

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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YC MD, P.C. d/b/a NEW YORK UROLOGIC
INSTITUTE,

Petitioner,

Index No: 500138/2017
IAS Part 73
Hon. Peter Paul Sweeney

-against-

DAVID SHUSTERMAN M.D.,

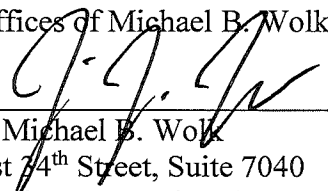
Respondent.

NOTICE OF APPEAL

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PLEASE TAKE NOTICE that the Respondent David Shusterman M.D. hereby
appeals to the Appellate Division, Second Department from each and every part of a
Judgment, entered June 25, 2019, and as to such Judgment notice of entry thereof was
provided by Petitioner on July 17, 2019.

Dated: August 6, 2019
New York, New York

Law Offices of Michael B. Wolk, P.C.

By:  _____

Michael B. Wolk

31 West 74th Street, Suite 7040

New York, New York 10001

Tel: 917-238-0576

Email: michael.wolk@wolkgroup.com

Attorneys for Respondent

David Shusterman M.D.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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In the Matter of Application of :
YC MD, P.C. d/b/a New York Urologic Institute, :
:
Petitioner, :
:
-against- :
:
DAVID SHUSTERMAN, M.D., :
:
Respondent. :
----- x

NOTICE OF ENTRY OF JUDGMENT

Index No. 500138/2017

PLEASE TAKE NOTICE that the attached is a true and correct copy of the Judgment filed, recorded and entered in the Office of the Kings County Clerk on June 25, 2019. A copy of the Judgment is annexed hereto.

Dated: Great Neck, New York
July 17, 2019

GARFUNKEL WILD, P.C.
Attorneys for Petitioner.

By: /s/ Salvatore Puccio
Andrew L. Zwerling
Salvatore Puccio
111 Great Neck Road
Great Neck, New York 11021
(516) 393-2200

TO: Michael Wolk, Esq.
Law Offices of Michael B. Wolk, P.C.
Attorneys for Respondent
31 West 34th Street, Suite 7040
New York, New York 10001

At an I.A.S. Trial Term, Part 73,
of the Supreme Court of the State of
New York, held in and for the County
of Kings, at the Courthouse, located at
360 Adams Street, Brooklyn, New York,
on the 9th day of July, 2018.

PRESENT:

Hon. Peter P. Sweeney, J.S.C.

-----X

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X

In the Matter of Application Of
YC MD, P.C. d/b/a New York Urologic Institute,
Petitioner,

-against-

DAVID SHUSTERMAN, M.D.,
Respondent.

-----X

JUDGMENT

Index No.: 500138/2017

WHEREAS, by Notice of Petition, dated January 4, 2017, Petitioner YC MD, P.C. d/b/a New York Urologic Institute ("Petitioner"), moved to confirm the October 21, 2016 Preliminary Arbitration Ruling and December 6, 2016 Final Arbitration Award of Paul Knag, Esq. pursuant to CPLR Article 75 (Docket Nos. 1-7) (the "Motion to Confirm");

WHEREAS, Petitioner filed a request for judicial intervention for appointment of a Justice of the Supreme Court to decide Petitioner's Motion to Confirm (Docket No. 8);

3870481

WHEREAS, by motion, dated June 15, 2017, Respondent David Shusterman, M.D. ("Respondent"), moved to dismiss the special proceeding for lack of personal jurisdiction (Docket No. 16);

WHEREAS, on July 17, 2017, the Court granted Petitioner's Motion to Confirm upon Respondent's default, and directed the Clerk to enter judgment in the amount of \$441,106.52, together with costs and disbursements as taxed, plus statutory interest (the "Default Judgment") (Docket No. 19);

WHEREAS, by motion, dated August 3, 2017, Respondent moved this Court for an Order vacating the Default Judgment and for dismissal of this special proceeding (Docket Nos. 21-25);

