19-666

No. _____

In The

Supreme Court of the United States

JENN-CHING LUO,

Petitioner,

v.

LOWE'S HOME CENTERS, LLC
JAMES R. WALTERS
CHRIS S. ERNEST

Respondents.

On Petition for Writ of Certiorari
to the Superior Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

After the appeal had been briefed and submitted to a three-judge panel for a review, Pennsylvania Superior Court refused to review the appeal and dismissed it by determining appellant's argument failed to conform to rule requirements. However, the Court's determination is not defects in rule compliance, but disagreement about pleading which offends conscience of the society, for an example, the court dismissed Petitioner's appeal because judge disagrees the number of argument points.

Further, Pennsylvania Superior Court's conduct also differs from other appellate courts. When an appellant's brief is found defective, other appellate courts do not dismiss the appeal, but give appellant an opportunity to cure the deficiencies.

This petition presents the following two questions:

1. Under the protection of due process of law, whether Pennsylvania Superior Court can dismiss Petitioner's appeal by the reasons that (1) the panel disagreed the number of argument points, (2) Petitioner did not comply with two inapplicable conditional rules, and (3) the panel disagreed 4 of 53 citations of legal authority?

2. Whether Pennsylvania Superior Court could dismiss the appeal without giving Petitioner an opportunity to cure his defective brief?

PARTIES TO THE PROCEEDING

Petitioner, JENN-CHING LUO, was the only appellant in the Superior Court of Pennsylvania. The three respondents were appellees in the Superior Court of Pennsylvania: Lowe's Home Centers, LLC, James R. Walters, Chris S. Ernest.

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Petitioner JENN-CHING LUO respectfully petitions this Court for a Writ of Certiorari to review the judgment of the Superior Court of Pennsylvania.

OPINION BELOW

The Pennsylvania Supreme Court per curiam order denying application for reconsideration is reprinted at (App. *Infra*, 1a); The Pennsylvania Supreme Court per curiam order denying Petition for allowance of appeal from the order of Superior Court is reprinted at (App. *Infra*, 2a); The Pennsylvania

Superior Court per curiam order denying panel rehearing or rehearing en banc is reprinted at (App. *Infra*, 3a); The non-precedential decision of the Pennsylvania Superior Court that dismissed the appeal is in the Appendix (App. *infra*, 4a-11a); The opinion of the Common Pleas, Chester County, Pennsylvania that confirmed arbitration award is reprinted at (App. *infra*, 12a-13a); The arbitration award is reprinted at (App. *Infra*, 27a-30a)

JURISDICTION

On July 25, 2019, the Pennsylvania Supreme Court denied application for reconsideration. This jurisdiction of this Court is invoked under under 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Seventh Amendment to the United States Constitution provides in pertinent part:

> *In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved,*

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> *nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

The Pennsylvania Constitution Article 5 Section

9 provides in pertinent part:

> *there shall also be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court,*

INTRODUCTION

1. This case was arisen from petitioner and respondent Lowe's had a contract for installing roof, skylights, and gutters. Lowe's had respondent Walters to perform the contract on June 3, 2014. Before the installation of new roof shingles was complete, around 2:20 PM it rained. Walters did not cover the roof and rainwater intruded the house to cause damages. Lowe's sent respondent Ernest for estimating the damages. Ernest, not a witness, came to petitioner's home to argue the occurrence, even refusing to enter attic to see water damages and also refusing to see water damages in wall cavities. What Ernest argued was easily proved false. After Ernest's version was proved false, Lowe's argued another versions. Lowe's contended a total of four versions of occurrence.

2. Petitioner filed this case in the Court of Common Pleas, Chester County, Pennsylvania ("the trial court"), and asserted three claims against defendants Lowe's, Ernest, and Walters, including a state law claim under Pennsylvania state Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), and two common law claims under negligence.

3. Petitioner demanded a jury trial. The contract for the home improvement had an arbitration clause that the claims "*will be determined by a neutral arbitrator and not a judge or jury.*" After a long series of motions, the trial court granted each defendant's motion to compel arbitration.

4. However, the long series of the trial court's interlocutory rulings have raised the following five questions:

(1) Whether the trial court erred in denying petitioner's right to jury trial by compelling petitioner to arbitration?
(2) Whether the injunction order against Walters, which strikes Walters' every filing and ceases Walters appearing in this case, is continuously and operated on Walters?
(3) Whether Lowe's and Ernest could stay the arbitration by themselves without a due process of law?
(4) Whether Walters' petition to open default judgment should be granted?
(5) Whether the arbitration award should be vacated?

The trial court's rulings clearly conflicted with the laws. For an example, each defendant had moved the trial court to dismiss the complaint. Each defendant already abandoned the arbitration clause, e.g., "*claims will be determined by a neutral arbitrator and not a judge or jury*". After defendants' motions to dismiss were not granted, the doctrine of waiver and estoppel barred each defendant from enforcing the arbitration clause. How could the trial court grant

defendants' motions to arbitration? The trial court completely leaned one side to favor the defendants, regardless the laws. Eventually, from the first to the last order, the trial court demonstrated it played a "*decision-fixing*" game, using the court's power to fix the case to a result the trial court judge designed. In the Section of Statement of the Case, we can see it is 100% certain the trial court judgment shall be vacated.

5. Petitioner appealed the trial court's judgment to Pennsylvania Superior Court. The appeal was made as a right, which is granted in Pennsylvania Constitution Article 5 Section 9. In this appeal, Petitioner has a liberty interest to pursue legal guarantee of Pennsylvania Constitution. See Wilkinson v. Austin, 545 U.S. 209, 221 (2005) ("*A liberty interest may arise from the Constitution itself, by reason of guarantees implicit in the word 'liberty,' . . . or it may arise from an expectation or interest created by state laws or policies . . . .*") Further, this case also involved value and use of petitioner's property. Petitioner also has a property interest in this appeal.

6. The notice of appeal includes 7 orders on appeal. Due to page limit, Petitioner abandoned one order. After the appeal had been briefed and was submitted to a three-judge panel for review, Pennsylvania Superior Court refused to review the appeal, and dismissed the appeal by determining Appellant Brief is defective, failing to conform to rule requirements. However, the Superior Court's determination is not a defect in rule compliance, but

disagreement about pleading. The Superior Court dismissed the appeal by three disagreements:

(1) The three-judge panel disagreed the number of argument points;
(2) Petitioner argument did not conform to two inapplicable conditional rules;
(3) The three-judge panel disagreed 4 of 53 citations of legal authority.

