

The National Agricultural
Law Center



University of Arkansas School of Law

An Agricultural Law Research Project

States' Alternative Dispute Resolution Statutes

State of New York

www.NationalAgLawCenter.org



UNIVERSITY of ARKANSAS
SCHOOL of LAW

States' Alternative Dispute Resolution Statutes

STATE OF NEW YORK

Index

<i>Arbitration</i>	2
<i>Alternative Method of Dispute Resolution by Arbitration</i>	7
<i>Mediation</i>	14
<i>Alternative Method of Dispute Resolution by Arbitration</i>	15

Arbitration

Chapter 8, Article 75.

Current through 2008

§ 7501. Effect of arbitration agreement

A written agreement to submit any controversy thereafter arising or any existing controversy to arbitration is enforceable without regard to the justiciable character of the controversy and confers jurisdiction on the courts of the state to enforce it and to enter judgment on an award. In determining any matter arising under this article, the court shall not consider whether the claim with respect to which arbitration is sought is tenable, or otherwise pass upon the merits of the dispute.

§ 7502. Applications to the court; venue; statutes of limitation; provisional remedies

(a) Applications to the court; venue. A special proceeding shall be used to bring before a court the first application arising out of an arbitrable controversy which is not made by motion in a pending action.

(i) The proceeding shall be brought in the court and county specified in the agreement. If the name of the county is not specified, proceedings to stay or bar arbitration shall be brought in the county where the party seeking arbitration resides or is doing business, and other proceedings affecting arbitration are to be brought in the county where at least one of the parties resides or is doing business or where the arbitration was held or is pending.

(ii) If there is no county in which the proceeding may be brought under paragraph (i) of this subdivision, the proceeding may be brought in any county.

(iii) Notwithstanding the entry of judgment, all subsequent applications shall be made by motion in the special proceeding or action in which the first application was made.

(iv) If an application to confirm an arbitration award made within the one year as provided by section seventy-five hundred ten of this article, or an application to vacate or modify an award made within the ninety days as provided by subdivision (a) of section seventy-five hundred eleven of this article, was denied or dismissed solely on the ground that it was made in the form of a motion captioned in an earlier special proceeding having reference to the arbitration instead of as a distinct special proceeding, the time in which to apply to confirm the award and the time in which to apply to vacate or modify the award may, notwithstanding that the applicable period of time has expired, be made at any time within ninety days after the effective date of this paragraph, and may be made in whatever form is appropriate (motion or special proceeding) pursuant to this subdivision.

(b) Limitation of time. If, at the time that a demand for arbitration was made or a notice of intention to arbitrate was served, the claim sought to be arbitrated would have been barred by limitation of time had it been asserted in a court of the state, a party may assert the limitation as a bar to the arbitration on an application to the court as provided in section 7503 or subdivision (b) of section 7511. The failure to assert such bar by such application shall not preclude its assertion before the arbitrators, who may, in their sole discretion, apply or not apply the bar. Except as provided in subdivision (b) of section 7511, such exercise of discretion by the arbitrators shall not be subject to review by a court on an application to confirm, vacate or modify the award.

(c) Provisional remedies. The supreme court in the county in which an arbitration is pending or in a county specified in subdivision (a) of this section, may entertain an application for an order of attachment or for a preliminary injunction in connection with an arbitration that is pending or that is to be commenced inside or outside this state, whether or not it is subject to the United Nations convention on the recognition and enforcement of foreign arbitral awards, but only upon the ground that the award to which the applicant may be entitled may be rendered ineffectual without such provisional relief. The provisions of articles 62 and 63 of this chapter shall apply to the application, including those relating to undertakings and to the time for commencement of an action (arbitration shall be deemed an action for this purpose), except that the sole ground for the granting of the remedy shall be as stated above. If an arbitration is not commenced within thirty days of the granting of the provisional relief, the order granting such relief shall expire and be null and void and costs, including reasonable attorney's fees, awarded to the respondent. The court may reduce or expand this period of time for good cause shown. The form of the application shall be as provided in subdivision (a) of this section.

§ 7503. Application to compel or stay arbitration; stay of action; notice of intention to arbitrate

(a) Application to compel arbitration; stay of action. A party aggrieved by the failure of another to arbitrate may apply for an order compelling arbitration. Where there is no substantial question whether a valid agreement was made or complied with, and the claim sought to be arbitrated is not barred by limitation under subdivision (b) of section 7502, the court shall direct the parties to arbitrate. Where any such question is raised, it shall be tried forthwith in said court. If an issue claimed to be arbitrable is involved in an action pending in a court having jurisdiction to hear a motion to compel arbitration, the application shall be made by motion in that action. If the application is granted, the order shall operate to stay a pending or subsequent action, or so much of it as is referable to arbitration.

