

Matter of Allstate Insurance Company v Aurelio Torres (2006 NY Slip Op 02361)

Decided on March 28, 2006

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

THOMAS A. ADAMS, J.P. GLORIA GOLDSTEIN STEVEN W. FISHER
ROBERT A. LIFSON, JJ.

DECISION & ORDER

2005-08591

In the Matter of Allstate Insurance Company, respondent,

v

Aurelio Torres, appellant. (Index No. 11626/04)

Jose R. Mendez, P.C., Rego Park, N.Y., for
appellant. Marshall & Marshall, Jericho, N.Y.
(Richard Steigman of counsel), for respondent.

In a proceeding pursuant to CPLR article 75 to permanently stay arbitration of an uninsured motorist claim, Aurelio Torres appeals from a judgment of the Supreme Court, Queens County (Rios, J.), dated July 27, 2005, which granted the petition.

ORDERED that the judgment is affirmed, with costs.

Contrary to the appellant's contention, the petitioner did not participate in the arbitration such that it waived its right to seek a stay of arbitration (*cf.* CPLR 7503[b]; *Matter of Basil Castrovinci Assoc. v District 65 Pension Plan*, 16 AD3d 493, 494; *Greenwald v Greenwald*, 304 AD2d 790). ADAMS, J.P., GOLDSTEIN, FISHER and LIFSON, JJ., concur.

ENTER:

James Edward Pelzer

Clerk of the Court