

SUPREME COURT - STATE OF NEW YORK

PRESENT: HON. R. BRUCE COZZENS, JR.
Justice.

TRIAL/IAS PART 7
NASSAU COUNTY

RW ADART POLY, LLC,

Petitioner(s),

-against-

MOTION #001, 003
INDEX#19967/2008
MOTION DATE:
May 14, 2009

NEW YORK MERCHANTS PROTECTIVE CO., INC.,

Respondent(s).

The following papers read on this motion:

Notice of Motion.....	1
Amended Notice of Petition.....	1
Answering Affidavits.....	7

Upon the foregoing papers, it is ordered that petitioner's amended petition to stay arbitration and motion for summary judgment are determined as hereinafter set forth.

The instant applications arise out of a Demand for Arbitration served upon the petitioner on or about October 15, 2008. The Demand seeks to arbitrate a breach of contract dispute and seeks \$10,976.86 in damages.

In support of the amended petition, it is asserted that the underlying agreement was materially altered. In addition, it is maintained that the arbitral body no longer exists. It is noted that pursuant to the Short Form Order dated April 6, 2009, the petitioner was granted leave to amend to locate documents to prove the allegation that the agreement was materially altered.

In opposition, the respondent maintains that the contract is a pre-printed form that has not been altered. Further, it is maintained that the arbitral body is the same, in that only the name changed due to a trademark infringement lawsuit.

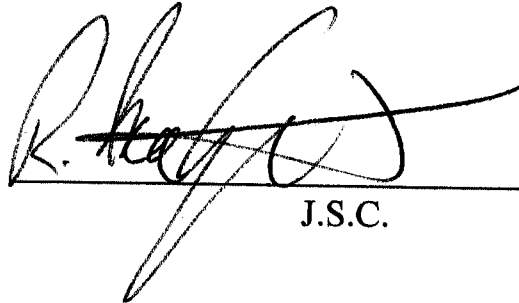
"Generally, under New York statutory and case law, a court may address three threshold questions on a motion to compel or to stay arbitration: (1) whether the parties made a valid agreement to arbitrate; (2) if so, whether the agreement has been complied with; and (3) whether the claim sought to be arbitrated would be time-barred if it were asserted in State court' (*Matter of Smith Barney, Harris Upham Co. v Luckie*, 85 NY2d 193, 201-202, 623 NYS2d

800, 647 NE2d 1308, *cert. denied* 516 US 811, 118 S. Ct. 59, 133 LE2d 23; *see Matter of County of Nassau v Civil Service Empls. Assn.* 14 AD3d 509, 789 NYS2d 63)." *DaSilva v Savo*, 35 AD3d 647, 826 NYS2d 436 [2nd Dept., 2006].

In the instant matter, the Court finds that the petitioner has not provided documentation proving the underlying agreement was materially altered. As a result, the Court finds that there was a valid agreement to arbitrate. Further, the petitioner does not dispute that agreement has been complied with nor that the claim is time-barred.

As such, the amended petition to stay arbitration and the motion for summary judgment are denied.

Dated: **SEP 15 2009**



J.S.C.

ENTERED

SEP 22 2009

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**