(b) Application to stay arbitration. Subject to the provisions of subdivision (c), a party who has not participated in the arbitration and who has not made or been served with an application to compel arbitration, may apply to stay arbitration on the ground that a valid agreement was not made or has not been complied with or that the claim sought to be arbitrated is barred by limitation under subdivision (b) of section 7502.

(c) Notice of intention to arbitrate. A party may serve upon another party a demand for arbitration or a notice of intention to arbitrate, specifying the agreement pursuant to which arbitration is sought and the name and address of the party serving the notice, or of an officer or agent thereof if such party is an association or corporation, and stating that unless the party served applies to stay the arbitration within twenty days after such service he shall thereafter be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time. Such notice or demand shall be served in the same manner as a summons or by registered or certified mail, return receipt requested. An application to stay arbitration must be made by the party served within twenty days after service upon him of the notice or demand, or he shall be so precluded. Notice of such application shall be served in the same manner as a summons or by registered or certified mail, return receipt requested. Service of the application may be made upon the adverse party, or upon his attorney if the attorney's name appears on the demand for arbitration or the notice of intention to arbitrate. Service of the application by mail shall be timely if such application is posted within the prescribed period. Any provision in an arbitration agreement or arbitration rules which waives the right to apply for a stay of arbitration is hereby declared null and void.

§ 7504. Court appointment of arbitrator

If the arbitration agreement does not provide for a method of appointment of an arbitrator, or if the agreed method fails or for any reason is not followed, or if an arbitrator fails to act and his successor has not been appointed, the court, on application of a party, shall appoint an arbitrator.

§ 7505. Powers of arbitrator

An arbitrator and any attorney of record in the arbitration proceeding has the power to issue subpoenas. An arbitrator has the power to administer oaths.

§ 7506. Hearing

(a) Oath of arbitrator. Before hearing any testimony, an arbitrator shall be sworn to hear and decide the controversy faithfully and fairly by an officer authorized to administer an oath.

(b) Time and place. The arbitrator shall appoint a time and place for the hearing and notify the parties in writing personally or by registered or certified mail not less than eight days before the hearing. The arbitrator may adjourn or postpone the hearing. The court, upon application of any party, may direct the arbitrator to proceed promptly with the hearing and determination of the controversy.

(c) Evidence. The parties are entitled to be heard, to present evidence and to cross-examine witnesses. Notwithstanding the failure of a party duly notified to appear, the arbitrator may hear and determine the controversy upon the evidence produced.

(d) Representation by attorney. A party has the right to be represented by an attorney and may claim such right at any time as to any part of the arbitration or hearings which have not taken place. This right may not be waived. If a party is represented by an attorney, papers to be served on the party shall be served upon his attorney.

(e) Determination by majority. The hearing shall be conducted by all the arbitrators, but a majority may determine any question and render an award.

(f) Waiver. Except as provided in subdivision (d), a requirement of this section may be waived by written consent of the parties and it is waived if the parties continue with the arbitration without objection.

§ 7507. Award; form; time; delivery

Except as provided in section 7508, the award shall be in writing, signed and affirmed by the arbitrator making it within the time fixed by the agreement, or, if the time is not fixed, within such time as the court orders. The parties may in writing extend the time either before or after its expiration. A party waives the objection that an award was not made within the time required unless he notifies the arbitrator in writing of his objection prior to the delivery of the award to him. The arbitrator shall deliver a copy of the award to each party in the manner provided in the agreement, or, if no provision is so made, personally or by registered or certified mail, return receipt requested.

§ 7508. Award by confession

(a) When available. An award by confession may be made for money due or to become due at any time before an award is otherwise made. The award shall be based upon a statement, verified by each party, containing an authorization to make the award, the sum of the award or the method of ascertaining it, and the facts constituting the liability.

(b) Time of award. The award may be made at any time within three months after the statement is verified.

(c) Person or agency making award. The award may be made by an arbitrator or by the agency or person named by the parties to designate the arbitrator.

§ 7509. Modification of award by arbitrator

On written application of a party to the arbitrators within twenty days after delivery of the award to the applicant, the arbitrators may modify the award upon the grounds stated in subdivision (c) of section 7511. Written notice of the application shall be given to other parties to the arbitration. Written objection to modification must be served on the arbitrators and other parties to the arbitration within ten days of receipt of the notice. The arbitrators shall dispose of any application made under this section in writing, signed and acknowledged by them, within thirty days after either written objection to modification has been served on them or the time for serving said objection has expired, whichever is earlier. The parties may in writing extend the time for such disposition either before or after its expiration.

