

## Petitioner Seeking To Vacate International Arbitral Award Has Choices Concerning How To Serve Respondent

January 9, 2012 by [Louis M. Solomon](#)

[Mafidis v. Subway International, B.V.](#), Case No. 3:10-CV-119 (PCD)(D. Conn. 2011), involves an attempt by a Subway franchisee under an international franchise agreement to vacate an international arbitral award against Subway. The Franchise Agreement contained a dispute resolution clause requirement arbitration and that proceedings would follow the United Nations Commission on International Trade Regulations and Law Arbitration Rules administered by an arbitration agency, such as the International Centre for Dispute Resolution. Necessary hearings would be held in New York City.

After the petitioner lost the arbitration, it sought to vacate on the grounds that Subway acted in bad faith. The petitioner mailed the court process to an entity addressed to Subway International but did not send the underlying complaint of summons or the court's process to Subway's principal place of business in Amsterdam.

Subway moved to dismiss for want of proper service. The Court granted the motion without prejudice. The Court relied on Fed. R. Civ. P. 4(h), which permits service on a non-U.S. corporation in a variety of ways, including by delivering a copy of the summons and of the complaint to an officer . . . or any other agent authorized by appointment or by law to receive service of process . . ." or in any manner permitted by Rule 4(f). That rule, in turn, permits service "by any internationally agreed mean" that is calculated to give notice. That includes service in accordance with the Hague Convention.

So the petitioner could have satisfied service in any of three ways at least: service in accordance with the Federal Rules; service in accordance with the Hague Convention; and service as specified in the Franchise Agreement (in this case it was easy to serve under the Franchise Agreement — all that was required was written notification sent by mail to Subway International's primary place of business in the Netherlands.

Plaintiff did not satisfy any of the means available, leading the District Court to dismiss the petition, without prejudice.