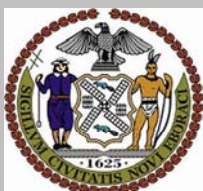


# KATONA & MIR NEWSLETTER

Fall 2007

As Katona & Mir continues to grow, we like to keep our clients updated on changes in the law, as well as the services we can provide.



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## Katona & Mir LLP

Issue 24

*We Build Partnerships Worldwide*

*Katona & Mir is a New York City based law firm specializing in employment & business law, immigration, real estate & criminal defense.*

### Arbitration or the Courts?

We often receive questions from clients regarding arbitration clauses in contracts.

Although there are positives to arbitrating a dispute, it is always in your best interest to discuss your situation with an attorney so that he or she may help you choose the best options.

An arbitration clause is one that allows an arbitration proceeding in lieu of a court proceeding. In arbitration a dispute is resolved by an impartial adjudicator whose decision the parties have agreed will be final and legally binding. It is a consensual process where parties have both already agreed to an arbitration clause in the contract.

It is important to keep in mind that although there is a sense of informality to the entire process, the law is generally keen to uphold the validity of arbitration clauses even when they lack formal language associated with legal contracts.

Arbitration is sometimes preferred because it can be less costly, and is

more informal. However, it still carries disadvantages that should be kept in mind; mistakes can rarely be appealed, and most importantly, the process of collecting an award may be burdensome and require additional judicial process.

In a recent case, *Goldberg v. Thelen Reid Brown Raysman & Theiner LLP*, the court upheld an arbitration award, stating that an award will be upheld so long as there is even a "barely colorable justification for the outcome."

In the above case, the arbitration arose out of an alleged breach of an employment contract by an employer. The arbitrator found for the employee and the employer moved to vacate or refute the award on the basis that the arbitrator's award was violative of public policy. The court reasoned that an arbitrator may apply his or her "own sense of law and equity to the facts as [he] finds them to be and make an award reflecting the spirit rather than the letter of the agreement."

### E-Mails Not Considered Binding Real Estate Contracts

A Queen's Judge ruled that an e-mail exchange between parties does not constitute an enforceable contract for the sale of land.

The central issue in the case of *Vista Developers Corp. v. VFP Realty LLC* was whether a series of e-mails from plaintiff Vista Developers, which sought to buy a Rockaway property for \$5.4 million, had established a binding agreement with the sellers, defendants VFP Realty and Alprof Realty. The sellers backed out of the agreement and Vista claimed the contract was binding based on e-mails containing all the necessary terms.

The Judge ruled that the General Obligations Law (GOL) subsection §701 that allows "electronic signals" to constitute binding writings does not

apply to real estate, but "...shall only apply to qualified financial contracts." Instead, the rules of real estate contracts are set forth in §703 Title 5 and the electronic signal provision is inapplicable.

The court reasoned that the purpose of real estate law and the requirement of a written contract, signed by both parties is to "...remove uncertainty...to distinguish in real estate sales, provisional 'agreements to agree' from final binding contracts," and emails fail to satisfy that.



## Police Community Caretaking Function allows Inventory Searches and Evidence is Admissible in Trial

In the criminal case of *United States v. Rafael Barrios*, a District Court judge in NY found that evidence obtained as a result of an inventory search of a defendant's car following his arrest could be admissible during trial since it was found under the police department's "community caretaking function."

Defendant- Barrios, along with other individuals, were arrested by police in late October in the Bronx, after an officer heard what he perceived to be a gun thrown to the pavement by Barrios. Barrios was standing next to a car he denied to be his and also gave a false name to the officers. After taking him to the precinct, police discovered car keys that Barrios said belonged to the car and repeated that the car was not his.

In light of the department's community caretaking function, which commonly involves the removal of vehicles left unattended in public spaces, blocking intersections, or parked illegally, officers removed the unclaimed car as it was parked illegally.

During a procedural inventory search at the police impound, police discovered a trunk full of cocaine and registration identifying Barrios as the owner of the car.

In allowing the evidence, the court reasoned that the police department's community caretaking function is completely separate from the "detection, investigation, or acquisition of evidence relating to the violation of a criminal statute, and thus seizures and inventory searches conducted in connection with that function do not offend the Fourth Amendment" as long as they are warranted "either in terms of state law or sound police procedure."



## Immigration & Employment Law

A judge in California ordered a temporary halt to the implementation of the Bush administration's new measure to curb illegal immigration. The measure would have forced employers to fire workers if their Social Security numbers could not be verified within 90 days. Employers would have further faced stiff penalties if they hired workers whose Social Security numbers could not be verified.

The main concern of the CA court was that legally authorized workers may also be discharged because the government's Social Security database, which would have been used to verify a SSN, is full of errors.

The court reasoned that these new work-site rules as written likely would impose undue hardships on businesses and their workers and that as a result

employees would face "irreparable harm" if the rule is enforced.

In response to these concerns, the court initially issued a preliminary injunction preventing the implementation of the rule that will remain in effect until a pending lawsuit challenging the rules goes to trial sometime next year or until a higher court intervenes. However, on Nov. 24, 2007, the government filed papers with the court announcing the abandonment of its defense of the rule as drafted and the government's intention to redraft the rule addressing the court's concern. The government plans to revise the rule by March 2007.

The plaintiffs bringing lawsuits include the AFL-CIO, the American Civil Liberties Union, the U.S. Chamber of Commerce and a number of other businesses and labor immigration-activist groups.

## DREAM Act Fails Senate Test Vote

The DREAM act failed in the Senate, dashing the hopes of thousands that Congress might pass some ameliorative immigration measure this year.

The Bill would have granted temp. legal status to illegal immigrants 29 and

under who entered the US before age 16, have been continuously present in the US for 5 yrs, had a US high school diploma (or had been admitted to an institution of higher education) and could show good moral character.

## News & Events

- On Nov. 19, Simi Mir taught a class entitled, "Legal Structure for Your Business," as part of a Business 101 series for Asian Women in Business, a non-profit organization that works with entrepreneurs and business owners. For more information, please contact us.
- Congratulations to David Katona, who was named co-chair of the Corporate Practice Committee for AILA's NY Chapter. Mr. Katona also serves as a Member of the Dept. of Labor Committee of AILA's NY Chapter as well as a Member of the Immigration Committee of the NYC Bar Association.



## Recent cases

- K&M is currently working on a pro bono case for a foreign national detainee who was detained in the Long Island ICE home raids.
- K&M was victorious in a recent arbitration dealing with a client-photographer who was being sued by her former agency for terminating her contract. The Arbitrator held in favor of our client and also awarded our client counterclaim damages.
- K&M recently assisted a music production company to acquire performance visas to the U.S. for the production company's Greek music groups.
- K&M recently procured a dismissal in a criminal case where an individual was falsely accused of harassment.

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