§ 7510. Confirmation of award

The court shall confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in section 7511.

§ 7511. Vacating or modifying award

(a) When application made. An application to vacate or modify an award may be made by a party within ninety days after its delivery to him.

(b) Grounds for vacating.

1. The award shall be vacated on the application of a party who either participated in the arbitration or was served with a notice of intention to arbitrate if the court finds that the rights of that party were prejudiced by:

(i) corruption, fraud or misconduct in procuring the award; or

(ii) partiality of an arbitrator appointed as a neutral, except where the award was by confession; or

(iii) an arbitrator, or agency or person making the award exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made; or

(iv) failure to follow the procedure of this article, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection.

2. The award shall be vacated on the application of a party who neither participated in the arbitration nor was served with a notice of intention to arbitrate if the court finds that:

(i) the rights of that party were prejudiced by one of the grounds specified in paragraph one; or

(ii) a valid agreement to arbitrate was not made; or

(iii) the agreement to arbitrate had not been complied with; or

(iv) the arbitrated claim was barred by limitation under subdivision (b) of section 7502.

(c) Grounds for modifying. The court shall modify the award if:

1. there was a miscalculation of figures or a mistake in the description of any person, thing or property referred to in the award; or

2. the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

3. the award is imperfect in a matter of form, not affecting the merits of the controversy.

(d) Rehearing. Upon vacating an award, the court may order a rehearing and determination of all or any of the issues either before the same arbitrator or before a new arbitrator appointed in accordance with this article. Time in any provision limiting the time for a hearing or award shall be measured from the date of such order or rehearing, whichever is appropriate, or a time may be specified by the court.

(e) Confirmation. Upon the granting of a motion to modify, the court shall confirm the award as modified; upon the denial of a motion to vacate or modify, it shall confirm the award.

§ 7512. Death or incompetency of a party

Where a party dies after making a written agreement to submit a controversy to arbitration, the proceedings may be begun or continued upon the application of, or upon notice to, his executor or administrator or, where it relates to real property, his distributee or devisee who has succeeded to his interest in the real property. Where a committee of the property or of the person of a party to such an agreement is appointed, the proceedings may be continued upon the application of, or notice to, the committee. Upon the death or incompetency of a party, the court may extend the time within which an application to confirm, vacate or modify the award or to stay arbitration must be made. Where a party has died since an award was delivered, the proceedings thereupon are the same as where a party dies after a verdict.

§ 7513. Fees and expenses

Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including attorney's fees, incurred in the conduct of the arbitration, shall be paid as provided in the award. The court, on application, may reduce or disallow any fee or expense it finds excessive or allocate it as justice requires.

§ 7514. Judgment on an award

(a) Entry. A judgment shall be entered upon the confirmation of an award.

(b) Judgment-roll. The judgment-roll consists of the original or a copy of the agreement and each written extension of time within which to make an award; the statement required by section 7508 where the award was by confession; the award; each paper submitted to the court and each order of the court upon an application under sections 7510 and 7511; and a copy of the judgment.

Alternative Method of Dispute Resolution by Arbitration **Rules of the Chief Judge**

Current with amendments received through 2008

§ 28.1. Definitions

(a) The words “panel of arbitrators” or “panel” in this Part shall mean: (1) a group of three attorneys chosen to serve as arbitrators by the arbitration commissioner pursuant to section 28.4 of this Part; or (2) a single attorney assigned by the arbitration commissioner, as the Chief Administrator of the

Courts, (hereinafter denominated the Chief Administrator), shall designate from time to time in a particular county or court; or (3) a single arbitrator in the event the parties, by stipulation, provide for arbitration before a single arbitrator in those cases where a panel of three arbitrators otherwise is required.

(b) The term “chairperson” shall mean the attorney so designated by the arbitration commissioner pursuant to section 28.4 of this Part, or the single arbitrator assigned by the arbitration commissioner.

§ 28.2. Mandatory Submission of Actions to Arbitration

(a) The Chief Administrator may establish in any trial court in any county the arbitration program authorized by this Part.

