

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1571

CA 09-01290

PRESENT: CENTRA, J.P., PERADOTTO, GREEN, AND PINE, JJ.

IN THE MATTER OF THE ARBITRATION BETWEEN FIA
CARD SERVICES, N.A., FORMERLY KNOWN AS MBNA
AMERICA BANK, N.A., PETITIONER-APPELLANT,

MEMORANDUM AND ORDER

AND

JENNIFER POLLEY, RESPONDENT-RESPONDENT.

MANN BRACKEN, LLP, ROCHESTER (PATRICIA A. BLAIR OF COUNSEL), FOR
PETITIONER-APPELLANT.

JENNIFER POLLEY, RESPONDENT-RESPONDENT PRO SE.

Appeal from an order of the Supreme Court, Herkimer County (Michael E. Daley, J.), entered April 7, 2009 in a proceeding pursuant to CPLR article 75. The order dismissed the petition to confirm an arbitration award.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs, the petition is granted and the arbitration award is confirmed.

Memorandum: Petitioner commenced this proceeding pursuant to CPLR article 75 to confirm an arbitration award that directed respondent to pay petitioner \$14,926.28 for an outstanding credit card balance. Supreme Court erred in dismissing the petition and instead should have granted the petition and confirmed the award. Pursuant to CPLR 7510, "[t]he court shall confirm an award upon application of a party made within one year after its delivery to [it], unless the award is vacated or modified upon a ground specified in section 7511" (emphasis added). Contrary to respondent's contention, petitioner "established that a binding written agreement to arbitrate was in effect between the parties" (*Matter of Fodor v MBNA Am. Bank, N.A.*, 34 AD3d 473, 474). The record establishes that petitioner sent the credit card agreement containing the arbitration provision to respondent, and we conclude that the use by respondent of the credit card constituted her consent to comply with the agreement (see *Tsadilas v Providian Natl. Bank*, 13 AD3d 190, lv denied 5 NY3d 702; *Feder v Fortunoff, Inc.*, 114 AD2d 399). "Because there is no basis in [the] record to vacate or modify the arbitrator's award, it must be confirmed" (*Matter of New York Cent. Mut. Fire Ins. Co. v State Farm*

Ins. Cos., 234 AD2d 995, 995).

Entered: December 30, 2009

Patricia L. Morgan
Clerk of the Court