No one legal professional could believe an appeal could be dismissed by any of the above reasons. Eventually, that never happened, except in this case. People may wonder why Petitioner was treated so grossly unjust and unfairly. Apparently, Pennsylvania Superior Court's conduct offends tradition and conscience of the legal community, raising a federal question of due process of law. E.g., Rochin v. California, 342 U.S. 165, 172 (1952). This matter is a good example for people to see that, in Pennsylvania, justice does not have the meaning of justice, but is a service for big guy.

7. Further, Pennsylvania Superior Court's conduct also differs from other appellate courts. Other appellate courts do not dismiss an appeal when appellant's brief is found defective, but reject defective brief, and order appellant to refile a proper brief in a specified time, and appeal is not dismissed unless appellant fails to do so. However, the Superior Court dismissed the appeal without giving Petitioner an opportunity to cure deficiencies. Pennsylvania Superior Court's decision differs from other appellate courts. This Court should resolve this conflicts.

8. This Court's review is needed to once and for all clearly and unequivocally establish a guideline to prevent an appellate court from arbitrarily dismissing an appeal, and to resolve conflicts between appellate courts.

STATEMENT OF THE CASE

9. Pennsylvania Superior Court did not review the appeal on the merits. However, from the facts and circumstances, it is 100% certain that the trial court judgment shall be vacated. See below.

The arbitration award shall be vacated, and the trial court judgment is vacated as moot

10. The arbitration has several procedural irregularity, which are grounds to vacate the award. However, the face of the award is enough to vacate the award. In this petition, we just look at the face of the award. For example, the award determines

> "*Claimant's claim against the Respondent Lowe's Home Centers, LLC for breach of contract is AWARDED in the amount of $2,034.07.*" (App. 27a-28a)

That determines a breach of contract claim. However, the second amended complaint does not have a breach of contract claim, which was never argued and never heard. How the arbitrator did his job is a question mark. Under procedural due process, the award cannot determine any claim that was never heard. See Baldwin v. Hale, 68 U.S. (I Wall.) 223, 233 (1864) ("*Parties whose rights are to*

be affected are entitled to be heard."). Procedural due process is a public policy. See Burstein v. Prudential Prop. and Cas. Ins. Co., 809 A.2d 204, 207 (Pa. 2002) ("*Public policy is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interest.*"). The award violates a public policy. This court has recognized that courts should not enforce an arbitration award that contravenes public policy. See W.R. Grace & Co. v. Local Union 759, Int'l Union of United Rubber Workers, 461 U.S. 757, 766, 103 S. Ct. 2177, 76 L. Ed. 2D 298 (1983); Also see Westmoreland *v.* Westmoreland Intermediate, 939 A.2d 855, 865-866 (Pa. 2007) ("*[A] court should not enforce a grievance arbitration award that contravenes public policy.*") The award must be vacated because of contravening a public policy.

11. The face of the award also contravenes another public policy. For example, the award has the determination:

> *"The amount awarded against Respondents Lowes Home Centers, LLC* (e.g., under a breach of contract claim[1]) *and James R. Walters* (e.g., under a negligence claim) *are the same damages for the same loss, and I consequently find that these two Respondents are jointly and severally liable for the amount awarded."* (App. 28a)

The award determined the damage in the negligence

[1]The award determined a non-existing breach of contract claim. Even if we assume breach of contract claim is valid, the award contravenes a public policy.

claim, arising from performing the contract, is the same damage from a breach of contract. Such determination conflicts with a Pennsylvania Supreme Court's holding, a public policy. See Bruno v. Erie Insurance Co., 106 A.3d 48, 70 (Pa. 2014) ("*[A] negligence claim based on the actions of a contracting party in performing contractual obligations is not viewed as an action on the underlying contract itself,*"). The award must be vacated, because it contravenes a public policy.

12. Clearly, the award contravenes two public policies, and must be vacated. It is 100% certain the trial court order (App. 12a), confirming the award, shall be vacated. However, Pennsylvania Superior Court were unwilling to vacate the trial court judgment.

The trial court erred in denying petitioner's right to jury trial, and the trial court judgment shall be vacated

13. The trial court issued three orders, e.g., (App. 25a), (App. 23a), and (App. 14a), granting Lowe's, Ernest, and Walters' motions to compel Petitioner to arbitration. Those orders are absolutely erroneous because the arbitration clause is inapplicable by any of the following reasons:

(a) Each defendant had moved the trial court to dismiss the complaint, and abandoned the arbitration clause, "*claims will be determined by a neutral arbitrator and not a judge or jury*". After defendants' motions to dismiss were not

granted, the doctrine of waiver and estoppel barred defendants from enforcing the arbitration clause;

(b) Defendants also failed to assert the affirmative defense of arbitration. For example, Ernest did not assert affirmative defense of arbitration in his preliminary objection (e.g., pre-answer motion), which waived the affirmative defense. See Pa.R.C.P. 1032(a); Ernest also did not assert affirmative defense of arbitration in his Answer, which waived the affirmative defense. See Pa.R.C.P. 1032(a);

(c) The trial court itself also made the arbitration clause inapplicable. For example, in Ernest's motion for judgment on pleadings, the trial court agreed to determine and determined the claims against Ernest. Therefore, the trial court could not grant Ernest's motion to compel arbitration because the trial court agreed to determine the claims against Ernest;

(d) Pursuant to 42 Pa.C.S. §7304(d) ("*If the application for an order to proceed with arbitration is made in such action or proceeding and is granted, the court order to proceed with arbitration shall include a stay of the action or proceeding.*"), application to compel arbitration should include a request to stay the judicial proceeding and the court should stay the judicial proceeding for the pending arbitration. However, each defendant's application failed to conform to 42 Pa.C.S. §7304(d). The trial court could not grant an application which fails to conform to the laws. See Mee v. Safeco Ins. Co. of America, 908 A.2d 344, 347 (Pa. Super. 2006).

There are so many reasons that the arbitration clause is inapplicable, and the trial court should not compel Petitioner to arbitration. Petitioner's right to jury trial was violated. The constitutional right to a jury trial is a *"promise that stands as one of the Constitution's most vital protections against arbitrary government."* See United States v. Haymond, 139 S. Ct. 2369, 2373 (2019). It is 100% certain that the trial court order (App. 12a), confirming arbitration award, shall be vacated because Petitioner 's right to jury trial was violated.

