

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

PRESENT: KIBBIE F. PAYNE
Justice

PART 4

**In the Matter of the Arbitration
MBNA AMERICA BANK, N.A.,**

INDEX NO. 114397/05

Petitioner,

MOTION DATE 03-14-06

5

MOTION SEQ. NO. 001

XAVIER F. ROMELL

Respondent -

MOTION CAUSE NO.:

The following papers, numbered 1 to 10, 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 application pursuant to CPLR article 7510 is denied, the arbitration award is vacated and the matter is remitted for a new hearing in accordance with the accompanying memorandum.

The foregoing constitutes the judgment and order of the court.

Dated: March 14, 2005

Check one: **FINAL DISPOSITION** **NON-FINAL DISPOSITION**

Check if appropriate: DO NOT POST REFERENCE

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 4**

In the Matter of the Arbitration Between

MBNA AMERICA BANK, N.A.

Index No. 114397-05

Petitioner,

Motion Seq. 001

-against-

JUDGMENT

XAVIER ROMEU,

Respondent.

KIBBIE F. PAYNE, J.:

In this CPLR article 75 proceeding, petitioner seeks confirmation of an arbitration award made in its favor against pro se respondent in the amount of \$32,821.73.

On November 10, 2004, petitioner and respondent entered a settlement agreement indefinitely staying arbitration of a credit card debt dispute. The agreement provided that the matter "shall be resolved by the payment from Respondent to [petitioner] of \$22,306.62" pursuant to a specified schedule. The parties further agreed therein that, in the event respondent failed to make the required payments, "an award shall be entered against the Respondent in favor of [petitioner] for the full balance . . . including any interest, costs and attorney's fees. . . ."

On March 10, 2005, petitioner filed a "Request for Entry of Award" with the National Arbitration Forum (NFA) on the ground that respondent failed to comply with the agreement. Petitioner

served a copy of the request on Orlando Vidal, Esq. of Sullivan & Worcester, Washington, DC. Mr. Vidal later informed petitioner in writing that neither he nor his firm represented respondent.

By letter addressed to respondent's New York City address, NAF informed respondent that petitioner was seeking an award against him. Respondent objected, and the matter was stayed. Thereafter, respondent made a written request that NAF mail a copy of all rules, procedures, and relevant information relating to the arbitration to his New York City address. However, on August 9, 2005, NAF mailed respondent notice of the hearing in care of Sullivan & Worcester. NAF did not mail the notice to respondent's address.

On September 9, 2005, the NAF arbitrator issued an award in favor of petitioner against respondent for a total amount of \$32,821.73. The award was delivered to petitioner and respondent that same day, and petitioner now makes this application for a confirmation order pursuant to CPLR § 7510. Respondent argues that the award is invalid as he was not given an opportunity to make any submissions in response to the claim. The court construes his pro se arguments as seeking vacatur of the award.

An arbitration award shall be vacated on the application of a party, who was served with notice of intention to arbitrate, where an arbitrator's failure to follow the procedure of CPLR article 75 prejudiced the rights of such party (see CPLR 7511 [b]

[1] [iv]). Article 75 provides that an "arbitrator shall appoint a time and place for the hearing and notify the parties in writing personally or by registered or certified mail not less than eight days before the hearing" (CPLR 7506 [b]).

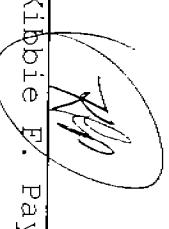
Here, it is undisputed that NAF improperly addressed its hearing notice to the law firm formerly representing respondent. As the subject notice explicitly gave the parties an opportunity to make additional submissions for consideration, respondent appears to have been prejudiced. Thus, grounds exist for vacating the award and remitting the matter for a new hearing (see Matter of Connolly v Allstate Ins. Co., 213 AD2d 787, 788 [3d Dept. 1995]; see generally Wedbush Morgan Securities, Inc. v Brandman, 192 AD2d 497 [1st Dept 1993]; CPLR 7511 [d]). Accordingly, it is

ORDERED that the application for confirmation of the arbitration award is denied; and it is further

ORDERED that the award is vacated and the matter ~~is remitted~~^{is appealed to the Appellate Division, First Department} for a new hearing.

The foregoing constitutes the judgment and order of the court.

DATED: March 14, 2006


Hon. Kippie F. Payne, J.A.C.

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OF NEW YORK
COUNTY CLERK
TO THE JUDICIAL CLERK'S DESK (ROOM
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AT 10:00 AM
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