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Demand for Arbitration--CPLR 7503(c): Two Notices Held to Constitute a Valid Demand

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ARTICLE 75—ARBITRATION

Demand for arbitration — CPLR 7503(c): Two notices held to constitute a valid demand.

CPLR 7503(c) makes provision for service of a notice of intention to arbitrate. If the requirements of the section are complied with, and the recipient of the notice fails to request a stay of arbitration within ten days of service, the recipient will be precluded from objecting to the validity of the alleged agreement to arbitrate. He will also be denied the right to object on the ground of non-compliance with the alleged agreement. However, where the court finds that the notice has been insufficient, the ten-day limitation will not apply.[275]

In the case of *Passik v. MVAIC*[276] the petitioner served a demand for arbitration. The notice failed to state a lack of insurance and thus was insufficient. Two weeks later a letter was received by MVAIC which incorporated the initial notice and added the denial of insurance coverage by petitioner's carrier. The court held that both documents must be read together and denied MVAIC's motion to stay the arbitration; the ground of the denial was that the motion was made after the expiration of the ten-day limitation period. The court reasoned that the purpose of 7503(c) is to give notice of the proposed arbitration to the other party. Therefore, if before an insufficient demand is acted upon, a further notice is given and together the two notices comply with 7503(c), the ten-day limitation period will commence to run only after service of the second of the two papers.

While this case does indicate a judicial effort to uphold the claimant's notice of arbitration, the practitioner is cautioned to conform the first notice to the requirements of CPLR 7503(c). The general indication from the cases is that the courts will not often be so indulgent.[277]

Failure to apply for stay of arbitration after receiving notice of intention to arbitrate.

CPLR 7503(3) provides: "A party may serve upon another party a notice of intention to arbitrate . . . stating that unless the party served applies to stay the arbitration within ten days after such service *he shall thereafter be precluded from objecting that a valid agreement to arbitrate was not made. . . .*" (Emphasis added.)

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[275] Hesslein & Co., v. Greenfield, 281 N.Y. 26, 22 N.E.2d 149 (1939).
[276] 42 Misc. 2d 447, 248 N.Y.S.2d 256 (Sup. Ct. 1964).
[277] Porteck v. MVAIC, 19 App. Div. 2d 802, 243 N.Y.S.2d 255 (1st Dep't 1963); Double E Food Mkts., Inc. v. Beatson, 18 App. Div. 2d 976, 238 N.Y.S.2d 280 (1st Dep't 1963) (memorandum decision); Herzberg v. MVAIC, 42 Misc. 2d 790, 249 N.Y.S.2d 588 (Sup. Ct. 1964).