14. Eventually, defendants did not contest the issue of jury trial, except Ernest contended that Petitioner has waived his right to jury trial when Petitioner signed the contract that has the arbitration clause. Such contention has been rejected by the court. In Allwein v. Donegal Mutual Ins. Co., 448 Pa. Super. 364, 379, 671 A.2d 744, 752 (1996), appeal denied, 546 Pa. 660, 685 A.2d 541 (1996), the court noted that although the courts do not have a license to rewrite the Lowe's contract, Lowe's does not have a license to rewrite statutes.

15. The facts and circumstances are clear. It is 100% certain that the trial court order (App. 12a), which confirmed the arbitration award, should be vacated, because Petitioner's right to jury trial was violated. However, Pennsylvania Superior Court was unwilling to vacate the trial court judgment.

The trial court order, granting Walters' petition to open default judgment, should be vacated

16. It should be erroneous for the trial court to grant Walters' petition to open the default judgment. (App. 18a).

17. First, on January 11, 2016, the trial court issued the order "*upon consideration of Plaintiff's Motion to Strike Defendant James R. Walters' Every filing and to Cease Walters Appearing in this Case, it is hereby ORDERED and DECRED that the Motion is GRANTED.*" That is an injunction. The injunction order is continuously and operated on Walters. See Leman v. Krentler-Amold Hinge Last Co., 284 U.S. 448, 451 (1932) ("*It was a decree which operated continuously and perpetually upon the respondent in relation to the prohibited conduct.*"). Walters was "*ceased appearing*". Filing the petition to open default judgment was a contempt of court order. Id @452; Rubber Tire Wheel Co. v. Goodyear Co., 232 U.S. 413 (1914); Louisville & Nashville R. Co. v. Western Union Tel. Co., 250 U.S. 363 (1919). Further, the injunction order also strikes Walters' petition. Clearly, it is 100% certain that the trial court order (App. 18a), granting Walters' petition to open the default judgment, shall be vacated. However, Pennsylvania Superior Court refused to review the appeal.

18. Second, the trial court order is a condensed version of Walters' petition. In Petitioner's brief to Pennsylvania Superior Court, Petitioner raised issues how the trial court erred in granting Walters' petition. Walters did not contest any of those issues, except citing Johnson v. White Septa Septa, 2266 CD 2007, (Pa. Commwlth. 2009) to contend trial court's

errors were harmless because "*the outcome here is the same as it would have been had there been a default judgment.*" That is clearly an erroneous contention. In Johnson, the reason why the court held "*harmless*" is "*As Defendants stipulated to liability prior to trial*". That did not happen in this case. Further, if the trial court did not open the default judgment, damages will be assessed by jury, not by arbitrator. Walters failed to prove the trial court's error is harmless. Facts and circumstances are clear. After a review of the appeal on the merit, the trial court order (App. 18a) should be vacated. However, Pennsylvania Superior Court refused to review the appeal.

The trial court order, denying Petitioner's motion to enter default judgment against Lowe's and Ernest, should be reversed

19. Pursuant to 42 Pa.C.S. §7304(d), Lowe's and Ernest should request the trial court to stay judicial proceeding for pending arbitration. However, Lowe's and Ernest failed to do it.

20. The arbitration was effectively controlled in Lowe's hands. According to agreement term, Lowe's needed to send application to American Arbitration Association and needed to pay the fee to advance the arbitration. However, after the trial court granted Lowe's and Ernest's motion to arbitration, Lowe's and Ernest refused to arbitration and decided to stay the arbitration by themselves. Most terribly, the trial court just let Lowe's and Ernest stay the arbitration as long as they wished. Lowe's and Ernest stayed the

arbitration for 15 months, which prejudiced Petitioner.

21. The point is that Lowe's and Ernest' self-determination is not a "form of law". The delayed arbitration was not "*due process of law*" because of failing to follow the forms of law. See Hagar v. Reclamation District, 111 U. S. 701, 708 (1884) ("*[B]y 'due process' is meant one which, following the forms of law, is appropriate to the case, and just to the parties to be affected.*") Further, right to procedural due process entitles Petitioner to be given a notice and an opportunity to be heard before the arbitration was stayed. Lowe's and Ernest's self-determination to stay the arbitration also violated Petitioner's right to procedural due process.

22. Because of failing to meet the essential elements of due process of law, the delayed arbitration is invalid, and should be banned and is inoperative.

23. Further, the trial court had surrendered its authority to determine the claims against Lowe's and Ernest. After the delayed arbitration was banned, there is no other forum available to decide the claims against Lowe's and Ernest. Default judgment should be the only available remedy. Petitioner filed a motion to enter default judgment against Lowe's and Ernest. The trial court denied Petitioner's motion without considering the issue of "due process of law". (App. 16a). Facts and circumstances are clear. After a review on the merit, the trial court order (App. 16a), which denied

Petitioner' motion to enter default judgment against Lowe's and Ernest, should be reversed. However, Pennsylvania Superior Court refused to review the appeal.

Pennsylvania Superior Court refused to review and dismissed the appeal

24. Petitioner appealed the trial court judgment to Pennsylvania Superior Court. The body of appellant brief has 87 pages. As shown above (¶¶10-23, pp. 7-15), the trial court judgment is not possibly to be affirmed.

25. After the appeal had been briefed and was submitted to a three-judge panel for review, Pennsylvania Superior Court refused to review the appeal, and dismissed the appeal by determining appellant's argument is defective, failing to conform to three rule requirements. (App. 8a-9a). However, the Superior Court's determination is not a defect, but is disagreement about pleading. The Superior Court dismissed the appeal by three disagreements:

(1) Appellant brief presents five points to be argued, and Pennsylvania Superior Court disagreed the number of argument points; (App. 9a-10a)
(2) Petitioner's argument did not apply the two conditional rules Pa.R.A.P. 2119(c)-(d) to cite the record. The point is Pa.R.A.P. 2119(c)-(d) are inapplicable[2]; (App. 10a)
(3) Appellant's argument cites 53 legal authorities

[2] It will be shown later that the two conditional rules Pa.R.A.P. 2119(c)-(d) are inapplicable.

