SCANNED ON 7/1/2008

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. CAROL EDMEAD
Justice

PART 35

Index Number : 602145/2007
MORELLI & GOLD, LLP
VS.
ALTMAN, PAUL H.
SEQUENCE NUMBER : # 001
DISMISS

INDEX NO. 602145-07
MOTION DATE 3/26/08
MOTION SEQ. NO. #001
MOTION CAL. NO.

ere read on this motion to/for

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	1
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

FILED
COUNTY CLERK'S OFFICE NEW YORK

Upon the foregoing papers, it is ordered that this motion

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

In accordance with the accompanying Memorandum Decision, it is hereby

ORDERED that the motion by defendant Paul H. Altman to dismiss the complaint pursuant to CPLR 3211(a)(8), for: (1) defective service of summons with notice pursuant to CPLR 308, (2) untimely service of complaint pursuant to CPLR 3012(b), (3) lack of subject matter jurisdiction pursuant to CPLR 3211(a)(2) and (4) arbitration and award, collateral estoppel and *res judicata* pursuant to CPLR 3211(a)(5), and for sanctions and costs against plaintiff pursuant to Part 130-1.1 *et seq.*, is denied; and it is further

ORDERED that the summons and complaint are deemed served as of the date of this order, and defendant shall serve an answer within 30 days of service by plaintiff of this order with notice of entry; and it is further

ORDERED that plaintiff serve a copy of this order with notice of entry upon all parties within 20 days of entry.

This constitutes the decision and order of the Court.

Dated: 6/30/08

J.S.C.
HON. CAROL EDMEAD

Check one: ☐ **FINAL DISPOSITION** ☑ **NON-FINAL DISPOSITION**

Check if appropriate: ☐ **DO NOT POST** ☐ **REFERENCE**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

MORELLI & GOLD, LLP,

Plaintiff,

-against-

PAUL H. ALTMAN,

Defendant.

Index No. 602145/07

DECISION/ORDER

HON. CAROL ROBINSON EDMEAD, J.S.C.

MEMORANDUM DECISION

In this action to recover legal fees, defendant, Paul H. Altman ("Altman"), moves pre-answer, for an order dismissing the complaint of Morelli & Gold, LLP ("the LLP") pursuant to CPLR 3211(a)(8), for: (1) defective service of summons with notice pursuant to CPLR 308, (2) untimely service of complaint pursuant to CPLR 3012(b), (3) lack of subject matter jurisdiction pursuant to CPLR 3211(a)(2) and (4) arbitration and award, collateral estoppel and *res judicata* pursuant to CPLR 3211(a)(5). Altman also seeks an order sanctioning LLP and awarding costs pursuant to Part 130-1.1 *et seq.* for pursuing a frivolous complaint.

FILED
JUL 01 2008
COUNTY CLERK'S OFFICE
NEW YORK

Factual Background

In or about April 2002, Altman and Richard Gold, a Partner of the LLP ("Mr. Gold"), entered into a written agreement (the "Representation Agreement") to perform legal services in connection with matters relating to Altman's son and his son's mother (the "underlying action"). The LLP represented Altman from April 2002 until February 2006.

At the conclusion of the LLP's representation, Altman refused to pay the balance of the LLP's legal fees. Altman then submitted the fee dispute to the Fee Dispute Resolution Program

("FDRP").[1] After a hearing, the arbitrators determined that the LLP was entitled to a portion of the legal fees claimed, and in light of the payments previously paid by Altman, directed the LLP to refund Altman $4,943.09 (the "Arbitration Award"). Unsatisfied with the Arbitration Award, the LLP commenced the instant action for a "*trial de novo.*"

Thereafter, Altman filed a complaint with the Departmental Disciplinary Committee of the Supreme Court of New York ("Disciplinary Committee" or "DDC") against Mr. Gold. In his disciplinary complaint, Altman alleged that the LLP's invoices were not properly itemized, submissions to the court were either improper or insufficient, and Mr. Gold misrepresented the status of the proceedings and his knowledge of family court procedural law.

Altman's Motion to Dismiss

Altman argues that service of the summons with notice was defective. The summons with notice was stapled to a telephone pole in front of his apartment building. Altman claims that service should be made by "affixing the summons to the door of . . . the actual dwelling place or usual place of abode and mailed." Since none of these requirements were complied with, Altman did not receive proper notice.

