

At a term of the Appellate Term of the Supreme Court
of the State of New York for the 2nd & 11th Judicial Districts

HON. MICHAEL L. PESCE, P.J.
HON. JOSEPH G. GOLIA
HON. JAIME A. RIOS, JJ.

DECEMBER 12, 2007 TERM
2007-00046 Q C
DEC 27 2007

NEW YORK MERCHANTS PROTECTIVE CO., INC.,

Appellant,

-against-

Lower Court #
13394/06

SALLOOM IMPORT & EXPORT CORP. and
MORURAD SALLOOM a/k/a MIKE SALLOOM,

Respondents.

The above named appellant having appealed to this court from a **JUDGMENT** of the **CIVIL COURT, CITY OF NEW YORK, QUEENS COUNTY** entered on **SEPTEMBER 28, 2006** and the said appeal having been **argued** by **GENE W. ROSEN, ESQ.** counsel for the appellant and **NO BRIEF SUBMITTED** for the respondents and due deliberation having been had thereon; it is hereby,

ORDERED AND ADJUDGED that the judgment, insofar as appealed from, is reversed without costs, and those branches of the petition seeking to confirm the arbitration award as to Morurad Salloom a/k/a Mike Salloom and to confirm the award of attorney's fees is granted.

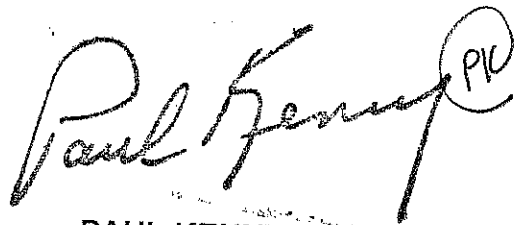
Pesce, P.J., Golia and Rios, JJ., concur.

KENNETH KIRSCHENBAUM, ESQ.
KIRSCHENBAUM & KIRSCHENBAUM, P.C.
200 GARDEN CITY PLAZA, STE. 500
GARDEN CITY, NEW YORK 11530

SALLOOM IMPORT & EXPORT CORP.
32-48 44TH STREET
ASTORIA, NEW YORK 11103

ENTER:

MORURAD SALLOOM a/k/a
MIKE SALLOOM
121 ROBBINS ROAD
ROXBURY, NEW YORK 12474



PAUL KENNY
CHIEF CLERK
APPELLATE TERM

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM : 2nd and 11th JUDICIAL DISTRICTS

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PRESENT : PESCE, P.J., GOLIA and RIOS, JJ.

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NEW YORK MERCHANTS PROTECTIVE CO., INC.,

Appellant,

-against-

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DECIDED

SALLOOM IMPORT & EXPORT CORP. and
MORURAD SALLOOM a/k/a MIKE SALLOOM,

Respondents.

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Appeal from a judgment of the Civil Court of the City of New York, Queens County (Diccia T. Pineda-Kirwan, J.), entered September 28, 2006. The judgment, insofar as appealed from, denied those branches of the petition seeking to confirm the arbitration award as to Morurad Salloom a/k/a Mike Salloom and to confirm the award of attorney's fees.

Judgment, insofar as appealed from, reversed without costs, and those branches of the petition seeking to confirm the arbitration award as to Morurad Salloom a/k/a Mike Salloom and to confirm the award of attorney's fees granted.

Petitioner commenced the instant special proceeding to confirm an arbitration award. The arbitrator issued an award in favor of petitioner on default against

RE: NEW YORK MERCHANTS PROTECTIVE CO., INC. v SALLOOM IMPORT &
EXPORT CORP. and MORURAD SALLOOM a/k/a MIKE SALLOOM,
NO. 2007-46 Q C

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respondents jointly and severally in the sum of \$4,970.40, with interest from October 1, 2003, plus attorney's fees in the sum of \$1,500. The petition was unopposed. The court modified the award by confirming it as to Salloom Import & Export Corp. and, citing CPLR 7511 (c) (2), denying the petition to confirm the award as to Morurad Salloom, noting that although he had signed the subject alarm lease, containing the arbitration clause, as a guarantor, he was not a party to the agreement to arbitrate the dispute. Further, the court modified the award by denying attorney's fees to petitioner on the ground that the lease provided for legal fees only if petitioner prevailed in litigation, not as a result of arbitration. Petitioner appeals from that part of the judgment which denied the branches of the petition seeking to confirm the award as to Mr. Salloom and to confirm the award of attorney's fees.

A court may only review the validity of an arbitration agreement in the context of an application to compel or stay arbitration pursuant to CPLR 7503, or an application to vacate an award pursuant to CPLR 7511 (b). Respondent Morurad Salloom failed to seek review of the validity of the arbitration agreement as to him under either section. "Once a case is referred to an arbitrator, 'all questions of fact and of law are within the judicially unreviewable purview of the arbitrator'" (Matter of Raisler Corp. [New York City Hous. Auth.], 32 NY2d 274, 282 [1973], quoting Matter of S & W Fine Foods [Office Empls. Intl. Union, Local 153, AFL-CIO], 8 AD2d 130, 131 [1959], affd 7 NY2d 1018

RE: NEW YORK MERCHANTS PROTECTIVE CO., INC. v SALLOOM IMPORT &
EXPORT CORP. and MORURAD SALLOOM a/k/a MIKE SALLOOM,
NO. 2007-46 Q C

[1960]; cf. CPLR 7511). Accordingly, we reverse the judgment, insofar as appealed
from, and grant the petition to confirm the arbitration award.

Pesce, P.J., Golia and Rios, JJ., concur.