

SHORT FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE AUGUSTUS C. AGATE IAS PART 24
Justice

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THE MATTER OF AN ARTICLE 75 PROCEEDING OF
GEMINI TANNING, INC.& MARIELENA DIAKOIANNIS,

Plaintiff,

Index No.: 7132/11

Motion Dated:
April 5, 2011

-against-

Cal. No.: 14

VESTED BUSINESS BROKERS LTD.,

Defendant.

m# 1

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The following papers numbered 1 to 9 read on this Order to Show Cause by petitioners for a stay of arbitration pursuant to CPLR 7503(b).

	<u>Papers</u> <u>Numbered</u>
Order to Show Cause - Petition - Exhibits	1 - 4
Affirmation in Opposition - Exhibits	5 - 7
Replying Affirmations	8 - 9

Upon the foregoing papers, it is ordered that this Order to Show Cause by petitioner for a stay of arbitration pursuant to CPLR 7503(b) is decided as follows:

The parties herein entered into a Non-Exclusive Listing brokerage agreement on June 5, 2010. The agreement provides that "any action or dispute between the Owner and VBB ... shall at the option of either party be determined by arbitration administered by the National Arbitration Association, under its Commercial Arbitration Rules." Pursuant to a notice dated February 14, 2011, respondent served a demand for arbitration upon the petitioners. Petitioners now seek to stay the arbitration on the ground that respondent filed a demand for arbitration with an entity known as Arbitration Services, Inc. ("ASI") and not with the National Arbitration Association as set forth in the arbitration agreement.

It is well settled that arbitration is favored by New York

Courts, as a matter of public policy. (TNS Holdings, Inc. v MKI Sec. Corp., 92 NY2d 335, 339 [1998].) On a motion to stay or compel arbitration, there are three threshold questions to be resolved by the courts: (i) whether the parties made a valid agreement to arbitrate, (ii) whether such agreement, if made, has been complied with, and (iii) whether the claim sought to be arbitrated would be barred by limitation of time had it been asserted in a court of the State. (Rockland County v Primiano Constr. Co., 51 NY2d 1, 7 [1980]; Da Silva v Savo, 35 AD3d 647, 647 [2006]; County of Nassau v Civil Serv. Empls. Assn., Inc., 14 AD3d 509, 509 [2005].)

In the matter at hand, it is undisputed that the parties entered into a valid arbitration agreement, and there is no allegation that the claim would have been barred by the statute of limitations. Petitioners' main argument is that the agreement has not been complied with since ASI is not the proper entity to entertain the arbitration of this dispute. However, according to respondent, the National Arbitration Association merged into ASI on May 22, 2007 after the National Arbitration Association was sued for trademark infringement by National Arbitration and Mediation, Inc. and was forced to change its name. Respondent has submitted a printout of a case by National Arbitration & Mediation, Inc. v National Arbitration Association, which was filed in March 2006. Further, respondent notes that both the National Arbitration Association and ASI have the same address, 7600 Jericho Turnpike, Woodbury, New York. Moreover, the commercial arbitration rules of both entities, annexed to respondent's opposing papers, are substantially the same. In addition, the website referred to in the arbitration agreement, www.natarb.com, is the same website for ASI. Thus, petitioners have not provided a legal basis to stay the arbitration.

Accordingly, this Order to Show Cause by petitioners for a stay of arbitration pursuant to CPLR 7503(b) is denied.

The Temporary Restraining Order contained in the Order to Show Cause dated March 23, 2011, which was continued pending the determination of this application, is vacated and set aside.

Dated: July 7, 2011

AUGUSTUS C. AGATE, J.S.C.