> in five points, and the Superior Court disagreed 4 of 53 legal authorities. (App. 10a-11a)

Pennsylvania Superior Court's decision should knock rational legal professionals' conscience off. It never happened before that an appeal was dismissed by any of the above reasons. Especially, since 1789 when the judicial branch began to take shape, it has been 230 year. No one appellate court dismisses an appeal by any of the above reasons, except in this case. People should wonder why Pennsylvania Superior Court treated Petitioner so grossly unjust and unfairly.

26. Mostly terribly, we are going to see, below, that Pennsylvania Superior Court's disagreements are completely unreasonable and even nonsense.

Pennsylvania Superior Court dismissed the appeal because three-judge panel disagreed the number of argument points

27. Petitioner presents the following five points to be argued:

> POINT 1. The January 11, 2016 injunction order barred Walters from filing a motion to compel Luo to arbitration. Walters' participation and contribution to the arbitration invalidated the award. The trial court judgment that confirmed the award was mooted. Further, the injunction order also barred Walters from filing a petition to open default judgment. The default judgment against

Walters should not be opened.

POINT 2. The trial court erred in granting Walters' petition to open default judgment.
(A) the first element "promptly filed a petition to open"
(B) the second element "provided a reasonable excuse or explanation for failing to file a responsive pleading"
(C) the third element "pleaded a meritorious defense to the allegations contained in the complaint"

POINT 3. The delayed arbitration failed to meet constitutional requirement, inoperative, and should be banned. There was no other forum available to decide the claims. Default judgment against Lowe's and Ernest is the only available remedy.

POINT 4. Luo was not entitled to be compelled to arbitration. The arbitration deprived Luo of the right to jury trial, equal protection, and due process. The arbitration award should be vacated.
(A) Defendants moved the trial court to dismiss the complaint and violated the arbitration clause
(B) Ernest abandoned arbitration clause under the civil rules
(C) The trial court made the arbitration

clause unenforceable
(D) Defendants' applications to compel arbitration were not in conformity with the laws, and the trial court has no authority to grant the applications
(E) The trial court orders that compelled Luo to arbitration were defective and invalid

POINT 5. The Trial court erred in denying Luo's petition to vacate the arbitration award.
(A) The arbitrator acted in bad faith and corrupted, not impartial
(B) The arbitrator ignored the law
(C) The arbitrator did not read the second amended complaint to find causes of action, but arbitrarily decided the arbitration
(D) To favor the three defense attorneys, the arbitrator did not proceed the hearing according to the agreement but changed the hearing place to a location that was convenient for the three defense attorneys
(E) The arbitration award contravened public policy and must be vacated

Pennsylvania Superior Court did not review the arguments on the merit, but dismissed the appeal because the three-judge panel disagreed the number of five points. It never happened before that an appeal was dismissed because judge disagrees the number of argument points. Why did Pennsylvania

Superior Court treat Petitioner so grossly unjust and unfairly?

28. Most terribly, Pennsylvania Superior Court's disagreement is completely unreasonable and even nonsense. The three-judge panel's comment is copied from (App. 9a-10a) into the following:

> *Our review of appellant's brief reveals substantial and numerous violations of the appellate rules. Although his brief contains an argument section, it is not divided "into as many parts as there are questions to be argued." Pa.R.A.P. 2119(a). Appellant raises 23 issues on appeal, but only divides the argument portion of his brief into five sections. While some of these sections include subsections, they are repetitive of previously argued issues and do not correspond with the issues raised on appeal.*

The Superior Court's comments to dismiss the appeal are completely unreasonable:

-1- The Pa.R.A.P. 2119(a) is clear that ("*the argument shall be divided into as many parts as there are questions to be argued*"), not "*divided into as many parts as the issues on appeal*". Further, issues on appeal could be abandoned, and it is unnecessary to present all the 23 issues in the argument. Especially, it never happened before that an appeal was dismissed because appellant waives an issue on appeal. Pennsylvania Superior Court's comment is unintelligent;

-2- It is erroneous for the three-judge panel to

write "*[w]hile some of these sections include subsections, they are repetitive of previously argued ...*". First, it is factual incorrect. Please verify the five argument points, above, to see if there is an argument that is repetitive of any other argument. The three-judge panel's comment is factual incorrect; Second, even if we assume there is an argument that is repetitive of other. It never happened before that an appeal was dismissed because an argument is argued twice. Pennsylvania Superior Court's comment is unintelligent;

-3- It is also erroneous for Pennsylvania Superior Court to write that "*[w]hile some of these sections include subsections, they ... ... do not correspond with the issues raised on appeal.*" First, it is factual incorrect. Which issue, presented in the argument, was not raised on appeal? Pennsylvania Superior Court never found one and three Defendants also never found one. The three-judge panel's comment is factual incorrect; Second, even if we assume appellant's argument includes an issue, which is not raised on appeal, it never happened before that an appeal was dismissed because appellant presented an issue which is not on appeal.

Pennsylvania Superior Court's disagreement is unintelligent. What we have seen is that Pennsylvania Superior Court dismissed the appeal by three nonsensical comments. People should wonder why Pennsylvania Superior Court arbitrarily dismissed Petitioner's appeal and treated Petitioner

so grossly unjust and unfairly.

Pennsylvania Superior Court dismissed the appeal because appellant's argument did not conform to Pa.R.A.P. 2119(c)-(d) to cite the record. However, Pa.R.A.P. 2119(c)-(d) are inapplicable.

29. In Pennsylvania Rules of Appellant Procedure ("Pa.R.A.P."), when factual evidence is not in dispute, rule Pa.R.A.P. 2117(a)(4) is applicable to cite the record; While, when factual evidence is in dispute, Pa.R.A.P. 2119(c)-(d) are applicable. That is the fundamental difference.

30. Petitioner's brief followed Pa.R.A.P. 2117(a)(4) to cite the record; While, Pennsylvania Superior Court dismissed the appeal because Petitioner's argument did not follow Pa.R.A.P. 2119(c)-(d) to cite the record. The Superior Court's disagreement is copied from (App. 10a) into the following:

> *Additionally, throughout the entirety of his argument section, Appellant fails to cite to the record. See Pa.R.A.P. 2119(c)-(d). Instead, claiming his own recitation of the facts was "verified," Appellant cites to his own brief rather than the record on appeal. See, e.g., Appellant's Brief, at 59 ("[I]t has been verified previously that [Appellant] completely complied with the Pennsylvania Rule of Civil Procedure to serve the 10-day notice ... on Walters. (This Br. pp. 30-31)")*

The Superior Court disagreed that "Appellant's argument did not conform to Pa.R.A.P. 2119(c)-(d) to

cite to the record", and also had the concern that Petitioner's argument cited to "his own recitation of the facts, e.g., the reference (This Br. pp.30-31)".