Altman also argues that service of the complaint was untimely. Altman served the LLP with a notice of appearance and demand for complaint on or about September 25, 2007. According to Altman, the LLP was required to serve the complaint within twenty days after service of the demand. However, the LLP served the complaint in or around January 10, 2008,

---

[1]To streamline the resolution of fee disputes between lawyers and their clients, the Courts created a mandatory Fee Dispute Resolution Program under Part 137 of Title 22 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("Part 137"). (*See* 22 NYCRR Part 137 (effective January 1, 2002); (*see also Borgus v. Marianetti*, 7 Misc.3d 1003(A), 801 N.Y.S.2d 230, Rochester City Ct,[2005]).

"some 87 days" late. In addition, the complaint was mailed to the wrong address. Altman's demand directed that the complaint be served at his home address in Sarasota, Florida. However, the LLP mailed the complaint to Altman's post office box, even though it was aware that Altman "rarely checks that address for mail."

Altman further argues that notwithstanding the procedural deficiencies, this action should be dismissed because the complaint is barred on the grounds of *res judicata*, collateral estoppel, arbitration and award, and as a result, the Supreme Court lacks jurisdiction in this matter.

The legal fee dispute raised in this action has already been litigated in binding arbitration and determined by the arbitrators.

Altman also points out that the LLP waived the right to a *trial de novo* pursuant to the arbitration clause of the Representation Agreement ("Arbitration Clause"). The Arbitration Clause provides in pertinent part:

> . . . in the event that a dispute arises between us concerning our attorneys' fees and expenses, you have an absolute right to have those disputes resolved through arbitration which will be binding upon both our firm and yourself.

Even if the LLP had the right to "*de novo*" review, the LLP failed to properly commence this action within the time prescribed by law in that the service of the summons with notice is still defective.

Finally, Altman contends that the LLP should be sanctioned in light of the frivolous complaint.

The LLP's Opposition

The LLP claims that according to the affidavit of the process server, after making several

unsuccessful attempts to serve Altman, the summons with notice was affixed to the door of Altman's "dwelling house." Altman does not deny receiving the process server's mailing.

The LLP also contends that it delayed the service and filing of the complaint until the Disciplinary Committee's disciplinary investigation was completed. Thus, the LLP's delay should be excused and Altman should be directed to answer the complaint. Further, dismissal for untimely service of a complaint, requires that Altman first reject the complaint upon service, and here Altman did not reject or return the LLP's complaint. In any event, if service is found to be defective, the LLP should be permitted an extension of time to effectuate service on Altman. As to service of the complaint at Altman's post office box, the LLP contends that during the course of its representation, he requested that all correspondence be mailed to his post office box.

As to the Arbitration Award, the LLP argues that there was no understanding between the parties that such Award would be final and binding. Consistent with Rule 137, the Arbitration Clause apprised Altman that an election by him to proceed to arbitration would be binding upon the LLP. In other words, once a client elects arbitration, arbitration is mandatory for the attorney. The LLP claims that while an attorney and client may agree that the arbitration award itself is "final and binding upon the parties and not subject to de novo review," such agreement must be "in writing in a form prescribed by the Board of Governors" and no such form was ever signed by either party. Instead, in connection with submitting the fee dispute to arbitration, Altman signed the "Client Request for Fee Arbitration" form in which he agreed that he understood that the Arbitration Award is binding upon all parties, unless either party rejects such Award by commencing an action on the merits of the fee dispute, *i.e.*, a trial *de novo*. Thus, Altman's request for sanctions lacks merit.

Altman's Reply

Altman argues that the affidavit of the process server clearly indicates that the summons and notice were posted "on the property" and not "nailed" to his door as required. Paradoxically, the process server was unable to serve a person of suitable age and discretion, but spoke with an unspecified person who advised that Altman was not in the military. Thus, the record shows that Altman was not served personally.

Altman argues that the law does not require that he first reject the complaint after it is served in order to prevail on a motion to dismiss.

Nor is there a reasonable excuse for the untimely service of the complaint. That the DDC's investigation was pending is of no moment because the time to serve the complaint is statutorily mandated. The DDC has no jurisdiction over the litigation in this Court and the DDC is permitted to investigate and prosecute an attorney during pending litigation. The DDC has also suspended its investigation until the conclusion of the instant litigation. Also, DDC's investigation does not stay the litigation in this Court and the parties did not agree to stay the instant litigation.

