Judiciary Law § 217-a: Legislature Sanctions Administrative Vacatur of Default Judgments

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As the dissent pointed out, the issue in this case was not whether an arbitrable agreement existed, but rather who was to conduct the arbitration. This issue was not the sort of threshold determination intended by the drafters to fall within the preclusions of CPLR 7503(c). By including objection to choice of arbitrator within the caveat of this provision the court has created a precedent open to abuse. A party might now not only force arbitration of an issue with no valid arbitrable basis, but choose his own arbitrator to determine the outcome as well. This is an unwarranted extension of an already stringent procedural obstacle.

JUDICIARY LAW


Section 217-a has been added to the Judiciary Law, giving an administrative judge, a presiding justice or a judge in charge of the administration of any court of record the power to bring a proceeding to set aside default judgments which appear to have been obtained by "fraud, misrepresentation, illegality, unconscionability, lack of due service, violation of law, or other illegalities. . . ." The remedies available in the proceeding include (1) a vacatur or stay of execution of such judgments (2) a vacatur of summonses and complaints from which illegal judgments may result (3) a decree of restitution of any payments collected from judgment debtors, and (4) any other relief deemed to be just and proper. The proceeding may be initiated when the judge or justice has satisfied himself that default judgments were illegally obtained in "a number of instances." Notice must be given to the parties or their attorneys and the proceeding must be determined by a judge other than the initiating judge or justice. This provision gives approval to a practice initiated in 1971 by Justice Edward Thompson, Administrative Judge of the New York City Civil Court, which has already resulted in the vacating of thousands of default judgments.

168 See note 160 supra.
169 CPLR 7504 provides that upon application of either party, the court may appoint an arbitrator where an agreement has failed to name one or where a dispute has arisen on this point. The facts of this case justify application of this provision, and the mere fact that the provision exists offers some support for the argument that choosing an arbitrator is an issue independent of the determination of the threshold issues of section 7503.
171 Id.
172 Id.