31. The Superior court's comment is completely baseless. First, it is easy to show that the two conditional rules Pa.R.A.P. 2119(c)-(d) are inapplicable; Second, citing "his own recitation of facts" was made according to Pa.R.A.P. 2117(a)(4) and Pa.R.C.P. 1019(g).

32. Let us see Pa.R.A.P. 2119(c)-(d) are inapplicable. First, the rule Pa.R.A.P. 2119(d) is as:

> (d) Synopsis of evidence. – *When the finding of, or the refusal to find, a fact is argued, the argument must contain a synopsis of all the evidence on the point, with a reference to the place in the record where the evidence may be found.*

The rule 2119(d) is in a *when-condition clause*, specifying argument must cite to the record when factual evidence is in dispute. This rule shall be applied when a party objects his opponent's evidence or when a party's evidence is objected by his opponent or is not admitted, for example, hearsay or inadmissible for any reasons. The point is plaintiff and defendants **NEVER** objected any evidences on the record. The conditional rule Pa.R.A.P. 2119(d) is inapplicable. It is a waste of time to deal with Pennsylvania Superior Court's nonsensical comment.

33. Further, the conditional Rule Pa.R.A.P. 2119(c) is also inapplicable. The rule is as:

> (c) Reference to record. – *If reference is made to the pleadings, evidence, charge, opinion or order, or any other matter appearing in the record, the argument must set forth, in immediate connection therewith, or in a footnote thereto, a reference to the place in the record where the matter referred to appears (see Pa.R.A.P. 2132).*

The rule is in a *if-condition clause*, specifying argument must set forth a reference to the record when argument cites to the record. As shown above, Pa.R.A.P. 2119(d) is inapplicable and argument is not required to cite to the record. Accordingly, the conditional rule Pa.R.A.P. 2119(c) is inapplicable.

34. Clearly, the two conditional rules Pa.R.A.P. 2119(c)-(d) are inapplicable. What we have seen is Pennsylvania Superior Court dismissed the appeal on the reason that petitioner's brief did not conform to the two inapplicable rules, e.g., Pa.R.A.P. 2119(c)-(d). The point is who has an obligation to comply with inapplicable laws. People may wonder why Pennsylvania Superior Court arbitrarily dismissed Petitioner's appeal by nonsensical comment.

35. Pennsylvania Superior Court also had the concern that Appellant's brief cited to "his own recitation of the facts, e.g., the reference (This Br. pp.30-31)", and considered it as a violation to Pa.R.A.P. 2119(c)-(d) for not citing the record. It has been shown above that Pa.R.A.P. 2119(c)-(d) are inapplicable. The Superior Court's comment is erroneous. Further, the following paragraphs will show that citing to "his own recitation of the facts"

was made according to Pa.R.A.P. 2117(a)(4) and Pa.R.C.P. 1019(g). People may wonder how Pennsylvania Superior Court does it's job, even incapable of comprehending procedural rules.

36. Because plaintiff and defendants **NEVER** objected any evidences on the record, Pa.R.A.P. 2117(a)(4) is applicable to cite undisputed facts. Petitioner shall assert statement of fact in his own words, which is necessary to prove his argument, and cites the record to verify his statement. The rule Pa.R.A.P. 2117(a)(4) is as:

> *A closely condensed chronological statement, in narrative form, of all the facts which are necessary to be known in order to determine the points in controversy, with an appropriate reference in each instance to the place in the record where the evidence substantiating the fact relied on may be found. See Rule 2132 (references in briefs to the record).*

At pages 30-31 of Petitioner's brief, Petitioner conformed to Pa.R.A.P. 2117(a)(4) to assert the statement of fact, "*Luo completely complied with the Pennsylvania Rules of Civil Procedure to serve the 10-day notice on Walters*", and cited the record to verify the statement. The pleading of the statement of fact, at Petitioner's brief pages 30-31, is copied into the following:

> **Luo completely complied with the Pennsylvania Rules of Civil Procedure to serve the 10-day notice on Walters**

On December 26, 2014 Luo mailed the Notice of Praecipe to Enter Judgment by Default ("10-day notice") to Walters at the following address:

JAMES R WALTERS
KOLB ROOFING COMPANY
8525 SUMMERDALE AVE
PHILADELPHIA, PA 19152-1141

The USPS tracking number is 9405 5036 9930 0456 1420 32. The USPS delivered the 10-day notice on December 27, 2014 at 11:48AM, in/at mailbox. (R. 148a-149a) Luo 100% complied with the rules to serve Walters the 10-day Notice. See Pa.R.C.P. 440(b) ("*Service by mail of legal papers other than original process is complete upon mailing.*"); Pa.R.C.P. 402(a)(2)(i) ("*If there is no attorney of record, service shall be made by handing a copy to the party or by mailing a copy to or leaving a copy for the party at the address endorsed on an appearance or prior pleading or the residence or place of business of the party, or by transmitting a copy by facsimile as provided by subdivision (d).*")

Plaintiff paid $5.05 for the mailing of 10-day notice. (R. 150a)

Clearly Petitioner conformed to Pa.R.A.P. 2117(a)(4) to assert the statement of fact "*Luo completely*

complied with the Pennsylvania Rules of Civil Procedure to serve the 10-day notice on Walters", and also cited the records (R. 148a-149a) and (R. 150a) for a verification.

37. Then, argument can "cite to his own brief" for statement of fact. See Pa.R.C.P. 1019(g) ("*Any part of a pleading may be incorporated by reference in another part of the same pleading ... ...*"). Petitioner totally conformed to rules to make his argument. In conformity with Rules Pa.R.A.P. 2117(a)(4), Petitioner asserted statement of fact in his own words, and cited record to verify his statement; Then, in conformity with Pa.R.C.P. 1019(g), Petitioner's argument cited to his own brief for statement of fact. It is surprised that Pennsylvania Superior Court wrote the following unintelligent comment at (App. 10a):

> *... ... ... Instead, claiming his own recitation of the facts was "verified," Appellant cites to his own brief rather than the record on appeal. See, e.g., Appellant's Brief, at 59 ("[I]t has been verified previously that [Appellant] completely complied with the Pennsylvania Rule of Civil Procedure to serve the 10-day notice ... on Walters. (This Br. pp. 30-31)")*

On contrary to the Superior Court's unintelligent comment, the statement of fact, "*[I]t has been verified previously that [Appellant] completely complied with the Pennsylvania Rule of Civil Procedure to serve the 10-day notice on Walters* ", was made according to Pa.R.A.P. 2117(a)(4), and the reference (This Br. pp. 30-31) was made according to Pa.R.C.P. 1019(g). Petitioner's argument completely

conformed to the rules. It is a waste of time to deal with Pennsylvania Superior Court's nonsensical comments. What we have seen is Pennsylvania Superior Court wrote nonsensical comments to dismiss Petitioner's appeal. People may wonder how Pennsylvania Superior Court does it's job.

