

Tom, J.P., Friedman, DeGrasse, Richter, Kapnick, JJ.

15198N      In re ROM Reinsurance Management                      Index 654480/12  
                    Company, Inc., et al.,  
                                    Petitioners-Appellants,

-against-

Continental Insurance Company, Inc.,  
(as successor to Harbor Insurance Company)  
Respondent-Respondent.

---

Nicoletti Gonson Spinner LLP, New York (Benjamin N. Gonson of  
counsel), for appellants.

White and Williams LLP, New York (Sarah R. Connelly of counsel),  
for respondent.

---

Judgment, Supreme Court, New York County (Joan B. Lobis,  
J.), entered January 22, 2015, denying the petition to stay  
arbitration on statute of limitations grounds, and dismissing the  
proceeding brought pursuant to CPLR article 75, unanimously  
affirmed, with costs.

Petitioners participated in the arbitrator selection  
process, even though they were undoubtedly aware of their statute  
of limitations claim. Under these circumstances, the court  
correctly determined that petitioners participated in the  
arbitration and therefore are precluded from seeking a stay on  
statute of limitations grounds pursuant to CPLR 7503(b) (see  
*Matter of Allstate Ins. Co. v Khait*, 227 AD2d 551 [2d Dept 1996];

*compare Cybex Intl. v Fuqua Enters.*, 246 AD2d 316, 316-317 [1998] [the petitioner did not waive its right to seek a stay of arbitration by participating in arbitral discovery and the selection of an arbitrator before it had received detailed specification of the respondent's claims]). Although petitioners have waived their ability to have the courts determine the statute of limitations issue, the issue may be determined by the arbitrators.

We have considered petitioners' remaining arguments, including that this Court had previously determined the participation issue (see 115 AD3d 480 [1st Dept 2014]), and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 21, 2015

A handwritten signature in black ink, appearing to read "Susan R.", written over a horizontal line.

CLERK