

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 32

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IN THE MATTER OF THE ARBITRATION BETWEEN,
FIA CARD SERVICES, N.A. [etc],

Petitioner,

- against -

MIGUEL ESCOBAR,

Respondent.

Index Number: 18132/2009

Motion Calendar Number: 27

Submission Date: 10/21/09

Decision and Order

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Arthur F. Engoron, Judge

In compliance with CPLR 2219(a), this Court states that the following papers, numbered 1 to 5, were used on this petition to confirm an arbitration award and cross-petition to vacate the award:

Papers Numbered:

Notice of Petition and Petition	1
Certificate of Conformity and Billing Statements (petitioner)	2
Cross-Petition	3
Reply Affirmation (petitioner)	4
Reply Affirmation (respondent)	5

Upon the foregoing papers, the petition is denied and the cross-petition is granted, without prejudice to any rights and/or remedies either side may still have as to the matters here in dispute.

In this special proceeding, petitioner FIA Card Services, N.A., formerly known as MBNA America Bank, N.A., seeks to confirm a \$21,508.72 arbitration award in its favor issued by National Arbitration Forum ("NAF") against respondent Miguel Escobar. Respondent seeks to vacate the award. In support of the petition, petitioner has submitted, among other things, a purported arbitration agreement, purported MBNA credit card statements addressed to respondent; a purported notice of claim, purported proof of service of the notice of claim, and a purported arbitration award. In opposition to the petition, and in support of the cross-petition, respondent alleges, among other things, that he did not agree to arbitrate; that he was not notified of the arbitration proceeding; that petitioner failed serve him with the arbitration award; that petitioner did not properly serve him with the instant petition; that NAF is not a neutral forum, but is an arm of the debt collection industry, and is affiliated with the law firm, Mann Bracken, LLP that commenced this proceeding (and for whom a receiver apparently was appointed on February 25, 2010); and that the instant claim is barred by the Statute of Limitations.

This Court finds that the subject arbitration award must be vacated as a matter of public policy and in the interests of justice. Respondent has submitted evidence, unrebutted by petitioner, that NAF is not a neutral party in that it is affiliated with the debt collection industry and, apparently, stops sending cases to individual arbitrators who rule in favor of alleged debtors. Furthermore, although NAF's recent agreement to cease adjudicating debt collection cases is not dispositive of the instant proceeding, because the agreement was prospective, it is further evidence of institutional bias. This Court agrees with respondent that such bias itself, without the need to prove bias by individual arbitrators, at the very least strongly militates in favor of vacating an award.

As the award is being vacated on this ground, this Court need not and does not address the other issues noted above. In particular, whether petitioner may now, as a plaintiff, bring a plenary action against respondent, as a defendant, or whether the Statute of Limitations (in any event, a waivable defense) would bar such an action, is not before this Court.

Thus, for the reasons stated herein, the petition is denied, the cross-petition is granted, and the aforesaid arbitration award is hereby vacated, without prejudice to any rights and/or remedies either side may still have as to the matters here in dispute.

Dated: May 21, 2010



Arthur F. Engoron, J.C.C.