

To commence the statutory time period for appeals as of right (CPLR § 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

Disp x Dec _____ Seq. No. 1 Type stay

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
PRESENT: HON. LINDA S. JAMIESON

-----X
In the Matter of the Petition of
INNOVAX-PILLAR, INC.,

Petitioner,

Index No. 64370/14

-against-

DECISION AND ORDER

to stay a certain arbitration pursuant
to CPLR 7503 demanded by

BRISCOE PROTECTIVE SYSTEMS INC.,

Respondent.

-----X
The following papers numbered 1 to 3 were read on this
petition:

<u>Paper</u>	<u>Number</u>
Notice of Petition, Petition and Exhibits	1
Affirmation in Opposition	2
Reply Affirmation	3

Petitioner brings this petition seeking to stay the arbitration commenced by respondent on the basis that there is no valid agreement to arbitrate because the contract is unconscionable. The arbitration demand seeks \$13,300, which includes \$5,000 in attorneys' fees.

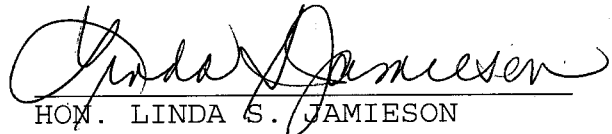
Petitioner argues that the parties' agreement is unconscionable because it allows only respondent to recover legal fees should it prevail; it precludes petitioner from asserting a counterclaim in any action instituted by respondent; and "it makes arbitration, including the issue of arbitrability, optional

at the request of either party." The issue of arbitrability is for the arbitrators to decide, not the Court. *Tsadilas v. Providian Nat. Bank*, 13 A.D.3d 190, 191, 786 N.Y.S.2d 478, 480 (1st Dept. 2004). See also *Wieder v. Wieder*, 105 A.D.3d 948, 949, 963 N.Y.S.2d 372, 373 (2d Dept. 2013) ("the determination as to whether the stipulation of settlement is unconscionable as a whole is for the arbitrator or arbitrators to decide.").

In any event, even if the other provisions about counterclaims and counsel fees were unconscionable - and the Court does not make any findings thereon - the arbitration provision is even-handed. Either party may invoke it equally. Accordingly, the Court must deny the petition.

The foregoing constitutes the decision and order of the Court.

Dated: White Plains, New York
December 9, 2014


HON. LINDA S. JAMIESON
Justice of the Supreme Court

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