Pennsylvania Superior Court dismissed the appeal because judge disagrees 4 of 53 citations of legal authority

38. Pennsylvania Superior Court also dismissed the appeal by determining Petition's argument failed to conform to Pa.R.A.P. 2119(a) for citation of relevant authorities, for example, the court wrote "*while Appellant's brief contains numerous references to case law, it is devoid of references to relevant case law.* See Pa.R.A.P. 2119(a)." (App. 10a) More specifically, Appellant's argument cites 53 citations of legal authority in five points, and Pennsylvania Superior Court disagreed 4 of 53 legal authorities.

39. It never happened before that an appeal was dismissed because judge disagrees one or some citations of legal authority. People would wonder why Pennsylvania Superior Court dismissed the appeal because judges disagreed 4 of 53 citations of legal authority.

40. Most terribly, Pennsylvania Superior Court's disagreement is unreasonable. The Superior Court determined four legal authorities are irrelevant. However, according to Black Law (2nd Edition, p.

1012), relevancy is "*Applying to the matter in question; affording something to the purpose*". A determination of relevancy should examine the question. The Superior Court's never examined the question. That did not determine relevancy, but made comments of disagreement. In the following, we can see the four comments of the Superior Court are nonsensical and unintelligent:

(1) The Superior Court commented a citation at Appellant's brief at 65 (defining "*defense upon the merit*") as "*only serves to define legal concept*". (App. 10a) Such comment is nonsense. The portion of the argument is as:

> Third, Walters asserted "objection" to complaint allegations as a meritorious defense. (This Br. pp.26-27) However, objection to factual allegation is not a meritorious defense. See Black Law Dictionary, Second Edition, p.775, ("*A 'defense upon the merits' is one which depends upon the inherent justice of the defendant's contention, as shown by the substantial facts of the case, as distinguished from one which rests upon technical objections or some collateral matter.*")

The definition of meritorious defense is cited to argue that objection to complaint allegation is not a meritorious defense. The Superior Court should determine the question if objection to

complaint allegation is a meritorious defense, not to make a comment. Especially, who could believe the appeal should be dismissed because Petitioner made the above argument? Pennsylvania Superior Court's conduct is nonsense;

(2) The Superior Court commented a citation at Appellant's brief at 61 ("citing Reshard v. McQueen, 562 So. 2D 811 (Fla. 1st DCA 1990)")) as "*exists outside our jurisdiction*". (App. 10a) Such comment is unintelligent. The Reshard is not the only legal authority, cited, in the argument. The argument also cites U.S. Supreme Court case, Pennsylvania case, and Florida case to show the courts made consistent rulings. The portion of argument is as:

> First, the trial court erred in the ruling that default judgment was nullified after filing the second amended complaint. Indeed, the second amended complaint superseded the original complaint. However, default judgment, a final judgment, cannot be nullified or destroyed. E.g., see Kessler v. Eldred, 206 U.S. 285 (1907) ("*Rights between litigants once established by the final judgment of a court of competent jurisdiction must be recognized in every way, and wherever the judgment is entitled to respect, by those who are bound thereby.*"); Albert Einstein Medical Center v. Forman, 212 Pa. Super. 450,

452, 243 A.2d 181 (1968) ("*Once a judgment has been entered, it is ordinarily conclusive*"). It was erroneous for the trial court to rule the default judgment was nullified when filing the second amended complaint.

It is certain that default judgment could not be nullified by filing an amended complaint. For an example in Florida state, in the case Reshard v. McQueen, 562 So. 2D 811 (Fla. 1st DCA 1990), appellant presents only one argument "*the default entered against him was nullified by the filing of an amended complaint on the day following the default.*" Id. @812. The Florida court disagreed the appellant's argument, and notes "*We are unable in these circumstances to conclude that the amended complaint should be accorded the effect appellant argues*" Id. @813. Default judgment could not be nullified by filing an amended complaint. Also see *47 Am. Jur. 2d Judgments, Section 1175*: "*([T]he general rule is that, on a default, the complaint is to be leniently construed and every reasonable inference indulged to support a cause of action. Hence,* ***a judgment rendered upon default will not be held void*** *... provided its direct averments necessarily imply or reasonably require an inference of the facts*

necessary to supply the defense.")

Even if the Superior Court rejected the citation of Florida case, there are other citations. Especially, has anyone heard that an appeal should be dismissed if appellant cites a case of another state? Pennsylvania Superior Court is outrageous. What Pennsylvania Superior Court should do is to rule if default judgment is nullified after filing the second amended complaint, not to make nonsensical comment;

(3) The Superior Court commented a citation at Appellant's brief at 62 ("*citing* Frow v. De La Vega, *82 U.S. 552 (1872) for proposition that defaulting defendant could not defend a second amended complaint; in fact,* Frow *does not contemplate a second amended complaint*)" as "*are entirely widely inaccurate statements of the law*". (App. 10a) Pennsylvania Superior Court's comment is unintelligent. The portion of the argument is as:

> Second, the trial court also committed another legal error that the second amended complaint named James R. Walters a co-defendant such that Walters could defend the second amended complaint, e.g., filing a preliminary objection. Because the court did not order to amend the caption, that's why Walters is on the caption as a defendant. However, that does not mean Walters could defend the second amended complaint,

> because Walters was a "*defaulting defendant*", not an "*active defendant*". A defaulting defendant (e.g., Walters) could not defend the second amended complaint. For example, see Frow v. De La Vega, 82 U.S. 552 (1872) ("*The defaulting defendant has lost his standing in court. He will not be entitled to service of notices in the cause, nor to appear in it in any way. He can adduce no evidence, he cannot be heard at the final hearing.*"). It was erroneous for the trial court to rule that Walters was named as a co-defendant in the second amended complaint such that he could defend the second amended complaint, e.g., filing a preliminary objection.

