

**Matter of Mounier v American Tr. Ins. Co.**

2007 NY Slip Op 00141

Decided on January 9, 2007

Appellate Division, Second Department

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Decided on January 9, 2007

**SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT**

ROBERT W. SCHMIDT, J.P.

FRED T. SANTUCCI

ROBERT A. LIFSON

JOSEPH COVELLO, JJ.

2005-03804

(Index No. 33120/04)

**[\*1] In the Matter of David Mounier, appellant,**

**v**

**American Transit Insurance Company, respondent.**

David Mounier, New York, N.Y., appellant pro se.

Marjorie E. Bornes, New York, N.Y., for respondent.

**DECISION & ORDER**

In a proceeding pursuant to CPLR article 75 to vacate an arbitration award, the petitioner appeals from an order of the Supreme Court, Kings County (Harkavy, J.), dated March 11, 2005, which denied the petition and confirmed the arbitration award.

ORDERED that the order is affirmed, with costs.

The arbitration award under review was not arbitrary, capricious, or irrational (*see* CPLR 7511[b][1][iii]; *Matter of Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 214, 223; *Friedman v Gleeson*, 300 AD2d 404). Moreover, the appellant waived any objection to the alleged misconduct or partiality of the arbitrator on the basis of purported ex parte communications with the respondent's counsel (*see Matter of Reilly v Progressive Ins. Co.*, 5 AD3d 776, 777; *Matter of Crystal City Police Benevolent Assn. [City of Corning]*, 91 AD2d 843). In any event, the appellant failed to meet his burden of proving, by clear and convincing evidence, that any impropriety on the part of the arbitrator prejudiced his rights or the integrity of the arbitration process (*see Matter of Hausknecht v Comprehensive Med. Care of N.Y.*, 24 AD3d 778, 780, citing *Matter of James A. Smith Contr. v Stahl*, 162 AD2d 688; *Matter of Montague Pipeline Tech. Corp. v Grace-Lansing & Grace Indus.*, 238 AD2d 510). Accordingly, the Supreme Court properly denied the appellant's petition and confirmed the arbitration award (*see* CPLR 7511[e]).

SCHMIDT, J.P., SANTUCCI, LIFSON and COVELLO, JJ., concur.

ENTER:

James Edward Pelzer

Clerk of the Court