(b) In each county where an arbitration program is established by order of the Chief Administrator, all civil actions for a sum of money only, except those commenced in small claims parts and not subsequently transferred to a regular part of court, that are noticed for trial or commenced in the Supreme Court, County Court, the Civil Court of the City of New York, a District Court or a City Court, on or after the effective date of the order where recovery sought for each cause of action is \$6,000 or less, or \$10,000 or less in the Civil Court of the City of New York, or such other sum as may be authorized by law, exclusive of costs and interest, shall be heard and decided by a panel of arbitrators. The Chief Administrator may also, at any time, upon the establishment of the program in any particular court or county or thereafter, provide for the submission to arbitration of actions seeking recovery of such sums, that are pending for trial in those courts on the effective date of the order.

(c) In addition, upon stipulation filed with the clerk of the court where the action was commenced or, if the case was transferred, the clerk of the court to which it has been transferred, any civil action for a sum of money only, pending or thereafter commenced in such courts, including actions removed to a court of limited jurisdiction from the Supreme Court pursuant to CPLR 325(d), regardless of the amount in controversy, shall be arbitrated, and in any such action the arbitration award shall not be limited to the amounts provided in subdivision (b) of this section, or to the monetary jurisdiction of the court. Any stipulation pursuant to this section may set forth agreed facts, defenses waived or similar terms, and to that extent shall replace the pleadings.

(d) In any action subject to arbitration under these rules or submitted to arbitration by stipulation, the arbitration panel shall have jurisdiction of any counter-claim or crossclaim for a sum of money only that has been interposed, without regard to amount.

(e) All actions subject to arbitration shall be placed on a separate calendar known as the arbitration calendar, in the order of filing of the note of issue, notice of trial or stipulation of submission, except that where a defendant is in default, the plaintiff may seek a default judgment pursuant to the provisions of CPLR 3215.

(f) The appropriate administrative judge, with the approval of the Deputy Chief Administrator, may direct a pretrial calendar hearing by the court of actions pending on the arbitration calendar. If an action is not settled or dismissed, or judgment by default is not directed upon the hearing, it shall be processed thereafter in accordance with the provisions of this Part.

§ 28.3. Arbitration Commissioner

(a) The Chief Administrator shall designate, in each county where arbitration is established pursuant to this Part, an arbitration commissioner. The compensation, if any, payable to a commissioner, other than a full time public official or employee who shall receive no compensation as such commissioner, shall be determined by the Chief Administrator within the appropriation made available for that purpose.

(b) The commissioner shall maintain complete and current records of all cases subject to arbitration under this Part and a current list of attorneys consenting to act as arbitrators.

§ 28.4. Selection of Panels of Arbitrators

(a) The members of each panel of arbitrators shall be appointed by the commissioner from the list established by the Chief Administrator of the Courts of attorneys-at-law admitted to practice in the State of New York. The Chief Administrator may establish procedures to evaluate the qualifications of applicants for placement on the list. No attorney shall be appointed unless he or she shall have filed with the commissioner a consent to act and an oath or affirmation equitably and justly to try all actions coming before him or her. An attorney may be removed from the list in the discretion of the commissioner upon approval of the Chief Administrator.

(b) Names of attorneys shall be drawn at random from the list. Where a three-arbitrator panel is utilized, the first name drawn for each three-arbitrator panel shall be the chairperson thereof. The chairperson of each panel shall have been admitted to practice in New York State as an attorney for at least five years; and the second and third members must be admitted to practice but not for any specified period of time, unless the Chief Administrator shall, by order, otherwise determine. Not more than one member or employee of a partnership or firm shall be appointed to any panel.

(c) No attorney who has served as an arbitrator shall be eligible to serve again until all other attorneys on the current list have had an opportunity to serve.

(d) An arbitrator who is related by blood, marriage or professional ties to a party or his counsel shall be disqualified for cause. An arbitrator may disqualify himself upon his own application, or by application of a party made within five days of the receipt of the notice of the hearing as provided by section 28.6 of this Part. Should a party object to the arbitrator's refusal to disqualify himself or herself for cause, the party may apply to the arbitration commissioner for a ruling. The commissioner's ruling shall be binding on all parties. If an arbitrator is disqualified, the commissioner shall select another arbitrator in the manner authorized by this section.

§ 28.5. Assignment of Actions to Panel

(a) The commissioner shall assign to each panel at least the first three, but no more than six, actions pending on the arbitration calendar.

(b) If an action is settled or discontinued before the hearing, the attorney for the plaintiff shall immediately notify the chairperson and the commissioner. If the plaintiff is not represented by an attorney, the chairperson, upon receiving notice of such settlement or discontinuance, shall

immediately notify the commissioner. The commissioner, upon receiving such notice, shall assign the next available action to the panel.

