



October 23, 2012

## ADR Case Update 2019 - 21

### New York

- **NO GROUNDS TO VACATE ARBITRATION AWARD**

*Zina Kotlyar, et al., v. Aleksandr Khlebopros, Seagate Mini Mall, Iosif Felsherov*  
2019 WL 5057854  
Supreme Court, Appellate Division, Second Department, New York  
October 9, 2019

Seagate Mini Mall, et al., (defendant corporations) own and operate a spa in Brooklyn, in which Aleksandr Khlebopros (defendant appellant) and Zina Kotlyar et al., (plaintiffs) own shares. After Kotlyar sued the defendants for breach of fiduciary duty, Khlebopros filed counterclaims seeking the dissolution of the corporations and commenced a third-party action against Iosif Felsherov (third party defendant). The matter proceeded to arbitration pursuant to the shareholders' agreements, with the arbitrator finding that Khlebopros was not entitled to dissolution because the majority shareholders had not engaged in oppressive conduct. Felsherov's motion to confirm the award was granted and Khlebopros appealed.

The Supreme Court, Appellate Division, Second Department, New York, affirmed. Judicial review of arbitration awards is extremely limited. This award was neither irrational nor violative of public policy, and Khlebopros failed to present evidence of bias or the appearance of bias on behalf of the arbitrator.

- **MASTER ARBITRATOR EXCEEDED HIS POWER**

*In the matter of Acuhealth Acupuncture v. Country-Wide Ins. Co.*  
2019 WL 5057852  
Supreme Court, Appellate Division, Second Department, New York  
October 9, 2019

After Country-Wide Insurance denied a claim for which Acuhealth Acupuncture was the assignee, Acuhealth submitted the claim to arbitration. The arbitrator refused to consider Country-Wide's defense that Acuhealth was fraudulently incorporated because the submissions were late, and found in favor of Acuhealth. Country-Wide appealed and the master arbitrator vacated the award and issued a new award in favor of Country-Wide, on the grounds that Acuhealth was

fraudulently incorporated. Acuhealth's motion to vacate the master arbitrator's award and confirm the original award was granted and Country-Wide appealed.

The Supreme Court, Appellate Division, Second Department, New York, affirmed and remitted. An arbitrator acts within his/her discretionary authority by refusing to entertain late submissions. Rejecting the original arbitrator's refusal to entertain late submissions in support of the defense that Acuhealth was fraudulently incorporated was outside the master arbitrator's power. The matter was remitted to the Supreme Court to determine attorney's fees due Acuhealth.

*Case research and summaries by Deirdre McCarthy Gallagher and Richard Birke.*

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