# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

PRESENT: Hon. MICHAEL D. STALLMAN PART 21
*Justice*

In Re Application of Citigroup Global Markets Inc. and John Joseph Abadiotakis to Confirm an Arbitration Award

CITIGROUP GLOBAL MARKETS INC. and JOHN JOSEPH ABADIOTAKIS,

Petitioners,

- v -

STAVROS OSCAR CID and TERESA CID,

Respondents,

and

FINANCIAL INDUSTRY REGULATORY AUTHORITY,

Nominal Respondent.

INDEX NO. 654211/12

MOTION DATE 4/18/13

MOTION SEQ. NO. 003

The following papers, numbered 19 to 22 were read on this motion for alternative service.

Notice of Motion; Affirmation; Exhibits A-I; Affidavit of Service | No(s). 19; 20; 21; 22

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

**Upon the foregoing papers, it is ORDERED that petitioner's motion for expedient service of process (CPLR 308 [5]) via email is denied, without prejudice to another application.**

**On December 3, 2012, petitioner commenced this proceeding to confirm an arbitration award before FINRA (purportedly served on July 3, 2012), which dismissed respondents' arbitration claims against petitioner and sanctioned respondents in the amount of $10,000. On January 14, 2013, petitioner gave notice that they withdrew their petition, and a second petition was e-filed on February 5, 2013 under the same index number.**

**Pursuant to CPLR 308 (5), petitioner now moves for an order permitting service of process upon respondents by email. A process server who attempted to serve the second petition at respondents' last known address in Flushing, New York avers that he "was told by Tenant in the house that they**

**(Continued . . .)**

[respondents] moved out of country." (Miniter Affirm., Ex I [Freda Aff. ].) According to petitioner, the attorney who represented respondents in the arbitration informed petitioner that, to the best of her knowledge, respondents "no longer live in New York and currently reside in Greece." (Miniter Affirm. ¶ 15.) Petitioner's attorney states, "searches of public records have produced no other current address for the Cids." (*Id.* ¶ 4.)

Petitioner proposes that service of process be made upon respondents via email, to email addresses provided on account applications that respondents filled out for petitioner Citigroup Global Markets, Inc. in 2006 and 2009 (Miniter Affirm., Ex A.) Petitioner proposes to send respondents an email on two consecutive dates, and that the subject line of the email bear a prominent subject line indicating that the attachments are legal papers to be opened immediately. Petitioner also proposes to mail the second petition to respondents at their last known address in Flushing, New York, and to the address that respondents provided in their application, which was in Woodbridge, New Jersey. Petitioner acknowledges that the additional mailing is "likely an exercise in futility." (Miniter Affirm. ¶ 33.)

Petitioner has demonstrated that service upon respondents under CPLR 308 (1), (2), and (4) is impracticable. According to petitioner's counsel's information, respondents apparently left the State of New York and moved to Greece, and their address in Greece is unknown.

Federal courts and New York courts have granted service of process by email. The leading federal case is *Rio Properties, Inc. v Rio Intl. Interlink,* 284 F3d 1007 [9th Cir 2002]), and petitioner cites two reported cases in New York that permitted service of process by email, *Hollow v Hollow* (193 Misc 2d 691 [Sup Ct, NY County 2002], citing *Rio Props., Inc.*, 284 F3d 1007) and *Snyder v Alternate Energy Inc.*, 19 Misc 3d 954 [Civ Ct, NY County 2008].) These cases all recognize that "a method of service of process must also comport with constitutional notions of due process. To meet this requirement, the method of service crafted . . . must be 'reasonably calculated, under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" (*Rio Props., Inc.*, 284 F3d at 1016, citing *Mullane v Central Hanover Trust Co.*, 339 US 306, 314 [1950].)

(Continued . . .)

A chief concern with service of process by email is the reliability of the email address to which process is directed, and thus whether there is a reasonable chance the email would reach the party to be served. (*See e.g. Ehrenfeld v Salim a Bin Mahfouz*, 2005 WL 696769, * 3 [SD NY 2005]; *see generally* Ronald J. Hedges, Kenneth N. Rashbaum, & Adam C. Losey, *Electronic Service of Process at Home and Abroad: Allowing Domestic Electronic Service of Process in the Federal Courts*, 4 Fed Cts L Rev 55 [2010].) In *Ehrenfeld*, the federal district court did not permit service by email to an email address associated with a website that defendant purportedly operates. The court stated, "Plaintiff has provided no information that would lead the Court to conclude that Defendant maintains the website, monitors the e-mail address, or would be likely to receive information transmitted to the e-mail address." (*Ehrenfeld*, 2005 WL 696769, * 3.)

Here, the email addresses come from applications that respondents completed in 2006 and 2009. (Miniter Affirm., Ex A.) As petitioner acknowledges, the New Jersey mailing address listed on the applications is not respondents' last known address. Petitioner has not provided any information that the email addresses provided years ago are valid (i.e., whether email sent to the email addresses would be returned as undeliverable), or whether the email accounts are still active.

For example, there is no indication that petitioner communicated via email with respondents at these email address. (*See Safadjou v Mohammadi*, 105 AD3d 1423 [4th Dept 2013] ["several months prior to the application for alternative service, the parties had been communicating via email at the two email addresses subsequently used for service"].) Although the email addresses were listed on applications, the record does not appear to indicate that respondents specifically agreed that notices and communications could be sent via email. (*See Alfred E. Mann Living Trust v ETIRC Aviation S.A.R.L.*, 78 AD3d 137, 142 [1st Dept 2010] ["The funding agreement specifically provides [defendant's] e-mail address as the means to provide him with any notice, request, demand, or communication"].)

Therefore, petitioner's motion for CPLR 308 (5) service by email is denied, without prejudice to another application for such service upon additional information as to the reliability of the email address to which process will be sent.

(Continued . . .)

**Finally, the Court notes that more than 120 days have passed since the second petition was e-filed, and petitioner did not request an extension of the time to serve.**

Dated: 7/11/13
New York, New York

_____, J.S.C.

1. Check one: ..... ☐ CASE DISPOSED ■ NON-FINAL DISPOSITION
2. Check if appropriate:..... MOTION IS: ☐ GRANTED ■ DENIED ☐ GRANTED IN PART ☐ OTHER
3. Check if appropriate:..... ☐ SETTLE ORDER ☐ SUBMIT ORDER
☐ DO NOT POST ☐ FIDUCIARY APPOINTMENT ☐ REFERENCE

HON. MICHAEL D. STALLMAN