Further, Altman claims that the LLP's mailing of the complaint to his post office box was a delay tactic designed to obtain an advantage over an unrepresented client.

In any event, the LLP has failed to demonstrate a meritorious claim, which has already been decided against the LLP. And, the LLP's purported "objections" to the manner in which the arbitration was conducted, were waived due to its failure to file an objection letter with the FDRP pursuant to Part 137.

Altman asserts that both the election to proceed to arbitration and the award are binding

on the LLP. And, as the preparer of the Representation Agreement, the LLP cannot now argue that the terms thereof were ambiguous. Since the arbitrators have ruled, the LLP is bound by *res judicata*, collateral estoppel or arbitration and award.

Further, there is no "pre-printed form" where parties waive their right to trial *de novo*, which is done by contract or retainer. The requirement that a waiver of trial *de novo* be in writing on the "pre-printed form" only applies to "the client" for the benefit of clients, and not to the attorney. Thus, the LLP's waiver of the trial *de novo* in the Retainer Agreement is binding on the LLP. And, as to Altman's purported acknowledgment of signing the Fee Arbitration Form which permits a trial *de novo*, the Arbitration Administration told him that his signature was required, and that the LLP's Representation Agreement would control.[2]

Analysis

Service of Summons with Notice

With respect to the service of the summons with notice, pursuant to CPLR 308(4), "[w]here service under paragraphs 1 and 2 cannot be made with due diligence" service may be made "by affixing a summons to the door of either the *actual* . . . dwelling place or ususal place of abode" *and* by mailing the summons to such person at his last known residence. The affixing of the summons "must be to an *actual* dwelling place or usual place of abode" (*Spath v Zack*, 36 AD3d 410, 829 NYS2d 19 [1st Dept 2007]; *McCaslin v Peterson*, 13 Misc 3d 1206, 824 NYS2d 755 [Supreme Court New York County 2005]).

The affidavit of the process server indicates that after three unsuccessful attempts at

---

[2] In its sur-reply, the LLP contends that Altman's contention that there is no "pre-printed form" lacks merit, in that such form is readily accessible from the Unified Court System's website.

service upon a person of suitable age and discretion, the summons with notice was affixed to the "door of said premises [7911A Kennedy Lane, Sarasota, Florida 34340]." The affidavit notes that the summons with notice was "posted on the premises on 8/31/07 12:10 p.[m.]." Altman, however, insists that the summons with notice was "stapled to a telephone pole out in front of the large gated property where [he] rents" an apartment.

Notwithstanding the issue as to whether the summons with notice was properly affixed to Altman's door, late service is permissible under CPLR 306-b "upon good cause shown or in the interest of justice" (*Spath v Zack, supra*; *Lippett v Educ. Alliance*, 14 AD3d 430, 431 [1st Dept 2005]). CPLR 306-b provides in pertinent part:

> If service is not made upon a defendant within the time provided in this section, the court, upon motion, shall dismiss the action without prejudice as to that defendant, or upon good cause shown or in the interest of justice, extend the time for service.

To establish the requisite good cause, reasonable diligence in attempting service must be shown, but the interest of justice is a broader standard, which does not require a showing of good cause, and permits the court to consider many factors (*Spath v Zack, supra, citing Mead v Singleman,* 24 AD3d 1142, 806 NYS2d 783 [2005]). These factors include, the meritorious nature of the action, the expiration of the statute of limitations, the length of delay in service, plaintiff's diligence (*Leader v Maroney*, Ponzini & Spencer, 97 NY2d 95, 104, 736 NYS2d 291 [2001]).

Here, the LLP requests an extension of time to effectuate proper service, and the Court finds that an extension of time to re-serve Altman is warranted. There is a possibility that the statute of limitations may bar recommencement of this action, and there is no legal prejudice to

Altman, who had notice of the action *(Spath v Zack, supra citing Chiaro v D'Angelo*, 7 AD3d 746, 776 NYS2d 898 [2004]). Also, it is undisputed that Altman lives in an apartment building located within a gated community, and Altman does not indicate that the gate is manned so that service upon a person of suitable age and discretion may have been made. Therefore, dismissal of the complaint based on failure to annex the summons with notice upon the "door" pursuant to CPLR 308 is denied.

