

**APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW  
YORK, SECOND DEPARTMENT**

**Atlantic Purchasing, Inc. v. Airport Properties II, LLC**

77 A.D.3d 824 (N.Y. App. Div. 2010) · Decided October 19, 2010

**SUMMARY**

The New York Appellate Division, Second Department, affirmed an order denying Airport Properties II, LLC's motion to vacate an arbitration award and granting Atlantic Purchasing, Inc.'s petition to confirm it. The court held that Airport waived its claim of arbitrator partiality by failing to object after learning of the arbitrator's prior relationship with Airport's counsel and continuing to participate in the arbitration. The court also found no evidence that the prior arbitration affected the arbitrator's neutrality and remitted the matter for entry of an appropriate judgment.

**CASE DETAILS**

|                              |                                                                                                                                                                                                                                                                       |
|------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>COURT</b>                 | Appellate Division of the Supreme Court of the State of New York, Second Department                                                                                                                                                                                   |
| <b>WRITING FOR THE COURT</b> | Covello, J.P.; Santucci, J.; Balkin, J.; Austin, J.                                                                                                                                                                                                                   |
| <b>JURISDICTION</b>          | New York                                                                                                                                                                                                                                                              |
| <b>DECIDED</b>               | October 19, 2010                                                                                                                                                                                                                                                      |
| <b>DISPOSITION</b>           | affirmed                                                                                                                                                                                                                                                              |
| <b>PROCEDURAL POSTURE</b>    | Airport Properties II, LLC appealed an order denying its motion to vacate an arbitration award and granting Atlantic Purchasing, Inc.'s petition to confirm the award.                                                                                                |
| <b>STANDARD OF REVIEW</b>    | An arbitration award may be vacated only on the statutory grounds set forth in CPLR 7511; a party's claim of arbitrator partiality may be waived by failing to object after learning the basis for the alleged bias and continuing to participate in the arbitration. |
| <b>PRECEDENTIAL VALUE</b>    | published and precedential                                                                                                                                                                                                                                            |
| <b>PARTIES</b>               | Airport Properties II, LLC, also known as Airport Properties II, Inc. v. Atlantic Purchasing, Inc.                                                                                                                                                                    |

**TOPICS**

arbitration

waiver

civil procedure

commercial litigation

contracts

## PRACTICE AREAS

arbitration

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commercial litigation

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remedies

## QUESTIONS PRESENTED

1. Whether Airport waived its claim that the arbitrator was partial or lacked impartiality by failing to object after learning of the arbitrator's prior relationship and continuing to participate in the arbitration.
2. Whether the arbitrator's nondisclosure and alleged prior relationship provided a basis to vacate the award under CPLR 7511(b)(1)(ii).

## HOLDINGS

1. A party waives a claim that an arbitrator is not impartial when, after becoming aware of the basis for the alleged bias or partiality, it fails to object and continues participating in the arbitration.
2. The award was not subject to vacatur under CPLR 7511(b)(1)(ii) because there was no evidence that the prior arbitration affected the arbitrator's ability to remain neutral.

## KEY QUOTATIONS

*“However, a party can waive a contention that an arbitrator is not impartial by failing to raise that allegation upon becoming aware of the basis for the alleged bias or partiality, and thereafter participating in the arbitration” (825)*

*“In any event, there is no evidence to demonstrate, or even suggest, that the prior arbitration had any effect upon the arbitrator’s ability to be neutral in the instant matter.” (826)*

## FACTUAL BACKGROUND

The parties entered into a contract requiring arbitration of disputes. Atlantic claimed that Airport owed it more than \$700,000 for goods and services and demanded arbitration before an American Arbitration Association-appointed arbitrator. On the second day of the hearing, the arbitrator disclosed to Airport's counsel, who was also an Airport principal, that he had previously served as arbitrator in an unrelated matter in which counsel represented a party. Counsel did not object or notify the AAA, and the arbitrator subsequently awarded Atlantic \$771,474.19.

## PROCEDURAL HISTORY

The parties' contract required arbitration of disputes. After an arbitrator awarded Atlantic \$771,474.19, Atlantic petitioned the Supreme Court, Orange County, to confirm the award. Airport moved to vacate based in part on the arbitrator's alleged failure to disclose a prior relationship with Airport's counsel, but the Supreme Court denied the motion and confirmed the award; the Appellate Division affirmed and remitted for entry of judgment.

## DISPOSITION

affirmed

## REMAND INSTRUCTIONS

The matter was remitted to the Supreme Court, Orange County, for entry of an appropriate judgment pursuant to CPLR 7514(a).

## CASES CITED

- Matter of Siegel (Lewis), 40 N.Y.2d 687 (1976)
- Matter of J.P. Stevens & Co. (Rytex Corp.), 34 N.Y.2d 123 (1974)
- Matter of Raitport v. Salomon Smith Barney, Inc., 57 A.D.3d 904, 906 (2008)
- Matter of Reilly v. Progressive Ins. Co., 5 A.D.3d 776, 777 (2004)
- Matter of Arner v. Liberty Mut. Ins. Co., 233 A.D.2d 321 (1996)
- Matter of Rothman v. RE/MAX of N.Y., 274 A.D.2d 520 (2000)

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