WHEREAS, by Cross-Motion, dated August 21, 2017, Petitioner moved this Court for costs and sanctions resulting from Respondent's defaults and opposed Respondent's motion to vacate the Default Judgment and for dismissal of the special proceeding (Docket Nos. 26-43);

WHEREAS, by Order, dated October 17, 2017, this Court vacated the July 17, 2017 Default Judgment, denied Petitioner's Cross-Motion for costs and sanctions, and directed Petitioner to re-serve Respondent within the time frame set forth therein (Docket No. 44);

WHEREAS, Respondent was re-served with the Notice of Petition and Motion to Confirm on October 30, 2017 (Docket No. 45);

WHEREAS, Respondent filed an Answer with Affirmation Defenses and Counterclaims on December 8, 2017 (Docket No. 46);

WHEREAS, by motion dated, December 27, 2017, Petitioner moved this Court for an Order striking Respondent's Answer with Defenses and Counterclaims as untimely, striking Respondent's Third Affirmative Defense, or in the alternative, extending Petitioner's time to serve Respondent under CPLR 306-b, striking Respondent's Fourth Affirmative Defense, and consolidation of proceeding with *YC MD, P.C. v. Shusterman*, Index No. 512207/2017 (Docket Nos. 49-61) ("Petitioner's Motion to Strike");

WHEREAS, Respondent opposed Petitioner's Motion to Strike on January 15, 2018 and filed a cross-motion for summary judgment on his First and Second affirmative defenses, and sought a default judgment on his counterclaims ("Respondent's SJ Motion") (Docket Nos. 62-64);

WHEREAS, Petitioner opposed Respondent's SJ Motion and filed a reply in further support of its Motion to Strike (Docket Nos. 66-71);

WHEREAS, Petitioner filed its Reply to Counterclaims on January 26, 2018 (Docket No. 65);

WHEREAS, Respondent filed a Notice of Rejection of untimely Reply and Notice of Rejection of Unauthorized Petitioner Application on January 26, 2018 (Docket Nos. 72, 73, respectively);

WHEREAS, Respondent filed a Sur-Reply, dated January 26, 2018, in opposition to Petitioner's Motion to Strike (Docket No. 74);

WHEREAS, by Decision and Order, dated April 12, 2018, the court ordered that the Notice of Petition/Petition were deemed served on the Respondent as of April 12, 2018, and it was further ordered that Respondent's answer with counterclaims and Petitioner's reply to counterclaims were deemed timely (Docket No. 75);

WHEREAS, the Court's April 12, 2018 Decision and Order also scheduled oral argument for Petitioner's Motion to Confirm, Petitioner's Motion to Strike, and Respondent's SJ Motion (Docket No. 75);

WHEREAS, on May 21, 2018, the Court heard oral argument on Petitioner's Motion to Confirm, Petitioner's Motion to Strike, and Respondent's SJ Motion (Docket No. 79);

WHEREAS, by Decision and Order, dated May 21, 2018, and after oral argument on Petitioner's Motion to Confirm, Petitioner's Motion to Strike, and Respondent's SJ Motion, the Court granted Petitioner's Motion to Confirm the Arbitration Award; the Court deemed Respondent's defenses pled in Respondent's Answer, including lack of standing and lack of capacity defenses, without merit; and the Court dismissed Respondent's counterclaims (Docket No. 79);

WHEREAS, the Court directed Petitioner to Settle Judgment on Notice (Docket No. 79);

NOW, upon the filing of Garfunkel Wild, P.C., attorneys for Petitioner, it is hereby

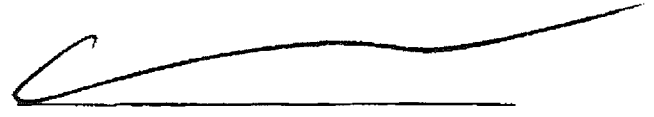
ADJUDGED that Accord Physicians PLLC ("Accord") with a principle place of business of 2632 East 14th Street, Brooklyn, New York 11235, recover of Respondent, David Shusterman, M.D., residing at or having a principle place of business at 69-15 Yellowstone Blvd #4, Forest

Hills, NY 11375, the sum of \$526,487.82, plus statutory interest in the amount of
121,757.75 for a total sum of \$ 648,245.57

ADJUDGED that Petitioner has execution thereof.