The Superior Court's comment is unintelligent. According to Frow, Waters "*cannot be heard*" and "*will not appear*". It is correct that Walters cannot defend the second amended complaint. The Superior Court is a nonsensical court. What the Superior Court should do is to rule if Walters could defend the second amended complaint, not to make nonsensical comment. Especially, who could believe the appeal should be dismissed because Petitioner made the above argument? The Superior Court is outrageous;

(4) The Superior Court commented a citation at Appellant's Brief at 59-60 ("*citing law relating to a petition to strike in support of his argument that the trial court erred in granting Walters's*

petition to open") as "*do not support the legal positions Appellant has taken in his brief*". (App.11a) Pennsylvania Superior Court's comment is unintelligent. The portion of the argument is as:

> First, it has been verified previously that Luo completely complied with the Pennsylvania Rules of Civil Procedure to serve the 10-day notice (e.g., Notice of Praecipe to Enter Judgment by Default) on Walters. (This Br. pp.30-31) According to precedents, Walters' contention, which he did not receive the 10-day notice, could not open a default judgment. For example, in Wells Fargo Bank, N.A. v. Vanmeter, 2013 PA Super 115, 67 A.3d 14 (2013), the Superior court affirmed "*trial court's denial of a petition ... ... despite appellant's contention that it did not actually receive ten day notice of plaintiff's intent to praecipe for entry of default judgment (citing Central Penn National Bank v. Williams, 362 Pa. Super. 229, 523 A.2d 1166, 1168-1169 (1987))*" Especially, see the supreme court holding in Central Penn National Bank v. Williams at 231:
>
> > *"The trial court found that actual receipt of the notice by defendant is unnecessary and that mailing*

> *the notice to an address known to be defendant's principal residence is sufficient. We agree and therefore affirm the order of the trial court."*
>
> The trial court's ruling contravened the Pennsylvania Supreme court holding. Especially, it has been verified previously that Walters has a pattern of baseless denial. (This Br. p.30)

The Superior Court's comment is unintelligent. First, the citation Central Penn National Bank held "*actual receipt of the notice by defendant is unnecessary.*" The civil rule for services is applied to all civil actions, regardless the cause of action; Second, the court's comment is factual incorrect. The Central reviewed a petition to open and/or strike default judgment, whose purpose is identical to Walters' petition to open and/or strike default judgment. The Superior Court just wrote nonsense to dismiss the appeal. Especially, who could believe that the appeal should be dismissed because Petitioner made the above argument? The Superior Court is outrageous.

41. What we have seen is Pennsylvania Superior Court wrote four nonsensical comments to dismiss Petitioner's appeal. People would wonder why Pennsylvania Superior Court arbitrarily dismissed Petitioner's appeal and treated Petitioner so grossly unjust and unfairly.

Pennsylvania Superior Court's decision also differs from other appellant courts

42. Pennsylvania Superior Court dismissed the appeal by determining appellant's brief is defective in rule compliance.

43. Pennsylvania state has two immediate appellate courts. The other immediate appellate court is the Pennsylvania Commonwealth court. Pennsylvania Commonwealth Court does not dismiss an appeal if appellant brief is found defective, but rejects defective brief and orders appellant to refile a proper brief, and appeal is not dismissed unless appellant fails to cure deficiencies. For example, in the Pennsylvania Commonwealth court case, 563 CD 2018, the court rejected a defective brief on 7/30/2018:

> *It is ordered: 1. Petitioner's brief is not accepted. 2. Petitioner shall file and serve an amended brief (4 copies) that conforms to the requirements of Chapters 1 and 21 of the Pennsylvania Rules of Appellate Procedure on or before August 10, 2018, or this case will be dismissed as of course. 3. Respondent's brief shall be due, if at all, 30 days after service of petitioner's amended brief*

Pennsylvania Commonwealth Court gives appellant an opportunity to cure deficiencies; While, Pennsylvania Superior Court did not give Petitioner an opportunity to cure the deficiencies. Pennsylvania Superior Court's decision differs from Pennsylvania

Commonwealth Court.

44. Further, Pennsylvania Superior Court's decision also differs from federal appellate courts. When appellant's brief is found defective, federal appellate courts reject the defective brief, and order appellant to refile a proper brief, and appeal is not dismissed unless appellant fails to do so. For example, in the Third Circuit (also in Pennsylvania), the Local Appellate Rule 107.3 is as

> "*If a motion, brief, or appendix submitted for filing does not comply with FRAP 27 · 32 or 3d Cir. L.A.R. 27.0 · 32.0, the clerk will file the document, but notify the party of the need to promptly correct the deficiency. The clerk will also cite this rule and indicate to the defaulting party how he or she failed to comply. ... ... If the court finds that the party continues not to be in compliance with the rules despite the notice by the clerk, the court may, in its discretion, impose sanctions as it may deem appropriate, including but not limited to the dismissal of the appeal, ...*")

The Third Circuit does not dismiss an appeal when appellant's brief is found defective.

45. Pennsylvania Superior Court's decision, which dismissed the appeal without giving appellant an opportunity to cure deficiencies, differs from other appellate courts. This Court shall have a review and resolve the difference.

REASONS FOR GRANTING THE PETITION

A. Pennsylvania Superior Court's judgment in dismissing the appeal offends interests of society, and conflicts with this Court's published opinion. This Court shall fulfill it's promise of reviewing the Pennsylvania Superior Court's judgment and establishes a guideline to prevent appellate courts from arbitrarily dismissing an appeal

This petition is not only for a question of ethic why Pennsylvania Superior Court dismissed Petitioner's appeal by nonsensical comments. Further, whether Pennsylvania Superior Court could dismiss petitioner's appeal by the three disagreements:

(1) three-judge panel disagrees the number of argument points;
(2) Petitioner's brief does not conform to two inapplicable rules;
(3) the three-judge panel disagreed 4 of 53 citations of legal authority.

is also a question for review.

According to this Court's published opinions, Pennsylvania Superior Court's conduct raises a federal question, due process of laws. In Rochin v. California, 342 U.S. 165, 172 (1952), this Court has the following opinion:

> *In each case, "due process of law" requires an evaluation based on a disinterested inquiry*

> *pursued in the spirit of science, on a balanced order of facts exactly and fairly stated, on the detached consideration of conflicting claims, on a judgment not ad hoc and episodic, but duly mindful of reconciling the needs both of continuity and of change in a progressive society.*

Applying this Court's opinion to this case, it could be seen that Pennsylvania Superior Court's conduct offends interests of society.

