

**DISTRICT COURT OF NASSAU COUNTY
FIRST DISTRICT: CIVIL PART**

-----X
CONSUMER ENERGY GROUP, INC,

Plaintiff

against

DAVID SMITH and RUTH SMITH,

Defendants.

INDEX NO. 22053/05

Present:

Hon. Sondra K. Pardes

-----X
**The following named papers numbered 1 to 3
submitted on this Notice on April 24, 2006**

	papers numbered
<u>Notice of Motion and Affidavits Annexed</u>	<u>1-2</u>
<u>Order to Show Cause and Affidavits Annexed</u>	
<u>Answering Affidavits</u>	<u>3</u>
<u>Reply Affidavits</u>	

The defendants move, pursuant to CPLR §4102(e), for an Order directing the Clerk of the Court to accept defendants' Jury Demand and set this matter down for a jury trial. The plaintiff opposes said motion.

This is an action arising out of defendants' alleged breach of a written oil delivery and service contract dated May 3, 2003, a copy of which is annexed to plaintiff's opposition papers. The Contract, Paragraph 11 "Legal Action", specifically states : "(t)he parties waive trial by jury in any action between them."

The Court finds that this language is clear and unambiguous and that the parties have waived their right to a trial by jury in this action relating to their agreement.

Accordingly, the defendants' motion is denied.

The foregoing constitutes the Decision and Order of this Court.


DISTRICT COURT JUDGE

Dated: May 15, 2006

cc: Kirschenbaum & Kirschenbaum, P.C., Attorneys for Plaintiff
Christopher J. Smith, Attorney for Defendant

SKP:rad