

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. THOMAS A. ADAMS,

Acting Supreme Court Justice

TRIAL/IAS, PART 36

NASSAU COUNTY

ALDRICH MANAGEMENT CO., LLC,

Petitioner(s),

MOTION DATE: 9/14/09

INDEX NO.: 13141/09

-against-

SEQ. NO. 1

D & W CENTRAL STATION FIRE ALARM CO., INC.,

Respondent(s).

The petitioner's motion, pursuant to CPLR §7503(b), to stay arbitration of the parties' December 8, 2005 contract (see petitioner's Exhibit D) in accordance with the respondent's June 16, 2009 demand (see petitioner's Exhibit E) is determined as hereinafter provided.

On December 8, 2005 the petitioner's predecessor, Aldrich Management Company (hereinafter "Aldrich"), entered into a "standard alarm lease" (see petitioner's Exhibit D) pursuant to which the respondent agreed to provide, inter alia, "central station monitoring, service and repair and semi-annual fire alarm inspection, cleaning and testing of interior fire alarm system" at a strip mall owned and/or managed by Aldrich located at 717-751 Hawkins Avenue in Lake Ronkonkoma. On June 10, 2009 Aldrich's representative, Michael DeLuca, wrote to the respondent terminating its services (see respondent's Exhibit R). On June 16, 2009 the respondent demanded arbitration of its claim for \$80,143.05 in fees pursuant to paragraph 18 of the December 8, 2005 agreement.

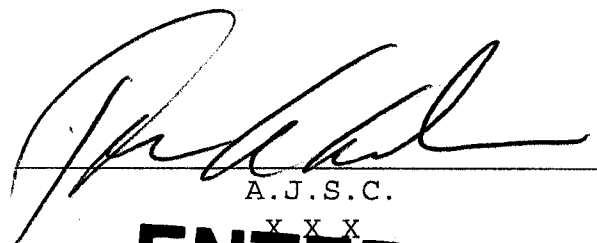
The petitioner presently seeks to permanently stay arbitration of the demand on the ground that no valid agreement to arbitrate was made (see CPLR §7503[b]) because Mr. DeLuca, who signed the December 8, 2005 agreement in his capacity as "construction supervisor", lacked authority to execute the contract.

The respondent's president, Warren Davis, avers, inter alia,

that Mr. DeLuca is (or was) the site manager for the mall with whom the respondent regularly dealt while performing the December 8, 2005 contract and earlier agreements beginning in 1997 (see e.g., respondent's Exhibit Q, Mr. DeLuca's October 8, 2007 missive). In addition to Mr. DeLuca's apparent authority, the petitioner subsequently paid the respondent's invoices (see respondent's Exhibit O) and therefore allegedly ratified the agreement.

Even assuming, arguendo, that no one with authority executed the December 8, 2005 agreement for Aldrich, the petitioner has not refuted the respondent's assertion, which is supported by the documentary evidence, that parties subsequently operated under its terms (see God's Battalion of Prayer Pentecostal Church, Inc. v Miele Associates, LLP, 10 AD3d 671,672; Matter of Chapnick v Cohen, 203 AD2d 362). Accordingly, the arbitration provision is enforceable and the petitioner's motion, pursuant to CPLR §7503(b), to stay arbitration is denied.

Dated: 10-27-09



A.J.S.C.
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ENTERED

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