

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: PART 32

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VICTORIA C. PERRY, :
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 Plaintiff, : **DECISION AND ORDER**
 :
 -against- :
 :
 CHARLENE P. BONNEAU, : Index No. 18428/01
 :
 Defendants. :
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Papers read on the motion: order to show cause -1; opposition - 2; and reply -3.

CHARLES J. MARKEY, J.:

Upon the foregoing papers, plaintiff moves for sanctions against defendant for failing to abide by a court order mandating arbitration. On or about April 22, 2004, Justice Richard D. Huttner, then sitting in IAS Part 38, transferred this action to arbitration. Over a year passed, and no action was taken. On October 25, 2005, in response to a motion by plaintiff to restore this case to the trial calendar, the parties entered into a stipulation that read: "Plaintiff's motion is granted to the extent that the matter is to be resolved by binding arbitration within 90 days of this Order." Justice Huttner, signed the stipulation transforming it to a court-ordered stipulation.

The two counsel that appeared before the undersigned on April 4, 2006 to argue the present motion for sanctions, Seth Berman, Esq., for the plaintiff, and Jeffrey M. Kalenka, Esq., for the defendant, were the two signatories to the October 25, 2005 agreement. Mr. Berman served a copy of the so-ordered stipulation upon his adversary on November 1, 2005. In response to receiving the notice of entry, defendant did nothing, neither noticing an appeal nor moving to resettle the order. More important, despite several attempts by plaintiff's counsel to arrange an

arbitration, defendant has failed to cooperate in the effort and has resisted all efforts to proceed. Defense counsel's position on this motion is that the court-ordered stipulation failed to set any parameters to the arbitration as to dollar amounts. Absent clarification, defendant refuses to enter into an arbitration.

Defendant's position is without merit. First, defendant made no effort since the date of the so-ordered stipulation in October, 2005 to vacate the stipulation or to resettle the order. This Court is bound to enforce agreements entered into by counsel, especially those that bear the imprimatur of the Court (*see, Socrates Psychological Servs., P.C. v. Progressive Cas. Ins. Co.* (7 Misc 3d 642, 647, 657 [NYC Civ Ct Queens County 2005]; *Pueblo Med. Treatment ex rel. Claudio v. Progressive Cas. Ins. Co.*, 2005 WL 525433, 2005 NY Slip Op 50287 [U]; *Hoss Med. Servs. v. Govt. Employees Ins. Co.*, 4 Misc 3d 521 [NYC Civ Ct Queens County June 17, 2004]).

The so-ordered stipulation in the present action merits enforcement. The law encourages arbitration (*Nationwide Gen. Ins. Co. v. Investors Ins. Co. of America, Inc.*, 37 NY2d 91, 95 [1975]; *State v. Philip Morris Inc.*, ___ AD3d ___, 2006 WL 871154, 2006 NY Slip Op 02635 [1st Dept. 2006]), the law disfavors disavowals of stipulations (*Wright v. Brockett*, 150 Misc 2d 1031, 1038 [Sup. Ct. Bronx County 1991]), and the law requires enforcement of court orders (*Ortega v. City of New York*, 809 NYS2d 884, 895, 2006 NY Slip Op 26052 [Sup Ct Kings County 2006]).

Justice Louis Brandeis stated: "We who are lawyers have a special obligation, and that is to make our law efficient. The disgrace that has come to the law, the discredit, the disrespect which has come to the law, is because it is inefficient, and because we make rules and we do not

provide any machinery for enforcing them.” (The Social and Economic Views of Mr. Justice Brandeis, at 402 [Alfred Leif ed. Vanguard Press, Inc., 1930] [quoting excerpts of Brandeis’s testimony on “Price and Business Incentive” before a United States House of Representatives Subcommittee on May 15, 1912], quoted in The Words of Justice Brandeis, at 120 [Solomon Goldman ed. Henry Schuman, Inc., 1953], and in *Garcia v. Munnerlyn*, 191 Misc 2d 689, 689-690 [NYC Civ Ct Queens County 2002]). As one court recently and eloquently pointed out: “Enforcement of court orders goes to the very underpinning of our legal system and without enforcement there would be no rule of law” (*Ortega v. City of New York*, ___ Misc 3d at ____, 809 NYS2d at 895, *supra*).

If defense counsel had wanted to add parameters to the scope of the arbitration, it should have done so at the time of the preparation of the stipulation or done so by appropriate motion within a reasonable time thereafter. This Court, absent allegations of trickery and deceit, will not make alterations to a prior court order that is plain and unambiguous on its face. Defense counsel has not cited any case showing a court vacating or modifying a mandate to arbitration by later adding parameters, and this Court’s independent legal research has not found any such case.

“[B]inding arbitration” must mean exactly that. Therefore, the order to show cause is granted to the extent that the defendant and her counsel must proceed to binding arbitration on or before June 2, 2006. Plaintiff shall take all steps, including documenting in writing so as to leave a paper trail, demonstrating all efforts done to notify defendant counsel of the arbitration and to secure the cooperation of defendant and her counsel. If defense counsel continues to resist the arbitration, plaintiff’s counsel shall serve and file an affirmation attesting to all the steps taken to secure defense counsel’s cooperation, and this Court will enter a judgment of

liability against the defendant and will set a date for an inquest on damages before the undersigned.

The Court also awards plaintiff the sum of \$500.00 for the legal expense in making the current motion, as well as the costs of the motion. The \$500 and motion costs must be paid by defense counsel to plaintiff's counsel on or before June 2, 2006. The Court further advises defendant that further noncompliance with Justice Huttner's order may result in an award of sanctions pursuant to Rule 130.

Plaintiff shall serve a "Filed" copy of this order with notice of entry upon defense counsel and the defendant. Defense counsel shall forward a copy of this order to the defendant.

The foregoing constitutes the decision, order, and opinion of the Court.

Hon. Charles J. Markey
Justice, Supreme Court, Queens County

Dated: Long Island City, New York
April 10, 2006

Appearances:

For the Plaintiff: Seth W. Berman, Esq., of counsel to Law Office of Kenneth M. Mollins, P.C.,
425 Broad Hollow Road, Suite 215, Melville, NY 11747

For the Defendants: Jeffrey M. Kalenka, Esq., Law Office of Robert P. Tusa, 1225 Franklin
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