June
Dated: ~~May~~ 25, 2019

ENTER:



NANCY T. SUNSHINE
Clerk

2019 JUN 25 AM 11:43

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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In the Matter of Application of :
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YCMD, P.C. d/b/a New York Urologic Institute, :
 :
 .. Petitioner, :
 :
 -against- :
 :
DAVID SHUSTERMAN, M.D., :
 :
 Respondent. :
----- X

Index No. 500138/2017

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

CATHERINE A. TORITTO, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides in the State of New York. That on the 17TH day of July, 2019, deponent served the within Notice of Entry of Judgment upon

Michael Wolk, Esq.
Law Offices of Michael B. Wolk, P.C.
31 West 34th Street, Suite 7040
New York, New York 10001

by depositing a true copy of same enclosed in a postage-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.


CATHERINE A. TORITTO

Sworn to before me this
17TH day of July, 2019


NOTARY PUBLIC

ELLEN H. HUGGLER
Notary Public, State of New York
No. 4953364
Qualified in Nassau County
Commission Expires July 10, 2023

Index No. 500138/2017
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

In the Matter of Application Of

YC MD, P.C. d/b/a New York Urologic Institute,

Petitioner,

-against-

DAVID SHUSTERMAN, M.D.,

Respondent.

NOTICE OF ENTRY OF JUDGMENT

ANDREW L. ZWERLING
SALVATORE PUCCIO
GARFUNKEL WILD, P.C.
Attorneys for Petitioner
Office and Post Office Address, Telephone
111 Great Neck Road
Great Neck, New York 11021
(516) 393-2200
(516) 466-5964

SIGNING REQUIREMENT

I, the undersigned, duly admitted to practice law in New York State, Petitioner's attorney of record in the above action, under penalty do affirm that the following statement is true:

That, pursuant to section 130 – 1.1-a of the Rules of the Chief Administrator (22 NYCRR), by signing the papers herein certify that to the best of my knowledge, information and belief, formed under an inquiry reasonable under the circumstances, the presentation of the papers or the contentions herein are not frivolous as defined in subsection (c) of section 130-1.1.

Dated: Great Neck, New York
July 17, 2019

/s/ Salvatore Puccio

ANDREW L. ZWERLING
SALVATORE PUCCIO

Supreme Court of the State of New York

Appellate Division: *Second* Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

*4C MD, P.C. d/6/9 New York Urologic Institute,
Petitioner*

- against -

David Shusterman, M.D., Respondent.

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

Case Type	Filing Type
<input type="checkbox"/> Civil Action <input checked="" type="checkbox"/> CPLR article 75 Arbitration <input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	<input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceedings <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Labor Law 220 or 220-b <input type="checkbox"/> Public Officers Law § 36 <input type="checkbox"/> Real Property Tax Law § 1278 <input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Executive Law § 298 <input type="checkbox"/> CPLR 5704 Review

Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.

<input type="checkbox"/> Administrative Review	<input checked="" type="checkbox"/> Business Relationships	<input checked="" type="checkbox"/> Commercial	<input checked="" type="checkbox"/> Contracts
<input type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input type="checkbox"/> Election Law	<input type="checkbox"/> Estate Matters
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input type="checkbox"/> Miscellaneous	<input type="checkbox"/> Prisoner Discipline & Parole
<input type="checkbox"/> Real Property (other than foreclosure)	<input type="checkbox"/> Statutory	<input type="checkbox"/> Taxation	<input type="checkbox"/> Torts

Appeal

Paper Appealed From (Check one only): If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.

