimants in the Arbitration, and non-party PartnerRe Ireland Insurance DAC ("PartnerRe"), the respondent in the Arbitration. FNF's application seeking an order staying the Arbitration, styled as Axos Nevada, LLC, et al. v. PartnerRe Ireland Insurance DAC, JAMS Ref #1425040548, is denied and its petition is dismissed. The motion seeking dismissal of the petition is held to be moot in view of this determination.

As is relevant to this proceeding, the three-arbitrator panel presiding over the Arbitration has ordered PartnerRe to produce certain documents held by FNF, as PartnerRe's outside claims handler. In directing PartnerRe to make this production, the arbitrators determined on four separate occasions that FNF was wearing two hats: claims handler and counsel. It is in connection with FNF's role as a claims adjuster for PartnerRe that the arbitrators directed

PartnerRe to produce documents. PartnerRe has not complied with this directive. Instead, FNF filed the instant application seeking to collaterally attack the arbitration panel's directive on this issue, even though the panel has not directed FNF to take any action.

As an initial matter, FNF lacks standing to challenge the arbitration panel's determination. FNF admits that it is "neither a party nor a signatory to the arbitration agreement between PartnerRe and Axos." NYSCEF Doc. No. 1 ¶ 6. FNF also has "never been served a subpoena or other process commanding it to produce documents." *Id.* ¶ 3.

It is well-settled law that a stranger to an arbitration, like FNF, lacks standing to seek a stay of the arbitration. *Investec Trustees (Jersey) Ltd. v Oppenheimer & Co., Inc.*, 85 A.D.3d 565, 565 (1st Dep't 2011) (citing *Cantor Fitzgerald Partners v. Municipal Partners, LLC*, 11 A.D.3d 247, 247-48 (1st Dep't 2004)) ("Petitioner is not a party to the arbitration submission agreement and thus has no standing to seek a stay"). Notably, FNF's assertion that the arbitration panel's order "functionally compels [FNF] to produce its own internal, deliberative documents – documents created and housed within the law firm and never possessed, controlled, or seen by its client" (NYSCEF Doc. No. 15 at 5) – is nonetheless insufficient to support standing. *Id.* at 565 ("We reject petitioner's argument that it is entitled to a stay because it will be required to satisfy any judgment respondent obtains on its counterclaim.")¹

Even assuming FNF had standing to seek a stay of the Arbitration, FNF waived any right to seek judicial relief when it previously elected to seek redress in the Arbitration. Having submitted the dispute to the arbitration panel, FNF cannot now seek a "second bite of the apple"

¹ For the same reason, FNF is not entitled to a protective order relating to a noticed deposition of Amos Friedland. The consequences of Friedland's failure to be deposed will fall on PartnerRe, a non-party to this proceeding. Obviously, the arbitration panel can impose a negative inference should PartnerRe fail to abide by its discovery obligations. The prospect of such a sanction being imposed by the arbitrators on PartnerRe does not confer standing on FNF to seek a stay or otherwise interfere with the underlying arbitration proceeding.

because it did not like the panel's decision. *E.g., Employers Ins. Co. of Wausau v. Dominion Ins. Receivable LLC*, 231 A.D.3d 617, 618 (1st Dep't 2024). The Court further agrees with Axos that Article 75 does not appear to provide authority for this application, which was likely commenced in an untimely fashion. NYSCEF Doc. No. 14 at 13-14.

Moreover, FNF has failed to demonstrate any defect with the panel's directives. The arbitration panel required PartnerRe to produce claim-adjusting records created by FNF in a business-advisor capacity, as opposed to in its attorney capacity. *Sage Realty Corp. v. Proskauer Rose Goetz & Mendelsohn L.L.P.*, 91 N.Y.2d 30 (1997), heavily relied upon by FNF, does not support a contention that documents created by an attorney performing a business function can be withheld from a client who requests them. Rather, *Sage Realty* addresses a client's presumptive right of access to its attorney's file, subject to narrow exceptions. *Id.* at 36-37. Moreover, FNF did not attempt, herein, to demonstrate a legal entitlement to withhold any specific document from PartnerRe.

Ultimately, PartnerRe has an obligation to produce documents within its possession, custody, or control, which includes documents held by its agents. *Main Place Pharmacy Corp. v. Central Buffalo Project Corp.*, 55 A.D.2d 1007, 1007 (4th Dep't 1977). Thus, arguments regarding the production of a specific document or category of documents fall squarely within the responsibilities of the arbitration panel, which is adjudicating the underlying dispute between Axos and PartnerRe.

That arbitration panel consists of three JAMS arbitrators who have consistently determined throughout four opportunities to consider the relevant issues that PartnerRe must produce documents in the possession of its agent, FNF, as claims handler. These are routine discovery determinations that are regularly handled by arbitral panels. FNF has presented no

extraordinary issues that would justify interlocutory judicial interference with the arbitration process herein, because arbitral decisions – especially interlocutory rulings – are generally not subject to judicial review. *E.g., Wien & Malkin LLP v. Helmsley-Spear, Inc.*, 6 N.Y.3d 471, 475, 483 (2006) (arbitral judgments and factual determinations “are owed substantial deference”); *Mobil Oil Indonesia v. Asamera Oil (Indonesia)*, 43 N.Y.2d 276, 279 (1977) (“courts have no authority to review an interlocutory ruling made by the arbitrators.”).

Accordingly, the petition seeking to stay the Arbitration is denied. The Clerk is directed to enter judgment dismissing the petition with prejudice.

This constitutes the decision and order of the Court.²

2/4/2026

DATE

James d'Auguste, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE

² The Court appreciates the invaluable assistance of Court Attorney Andrew J. Lorin, Esq., in connection with this matter.