

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

Charles E. Ramos

PRESENT: _____
Justice

PART 53

Index Number : 653017/2013
CITIGROUP GLOBAL MARKETS, INC.
vs
FIORILLA, JOHN LEOPOLDO
Sequence Number : 001
VACATE AWARD

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____	No(s). _____
Answering Affidavits — Exhibits _____	No(s). _____
Replying Affidavits _____	No(s). _____

Upon the foregoing papers, it is ordered that this motion is

**Motion is decided in accordance with
accompanying Memorandum Decision.**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 1/2/14
[Signature]

[Signature]

HON. CHARLES E. RAMOS, J.S.C.

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK:COMMERCIAL DIVISION
-----X

CITIGROUP GLOBAL MARKETS, INC. and
EDWARD JAMES MULCAHY, JR.,

Petitioners,

against

Index No. 653017/2013
Motion Sequence #001

JOHN LEOPOLDO FIORILLA AS TRUSTEE FBO
JOHN LEOPOLDO FIORILLA TRUST U/A/D 06-25-2003,

Respondent.
-----X

Hon: Charles E. Ramos, J.S.C.

The petitioners bring on this motion to vacate an arbitration award on the ground of arbitral bias and manifest disregard of the law.

They allege that one of the arbitrators failed to disclose, among other things, that one of them had a past dispute with one of the petitioners herein and that another arbitrator allegedly failed to disclose a lawsuit accusing her of intentional wrongdoing, including a challenge to her law license, which disclosure was required by the rules of the arbitral forum (FINRA). In addition, the petitioners allege that the arbitrators entered an award in a dispute that the parties had already settled.

In light of the fact that this matter was in fact settled and that all parties so advised the panel and FINRA in writing, (which a Florida tribunal had found as fact in a proceeding these

respondents commenced) there is no need to delve into the troubling allegations of misconduct by the arbitrators. This award must be vacated.

The respondents may not succeed by arguing that public policy favors deference to arbitral awards. There can be no legitimate public interest in respecting arbitrations of disputes that have already been settled - the argument turns public policy on its head.

As the Court of Appeals has observed, the policy underlying enforcement of settlements is "advanced only if settlements are routinely enforced rather than becoming gateways to litigation." *Id.* [citing *Matter of Olympic Tower Assocs. v. City of New York*, 81 NY2d 961, 963 (1993)]. Had the Panel abided by FINRA Rules, as FINRA did, and acknowledged that this matter had been settled, the parties could have avoided this needless litigation.

The respondents' refusal to abide by the settlement, particularly in light of prior Florida litigation, has resulted in a frivolous waste of counsel's time and efforts, as well as a waste of the scarce resources available to New York's Unified Court System.

Settle Order and Judgment on notice.

Dated: January 2, 2014

ENTER



J. S. C.
HON. CHARLES E. RAMOS