

**Fein v Langer**

2023 NY Slip Op 34745(U)

June 16, 2023

Supreme Court, New York County

Docket Number: Index No. 651198/2023

Judge: Jennifer G. Schecter

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY: COMMERCIAL DIVISION**

**PRESENT:** HON. JENNIFER G. SCHECTER **PART 54**

*Justice*

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**INDEX NO.** 651198/2023

ARIEL FEIN, SARAH KRUGER, ALAN FEIN, ASMSY,  
LLC, A NY LIMITED LIABILITY COMPANY

**MOTION SEQ. NO.** 005

Petitioners,

- v -

**DECISION + ORDER ON  
MOTION**

IRVING LANGER,

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 91, 92, 93, 94, 95, 96, 97, 98

were read on this motion to/for

RENEWAL

There is no basis for reargument since respondent does not identify anything that the court overlooked on the underlying motion (*see William P. Pahl Equip. Corp. v Kassiss*, 182 AD2d 22, 27-28 [1st Dept 1992]). Nor is there a basis for renewal based on the settlement agreement (Dkt. 93). Respondent does not proffer any reasonable justification for why he did not or could not have submitted it on the prior motion (*see Abu Dhabi Commercial Bank, P.J.S.C. v Credit Suisse Sec. (USA) LLC*, 114 AD3d 432, 433 [1st Dept 2014]). His excuses--that he forgot about it, that he may not have signed it, and that it may be unenforceable--do not warrant renewal. On the contrary, if for some reason he is not bound by the settlement agreement then it could not possibly support renewal since it would not change the court's prior determination (*see Shawe v Kramer Levin Naftalis & Frankel LLP*, 167 AD3d 481 [1st Dept 2018]). And, if he did sign it, there is simply no excuse for not submitting it, particularly given the import of the prior proceedings in the underlying motion papers.

The argument that respondent did not realize the potential import of the settlement agreement until after the March 10, 2023 oral argument is not a reasonable justification (*see American Audio Serv. Bur. Inc. v AT & T Corp.*, 33 AD3d 473, 476 [1st Dept 2006]). "Renewal is not available as a 'second chance' for parties who have not exercised due diligence in making their first factual presentation" (*Chelsea Piers Mgt. v Forest Elec. Corp.*, 281 AD2d 252 [1st Dept 2001]). In any event, there was ample time between the March 10 oral argument on the preliminary injunction motion and when the court issued a final ruling on the petition on April 26, 2023--during which time the parties submitted further briefing--for respondent to have raised this issue (*see Abu Dhabi Commercial Bank, P.J.S.C.*, 114 AD3d at 433).

Given the denial of this motion the fee application will be supplemented (*see* Dkt. 83 at 2).

Accordingly, it is ORDERED that respondent's motion for reargument and renewal is DENIED. And it is further ORDERED that petitioners may supplement their fee application by June 22, 2023, to which objections may be filed by June 29, 2023.

6/16/2023

DATE

CHECK ONE:

CASE DISPOSED  
GRANTED

DENIED

NON-FINAL DISPOSITION  
GRANTED IN PART

OTHER

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JENNIFER G. SCHECTER, J.S.C.