

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

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CA 13-01107

PRESENT: SCUDDER, P.J., CENTRA, FAHEY, CARNI, AND VALENTINO, JJ.

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IN THE MATTER OF ARBITRATION BETWEEN NIAGARA  
FRONTIER TRANSPORTATION AUTHORITY,  
PETITIONER-APPELLANT,

AND

MEMORANDUM AND ORDER

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL  
1949, RESPONDENT-RESPONDENT.

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DAVID J. STATE, BUFFALO (WAYNE R. GRADL OF COUNSEL), FOR  
PETITIONER-APPELLANT.

W. JAMES SCHWAN, BUFFALO, FOR RESPONDENT-RESPONDENT.

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Appeal from an order of the Supreme Court, Erie County (Frederick J. Marshall, J.), entered September 20, 2012 in a proceeding pursuant to CPLR article 75. The order denied the petition seeking a permanent stay of arbitration.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Supreme Court properly denied the petition seeking a permanent stay of arbitration pursuant to CPLR 7503 (b). Contrary to petitioner's contention, a stay was not warranted on the ground of *res judicata*. The prior arbitration between the parties did not involve the same claim, and therefore *res judicata*, or claim preclusion, is not applicable (*see generally Xiao Yang Chen v Fischer*, 6 NY3d 94, 100). Insofar as petitioner contends that the prior arbitration involved the same issue and thereby contends that collateral estoppel, or issue preclusion, applies (*see generally Parker v Blauvelt Volunteer Fire Co.*, 93 NY2d 343, 349), we note that it is for the arbitrator to determine "[t]he effect, if any, to be given to [that] earlier arbitration award" (*Matter of City Sch. Dist. of City of Tonawanda v Tonawanda Educ. Assn.*, 63 NY2d 846, 848; *see Matter of Falzone [New York Cent. Mut. Fire Ins. Co.]*, 15 NY3d 530, 534-535). We reject petitioner's further contention that the arbitration should be permanently stayed as a matter of public policy (*see Matter of Village of Johnson City [Johnson City Firefighters Assn., Local 921 IAFF]*, 75 AD3d 817, 818; *see generally Matter of Board of Educ. of Watertown City Sch. Dist. [Watertown Educ. Assn.]*, 93 NY2d 132, 138-

140) .

Entered: February 7, 2014

Frances E. Cafarell  
Clerk of the Court