Service of the Complaint

With respect to the LLP's delay in service of the complaint, CPLR 3012(b) sets forth the time within which the service of a complaint, where the summons was served without the complaint, must be effectuated. CPLR 3012(b) provides that

> If the complaint is not served with the summons, the defendant may serve a written demand for the complaint within the time provided in subdivision (a) of rule 320 for an appearance. Service of the complaint shall be made within twenty days after service of the demand. . . .

On September 25, 2007, Altman served a demand for complaint. It is uncontested that the complaint was due to be served within 20 days thereafter, on October 15, 2007. It is also uncontested that the LLP did not serve the complaint, however, until, 87 days thereafter, on January 10, 2008.

However, the Court has "considerable discretion when considering a motion to dismiss pursuant to CPLR § 3012(b)" (*Stevens v Stevens*, 165 AD2d 780 [1st Dept 1990]). "In order to avoid dismissal under CPLR 3012 (b), the LLP must demonstrate a reasonable excuse for the delay and a meritorious claim against the defendant" *(Id.)* "[T]he decision as to what constitutes a reasonable excuse ordinarily lies within the sound discretion of the trial court . . ." (*Barasch v*

Micucci, 49 NY2d 594, 599 [1980]). The demonstration of a meritorious claim "may be satisfied by the filing of one or more 'affidavits of merit' containing evidentiary facts and attested to by individuals with personal knowledge of those facts . . . [a]s a general rule, these affidavits must be sufficient to establish prima facie that the plaintiff has a good cause of action" (*Barasch v Micucci*, 49 NY2d 594 *supra*). If the plaintiff has "not evinced any intent to abandon their claim or otherwise prejudiced defendant, it is not an abuse of discretion for . . . the court to refuse to dismiss the complaint on timeliness grounds" (*Rose v Our Lady of Mercy Med. Ctr.*, 268 AD2d 225 [1st Dept 2000]). The "verified" complaint alleges sufficient facts to support a claim for recovery of legal fees under theories of breach of contract, unjust enrichment, account stated, and legal fees in connection with recovering unpaid legal fees. Furthermore, there is no indication that the LLP intended to abandon this action.

Furthermore, Altman's contention that service of the complaint at his "post office box" warrants dismissal of the complaint lacks merit. CPLR 308 also governs the manner of service of a complaint, and mailing the complaint to an incorrect address deprives the Court of personal jurisdiction, warranting dismissal of the complaint (*Foster v Cranin*, 180 AD2d 712, 579 NYS2d 742). "The 'nail and mail' provision of the CPLR permits a plaintiff to mail duplicate process to the defendant at his last known residence" (*Feinstein v Bergner*, 48 NY2d [1979] *supra*). The term "residence is intended to be synonymous with address . . ." (*Mangold v Neuman*, 87 AD2d 780 [1st Dept 1982]) and it has been stated that "it is not uncommon for residences to bear post-office box addresses" (*Townsend v Hanks*, 140 AD2d 162 [1st Dept1988]).

It is uncontested that Altman listed his home address on Kennedy Lane in his demand for complaint, and that notwithstanding his demand, the LLP served Altman at his post office

address. However, it is also uncontested that the LLP was previously directed to send all notices to Altman at his post office address. This is not an instance where the complaint was sent to an "incorrect" address, as Altman does not deny that the post office address is his. The complaint herein was sent to an *additional* address of the defendant, an address which Altman previously designated at an address to receive notices. Therefore, dismissal of the complaint based on the untimely service and incorrect mailing of the complaint is denied.

Arbitration and Award, Res Judicata and Collateral Estoppel

Collateral estoppel, *res judicata* and the defense of arbitration and award are "important specific defenses which may support dismissal" (Bender & Company, New York Civil Practice: CPLR P 3211.25 [2007]). "Res judicata and collateral estoppel require that the party be bound by the prior determination . . . and the prior determination must have been a final judgment (or order) on the merits" (Bender & Company, New York Civil Practice: CPLR P 3211.25 [2007]). "Collateral estoppel is a corollary to the doctrine of res judicata; it permits in certain situations the determination of an issue of fact or law raised in a subsequent action by reference to a previous judgment on a different cause of action in which the same issue was necessarily raised and decided" (*Gramatan Home Investors Corp. v Lopez,* 46 NY2d 481, 485 [3d Dept 1979]). The doctrine of *res judicata* provides that "once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred . . ." (*O'Brien v Syracuse*, 54 NY2d 353, 357 [1981]).

The affirmative defense of arbitration and award under CPLR 3211 (a)(5) is "available only when the dispute has already gone to arbitration and an award has been made" (West's McKinney's Consolidated Laws of New York CPLR Rule 3211 [2006]). All arbitration awards

are final and binding, "[e]xcept as set forth in [Part] 137.8, the trial de novo rule" (Siegel, NY Prac Rev 1 § 119). A demand for a trial *de novo* has the "effect of vacating an entire arbitrator's award and returning all of the causes of action pleaded to the court for trial" (*Flum v Goldman Band Concerts*, 128 Misc 2d 42 [NY Civ Ct 1985] *citing Bridges v City of Troy* (112 Misc 2d 384 [Sup Ct, Rensselaer County 1982]). Such *de novo* review is "available to either party as of right" (*Eiseman Levine Lehrhaupt & Kakoyiannis, P.C. v Torino Jewelers*, 2007 NY Slip Op 8117, 4 NY App Div [1st Dept 2007]). However, "[i]f no action is commenced within 30 days of the mailing of the arbitration award, the award shall become final and binding" (*Pruzan v Levine*, 18 Misc 3d 70, 852 NYS2d 584 [2d Dept 2007]; *see also* 22 NYCRR 137.8; *Schlossberg's Atlas Welding & Boiler Works Co. v Ernest Duke Corp.*, 91 Misc 2d 487, 490 [NY Civ Ct 1977]).

Thus, determination of whether the LLC's action is barred by the defense of award and arbitration turns on whether the Arbitration Award at issue is final and binding, which in turn, depends upon whether the LLC properly availed itself of Part 137's trial *de novo* rule. As the movant on this motion to dismiss, Altman bears the initial burden of establishing that the LLC failed to comply with the trial *de novo* rule of Part 137.

Pursuant to Part137.8 (a), "a party aggrieved by the arbitration award may commence an action on the merits of the fee dispute in a court of competent jurisdiction within 30 days after the arbitration award has been mailed"(*see* 22 NYCRR § 137.8). The right to demand a trial *de novo* under Part 137 "does not require a showing that there was anything wrong with the manner in which the hearing was conducted or that the award was in any way defective . . . all that is required is that such a demand be timely filed with the clerk" (*Schlossberg's Atlas Welding & Boiler Works Co. v Ernest Duke Corp.*, 91 Misc 2d 487, 490 NY Civ Ct [1977]).

The LLP had 30 days from the mailing of the arbitration award to commence the action for a trial *de novo.* According to Altman's July 11, 2007 email sent to "Ms. Leibowitz and Ms. Davis," the Arbitration Award was "mailed to the litigants on May 29, 2007." The summons with notice was filed on June 27, 2007, 29 days after the award was mailed. Therefore, the LLC's instant action for trial *de novo* was timely commenced. Since the LLP timely sought *de novo* review following the arbitration, the affirmative defenses arbitration and award (and by extension, collateral estoppel and *res judicata*) are not available to Altman so as to bar plaintiff's complaint from adjudication on the merits.

As to Altman's claim that the LLC waived its right to *de novo* review, the Court notes that the submission of a fee dispute to mandatory arbitration does not bar judicial *de novo* review unless the parties "expressly waive their rights to such review in advance" (*Borgus v Marianetti*, 7 Misc3d 1003, 801 NYS2d 230, Rochester City Ct [2005]; *see* 22 NYCRR §§ 137.2(a)(c). Part 137 (c) requires that any agreement by the parties to waive their right to *de novo* review must be made "in writing in a form prescribed by the Board of Governors." The *written waiver form* prescribed by the Board of Governors requires both parties to acknowledge that:

> they agree to be bound by the decision of the arbitrator(s) and agree to waive their rights to reject the arbitrator(s) award by commencing an action on the merits (trial *de novo*) in a court of law within 30 days after the arbitrator(s) decision has been mailed.... Attorney and Client understand that they are not required to agree to waive their right to seek a trial *de novo* under Part 137."[3]

In *Borgus v Marianetti* (7 Misc3d 1003 (supra)), the parties' retainer agreement stated

[3]Model Form UCS 137-14 (11/01), www.courts.state.ny.us/admin/feedispute/model_ forms.html

that:

> THE DECISION AND AWARD OF THE ARBITRATOR(S) SHALL BE FINAL, and each of the parties hereto agrees to be conclusively bound by the decision and award.

In determining whether such agreement barred the parties from obtaining judicial *de novo* review of their fee dispute, the Court concluded that neither party was barred from seeking such judicial resolution of their dispute, despite their agreement to be bound by the arbitration decision.

Likewise, the Representation Agreement herein does not contain the express waiver language required by 22 NYCRR § 137.2(c). Accordingly, despite language suggesting otherwise in their Representation Agreement, the parties retained their right to seek judicial *de novo* review of their dispute over fees charged for work performed under the Retainer Agreement.

Subject Matter Jurisdiction

Nor can it be said that this Court lacks subject matter jurisdiction over the LLC's claims. Subject matter jurisdiction has been defined as the "power to adjudge concerning the general question involved, and is not dependent upon the state of facts which may appear in a particular case, arising, or which is claimed to have arisen, under that general question"(*Thrasher v United States Liability Ins. Co.*, 19 NY2d 159, 166 [1967]). "A party may commence the action for a

trial de novo in a court of competent jurisdiction" (Standards and Guidelines promulgated by the Board of Governors of the New York State Attorney-Client Fee Dispute Resolution Program). Additionally, the language of Part 137 referencing a court of competent jurisdiction for *de novo* review "is expanded upon by a supplementary directive that the aggrieved party may commence an action on the merits of the fee dispute *in a court with jurisdiction over the amount in dispute* . . ." (*Mahl v Rand,* 2006 NY Slip Op 50518 [NY City Civ Ct 2006]; *see also* Standards and Guidelines promulgated by the Board of Governors of the New York State Attorney-Client Fee Dispute Resolution Program).

Here, the amount of the fee dispute in question, $35,000.00, clearly falls within this Court's subject matter jurisdiction.

Sanctions

Sanctions pursuant to 22 NYCRR part 130 should be awarded for taking legal actions which are completely without merit in law, are undertaken primarily to delay the resolution of the litigation or assert false material statements of fact (*see LMK Psychological Services, P.C. v Liberty Mut. Ins. Co.*, 30 AD3d 727, 816 NYS2d 587 [3d Dept 2006] citing *Ireland v GEICO Corp.*, 2 AD3d 917, 919, 768 NYS2d 508 [2003]; *Mountain Lion Baseball v Gaiman*, 263 AD2d 636, 639, 693 NYS2d 289 [1999]). In light of this Court's determination that the LLC's complaint is not subject to dismissal on the grounds set forth by Altman, sanctions against the LLC for filing a purported frivolous complaint lacks merit.

Based on the foregoing, it is hereby

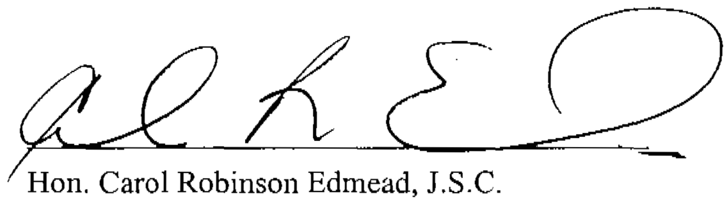
ORDERED that the motion by defendant Paul H. Altman to dismiss the complaint pursuant to CPLR 3211(a)(8), for: (1) defective service of summons with notice pursuant to

CPLR 308, (2) untimely service of complaint pursuant to CPLR 3012(b), (3) lack of subject matter jurisdiction pursuant to CPLR 3211(a)(2) and (4) arbitration and award, collateral estoppel and *res judicata* pursuant to CPLR 3211(a)(5), and for sanctions and costs against plaintiff pursuant to Part 130-1.1 *et seq.*, is denied; and it is further

ORDERED that the summons and complaint are deemed served as of the date of this order, and defendant shall serve an answer within 30 days of service by plaintiff of this order with notice of entry; and it is further

ORDERED that plaintiff serve a copy of this order with notice of entry upon all parties within 20 days of entry.

This constitutes the decision and order of the Court. the decision and order of the Court.



Dated: June 30, 2008

Hon. Carol Robinson Edmead, J.S.C.

FILED

JUL 0 1 2008

COUNTY CLERK'S OFFICE
NEW YORK