Indeed, judge may disagree the number of argument points. However, the legal community never witnessed or expect that an appeal could be dismissed because judge disagrees the number of argument points; Further, no one has an obligation to comply with inapplicable laws. The legal community also never witnessed or expect that an appeal could be dismissed because appellant did not comply with inapplicable rules; Further, it is also nothing uncommon that judge may disagree one or some citations of legal authority. However, the legal community also never witnessed or expect that an appeal could be dismissed if judge disagrees a or some citations of legal authority. Clearly, Pennsylvania Superior Court's judgment in dismissing Petitioner's appeal offends "*traditions and conscience of our people*". That shocks the conscience, a violation of due process of laws.

Since 1789 when the judicial branch began to take shape, it has been 230 years. No other appellate courts arbitrarily dismissed an appeal on any of the following reasons: (1) judge disagrees the number of

argument points, (2) appellant's brief does not conform to inapplicable rules, (3) judge disagrees 4 of 53 appellant's citations of legal authority. Petitioner is the only victim in 230 years, whose appeal was arbitrarily dismissed so grossly unjust and brutally.

Pennsylvania Superior Court's conduct offends interests of society. This Court has a promised duty of reviewing a lower court's conduct when the lower court offends interest of society. See Id @171 ("*The Due Process Clause places upon this Court the duty of exercising a judgment, within the narrow confines of judicial power in reviewing [Pennsylvania Superior Court's decision], upon interests of society pushing in opposite directions.*") This Court shall fulfill with the promised duty of reviewing Pennsylvania Superior Court's decision and establishes a guideline to prevent appellate courts from arbitrarily dismissing an appeal.

B. This petition presents a perfect vehicle to resolve appellate court's split on the ruling when appellant's brief is found defective

As shown above (¶¶42-45, pp. 35-36), Pennsylvania Superior Court's decision differs from other appellate courts. When Petitioner's brief is found defective, the Superior Court dismissed Petitioner's appeal without giving Petitioner an opportunity to cure the deficiencies; While, other appellate courts give appellants an opportunity to cure the deficiencies when appellant's brief is found defective. There is an acknowledged split among appellate courts. This case presents the perfect

vehicle to resolve the appellate split, to avoid further deviating decisions on this issue.

However, it appears that Pennsylvania Superior Court's decision is incorrect, in conflict with several published opinions of this Court. First, this Court has held defective pleading is not decisive to the outcome. See Conley v. Gibson, 355 U.S. 41,48 (1957) (The courts "*reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome, and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.*"). Apparently Pennsylvania Superior Court conflicts with this Court's published opinion, and dismissed the appeal by determining Petitioner's brief is defective; Second, this Court also held that, in the absence of any justifying reason, Pennsylvania Superior Court must give petitioner an opportunity to cure deficiencies. See Foman v. Davis, 371 U.S. 178, 182 (1962) ("*[T]he grant or denial of an opportunity to amend is within the discretion of the [Pennsylvania Superior Court], but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion.*") The point is that after filing a notice of appeal, appellant just follows scheduling order to file a brief. No justifying reasons could possibly exist, e.g., undue delay or opponent is prejudiced. Because of no justifying reasons, appellate court shall give appellant an opportunity to cure the deficiencies. Apparently, it is erroneous for Pennsylvania Superior Court to dismiss the appeal without giving Petitioner an opportunity to cure his defective brief.

There is an acknowledged split among appellate courts. This case presents the perfect vehicle to resolve the appellate split, to avoid further deviating decisions on this issue.

C. The appeal has not been reviewed on the merits. Pennsylvania Superior Court's conduct conflicts with a tradition of this Court that mere technicalities should not stand in the way of deciding a case on the merits

Review is warranted. Even if we assume Petitioner's brief is defective, this Court has a tradition to review an appeal on the merits. Torres v. Oakland Scavenger Co., 487 U.S. 312, 316 (1988) ("*'mere technicalities' should not stand in the way of consideration of a case on its merits.*") Especially, the appeal has been briefed. Pennsylvania Superior Court should not refuse to review the appeal on the merits.

Further, the facts and circumstances are clear. It could be certain that, after a review on the merits, the trial court judgment shall be vacated:

(1) As shown above (¶¶10-12, pp.7-9), the arbitration award contravenes public policies. It is 100% certain that, after a review on the merit, the trial court order (App. 12a), which confirmed the award, shall be vacated;

(2) As shown above (¶¶13-15, pp. 9-11), the trial court erred in denying Petitioner's right to jury trial by compelling Petitioner to arbitration. It is also 100% certain that, after a review on the

merit, the trial court order (App. 12a), which confirmed the arbitration award, shall be vacated because the trial court erred in denying petitioner's right to jury trial;

(3) As shown above (¶¶16-18, pp.12-13), the trial court erred in accepting Walters' petition to open the default judgment, because there is an injunction order, which barred Walters from filing the petition to open default judgment. Further, Walters failed to prove trial court's error was harmless. A review on the merit may vacate the trial court order (App. 18a), which granted Walters' petition to open default judgment;

(4) As shown above (¶¶19-23, pp.13-15), Lowe's and Ernest self-determined to stay the arbitration. Self-determination is not a "form of laws", in violation of due process of laws. Further, before a stay of the arbitration, procedural due process entitled Petitioner to be given a notice and an opportunity to be heard. Lowe's and Ernest's self-determination also violated Petitioner's right to procedural due process. The delayed arbitration, provided by Lowe's and Ernest, is unconstitutional, inoperative, and should be banned. A review on the merits may reverse the trial court order (App. 16a) that denied Petition's motion to enter default judgment against Lowe's and Ernest.

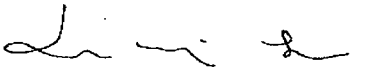
Facts and circumstances are clear. After a review on the merit, it is 100% certain that the trial court judgment shall be vacated. Under this circumstance, this Court has held in a similar situation that

Petitioner should be offered an opportunity to test his appeal on the merit. See Foman v. Davis, 371 U.S. 178, 182 (1962) ("*If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits.*") Petitioner should be offered an opportunity to have his appeal reviewed on the merits.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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