

SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Hon. Sherry Klein Heitler
Administrative Order

Matter of Application of

SHARON MAHN,

Petitioner,

- v -

INDEX NO. 653048/2014

MAJOR LINDSEY and AFRICA, LLC,

For An Order Vacating the Final in Case No.
13 20 1000 2267 of the American Arbitration
Association, New York County,

Respondent.

Administrative Order:

By letter dated October 27, 2014, respondent's counsel requests that "this proceeding be dismissed, or at least consolidated with Petitioner's prior application related to the same arbitration (Index No. 155645-2014), which was adjudicated by Justice Mendez in Part 13." By letter of the same date, counsel for petitioner Sharon Mahn opposes both dismissal and consolidation and asks that this proceeding remain in the Commercial Division.

On September 15, 2014, the Hon. Manuel J. Mendez issued a judgment in Matter of Sharon Mahn (Index No. 155645-2014) denying Ms. Mahn's petition to vacate the arbitration award at issue on the ground of arbitrator partiality. That judgment is being appealed. On October 6, 2014, petitioner commenced this second proceeding seeking to vacate the same arbitration award under a new index number and requested assignment to the Commercial Division. It is currently assigned to the Hon. Shirley Kornreich (Part 54). On October 7, 2014, respondent filed a motion in the first proceeding for a sealing order in connection with respondent's allegedly forthcoming petition to confirm the final award rendered in its favor in the arbitration. That motion was fully submitted on October 29, 2014 to Justice Mendez.

Counsel for respondent argues that, pursuant to CPLR 7502 (a) (iii), it was improper for Ms. Mahn to file, as a new action, a second petition related to the same arbitration. CPLR 7502 (a) (iii) states: "Notwithstanding the entry of

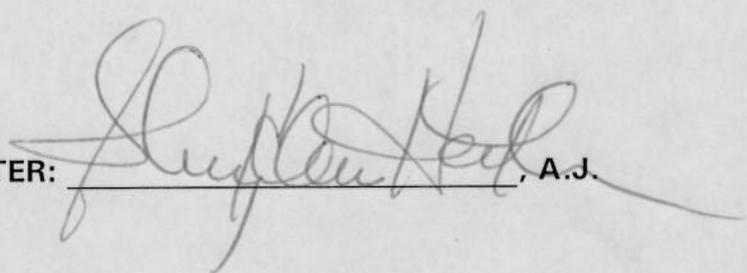
judgment, all subsequent applications shall be made by motion in the special proceeding or action in which the first application was made.”

As administrative judge, I have no authority to order the dismissal or consolidation of any actions pending before different judges of this court. My authority is limited to review of the random assignment of cases to the various justices on the grounds that cases either belong or do not belong in the Commercial Division or are related to other pending matters (see Uniform Rule 202.70 [e], [f] [2]; Supreme Court, Civil Branch New York County's Operations Manual, § I [D] [2]).

It should be noted that, when counsel for Ms. Mahn filed this second proceeding, he listed on the Request for Judicial Intervention the Mendez proceeding as a related matter. It was not assigned to Justice Mendez, only because the first proceeding was listed as "disposed" in the Court's Civil Case Information System (see Operations Manual, § I [D] [2] as a result of the September 15, 2014 judgment. Since the two proceedings are clearly related and the first proceeding is, in fact, still active, reassignment of Ms. Mahn's second petition to vacate the arbitration award to Justice Mendez would serve the interests of judicial economy.

For the foregoing reasons, the General Clerk's Office is directed to reassign this proceeding to the Hon. Manual J. Mendez (I.A.S. Part 13) as related to Index No. 155645/2014. The petition is currently returnable in the ECF Submissions Part on December 17, 2014.

Dated: November 3, 2014

ENTER:  A.J.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION