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## Ignoring an Arbitration Proceeding Is No Protection Against an Adverse Award

A party who agrees to arbitrate cannot avoid an adverse arbitration award by ignoring the arbitration proceedings. *Merchant Cash & Capital, LLC v. Ko*, Case No. 14 Civ. 659(KPF) (S.D.N.Y. June 19, 2015).

Ko operated an auto body shop. He contracted with Merchant Cash, a company that purchases receivables from other businesses, taking \$140,000 in exchange for his agreement to turn over \$163,800 of his sales to Merchant Cash. As required by the parties' agreement, Ko opened a designated bank account and used a special credit card processing company for his business transactions. After turning over approximately \$5,500 of his sales receivables to Merchant Cash, Ko abruptly closed the bank account, stopped using the credit card terminal, and refused to make further payments to Merchant Cash.

Merchant Cash filed a breach of contract lawsuit. Following the parties' agreement to arbitrate, the court entered an order staying the lawsuit pending arbitration before the AAA. After initial arbitration pleadings had been filed, Ko's attorney withdrew as Ko's counsel. The arbitrator issued orders urging Ko to obtain new counsel and advising him that if Ko chose not to participate in the arbitration, the matter might be heard and an award granted anyway.

Ko did not respond to the arbitrator's orders, nor to subsequent communications regarding discovery and other matters related to the proceedings. The arbitrator notified Ko of preliminary hearings, sought opposition papers from him, and scheduled the final hearing. Ko did not participate in any part of the arbitration.

After considering what evidence he had before him, the arbitrator awarded the outstanding balance to Merchant Cash. Merchant Cash then returned to court and filed a motion for summary judgment confirming the arbitrator's award. Ko did not oppose the motion or otherwise appear in the litigation.

The court examined Merchant Cash's submission in depth even though Ko had failed to respond. The court noted that a high showing is needed to avoid summary confirmation of an arbitration award, such as one of the four statutory bases enumerated in the FAA, or that the arbitrator has acted in manifest disregard of the law.

The court held that Ko did not contest the facts set forth in the petition to confirm the award, the arbitrator did his best to include both parties in the arbitration proceedings, and had even provided a reasoned decision for his award, and none of the grounds for vacating the award under the FAA were present. Because both parties had an opportunity to participate fully in the arbitration and Ko had not challenged the award's legal sufficiency, the court granted Merchant Cash's motion for summary judgment and entered judgment against Ko in accordance with the arbitrator's award.

**Practice Pointer:** Parties ignore arbitration proceedings at their peril. Refusing to participate in an arbitration will not prevent an arbitration award against that party once it has agreed to arbitrate. Given courts' great deference to arbitration awards, it is essential for a respondent to present its defense on the merits during the arbitration.

**Keywords:** alternative dispute resolution, adr, litigation, Federal Arbitration Act, confirmation of award, participation in proceedings

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