- Amended Decree, Amended Judgement, Amended Order, Decision, Decree, Determination, Finding, Interlocutory Decree, Interlocutory Judgment, Judgment, Order, Order & Judgment, Partial Decree, Resettled Decree, Resettled Judgment, Resettled Order, Ruling, Other (specify):

Court: Supreme, County: Kings, Dated: July 9 2018, Entered: June 25 2019, Judge (name in full): Hon. Peter P. Sweeney, Index No.: 500138/2017, Stage: Interlocutory, Final, Post-Final, Trial: Yes, No, Jury, Non-Jury

Prior Unperfected Appeal and Related Case Information

Are any appeals arising in the same action or proceeding currently pending in the court? Yes No

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

Original Proceeding

Commenced by: Order to Show Cause, Notice of Petition, Writ of Habeas Corpus, Date Filed: Statute authorizing commencement of proceeding in the Appellate Division:

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: Choose Court, County: Choose County, Judge (name in full):, Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order:

Court: Choose Court, County: Choose County, Judge (name in full):, Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

Appeal from Final Judgment confirming arbitration award and denying application to vacate arbitration award

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

All legal issues raised by Respondent David Shusterman M.D. in the case before the Kings County Supreme Court for vacatur of the arbitration award, including but not limited to all legal issues regarding an award of "prevailing party" legal fees and litigation expenses to Petitioner that is inconsistent with and/or unauthorized by the parties' intent for a discretionary legal-fee shifting clause, as well as disproportionate to a net amount of approximately \$6,000 in legal ~~damages~~ to Petitioner where the awarded legal fees are about \$440,000.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	David Shusterman, M.D.	Respondent	Appellant
2			
3	YC MD, P.C. d/b/a New York Urologic Institute	Petitioner	Respondent
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Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: *Michael B. Wolk Esq. / Law Office of Michael B. Wolk, P.C.*

Address: *31 West 34th Street, suite 7040*

City: *New York* State: *NY* Zip: *10001* Telephone No: *917-238-0576*

E-mail Address: *Michael.wolk@wolkgroup.com*

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): *1*

Attorney/Firm Name: *Solvatore Puccio Esq. / Gorfunkel Wild, P.C.*

Address: *111 Great Neck Road*

City: *Great Neck* State: *NY* Zip: *11021* Telephone No: *516-393-2200*

E-mail Address: *spuccio@gorfunkelwild.com*

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): *3*

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):

Informational Statement - Civil

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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YC MD, P.C. d/b/a NEW YORK UROLOGIC
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Index No: 500138/2017
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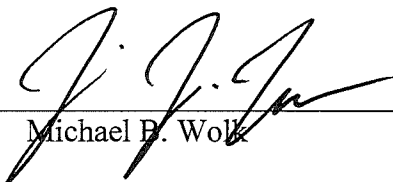
Respondent.

**AFFIRMATION OF
SERVICE**

-----x
MICHAEL B. WOLK, an attorney duly admitted to practice law in the State of
New York, hereby affirms under penalty of perjury as follows:

I am counsel of record for Respondent David Shusterman M.D. (“Respondent”). I am over the age of 18 years and maintain a law office in the County, City and State of New York. On August 6, 2019, I served a copy of the foregoing Notice of Appeal for Respondent, the underlying Judgment from which the Notice of Appeal has been taken, and an Appellate Division Information Sheet (collectively, the “Appeal Papers”) on counsel of record for Petitioner, to wit: Garfunkel Wild, P.C. (att: Andrew L. Zwerling, Esq. and Salvatore Puccio, Esq.), 111 Great Neck Road, Great Neck, New York 11021, through the Court’s efilings and eservice system for this electronically docketed case.

Dated: August 6, 2019
New York, New York



Michael B. Wolk