§ 28.6. Scheduling of Arbitration Hearings

(a) The hearing shall be held in a place provided by the court, by the commissioner, by the chairperson of the panel or, at the request of the chairperson, by a member of the panel. Unless otherwise agreed by the panel, parties and counsel, such place shall be within the county.

(b) The chairperson shall fix a hearing date and time, not less than 15 nor more than 30 days after the case is assigned, and shall give written notice to the members of the panel and the parties or their counsel at least 10 days before the date set. The commissioner may, on good cause shown, extend for a reasonable period the time within which the hearing shall be commenced. Such date and time shall not be a Saturday, Sunday, legal holiday or during evening hours except by agreement of the panel, parties and counsel. Adjournments may be granted at the discretion of the chairperson only upon good cause shown.

(c) If the chairperson is unable to schedule a hearing within 30 days after the case is assigned, or within such further period as the commissioner may set, he shall notify the commissioner in writing of the reasons for such inability. The commissioner shall mark the action “continued” and place it on the arbitration calendar, and shall assign another action to the panel.

(d) Any action which is continued twice, after assignment to two panels, shall be referred by the commissioner to the court where the action was commenced or, if the action was transferred, to the court to which it was transferred, for a hearing on the cause of the inability to hold an arbitration hearing. The court, upon such hearing, may order a dismissal, or authorize the entry of judgment by default pursuant to CPLR 3215, or refer the action to the commissioner for assignment to another panel.

§ 28.7. Defaults

(a) Where a party fails to appear at the hearing, the panel shall nonetheless proceed with the hearing and shall make an award and decision, as may be just and proper under the facts and circumstances of the action, which may be entered as a judgment forthwith pursuant to section 28.11(b) of this Part. The judgment, if any, the default and the award may be vacated and the action may be restored to the arbitration calendar only upon order of the court where the action was commenced or, if the action was transferred, the court to which it was transferred, upon good cause shown. Such order of restoration shall be upon condition that the moving party pay into the court an amount equal to the total fees payable by the administrative office for the courts to the panel.

(b) Should all parties fail to appear at the hearing, the panel must file a report and award dismissing the action. The action may be restored to the arbitration calendar only upon order of the court where the action was commenced or, if the action was transferred, the court to which it was transferred, upon good cause shown. Such order or restoration may provide for the payment by any party into the court of such part of the panel fees payable by the administrative office for the courts to the panel as the court may determine to be just and proper.

§ 28.8. Conduct of Hearings

(a) The panel shall conduct the hearing with due regard to the law and established rules of evidence, which shall be liberally construed to promote justice. In personal injury cases, medical proof may be established by the submission into evidence of medical reports of attending or examining physicians upon stipulation of all parties.

(b) The panel shall have the general powers of a court, including but not limited to:

- (1) subpoenaing witnesses to appear;
- (2) subpoenaing books, papers, documents and other items of evidence;
- (3) administering oaths or affirmations;
- (4) determining the admissibility of evidence and the form in which it is to be offered;
- (5) deciding questions of law and facts in the actions submitted to them.

§ 28.9. Costs of Hearings; Stenographic Record

(a) Witness fees shall be the same as in the court in which the action was commenced or, if the action was transferred, the court to which the action was transferred and the costs shall be borne by the same parties as in court.

(b) The panel shall not be required to cause a stenographic record to be made, but if any party, at least five days before the hearing, requests such record be kept and deposits \$50 or such additional sum as the panel may fix to secure payment therefor, the panel shall provide a stenographer. Any surplus deposited shall be returned to the party depositing it. The cost of the stenographer shall not be a taxable disbursement.

§ 28.10. Compensation of Arbitrators

(a) The Chief Administrator shall provide for the compensation, including expenses, payable to each arbitrator to the extent of money available to the administrative office for the courts for this purpose. Claims for such compensation shall be made to the commissioner after entry of the award on forms prescribed by the Chief Administrator, except that a claim for compensation of the chairperson of a panel also may be made where the action is settled or withdrawn after a panel hearing date has been scheduled but before the hearing is commenced, and a claim for compensation of an arbitrator other than a chairperson may be made where the action is settled or withdrawn within three days of the date scheduled for the hearing. The commissioner shall forward all claims approved by him to the Chief Administrator. Any arbitrator may apply to the commissioner for reimbursement of extraordinary expenses necessarily incurred by him in the same manner as provided for application for ordinary compensation.

§ 28.11. Award

(a) The award shall be signed by the panel of arbitrators or at least a majority of them. The chairperson shall file a report and the award with the commissioner within 20 days after the hearing, and mail or deliver copies thereof to the parties or their counsel. The commissioner shall mark his files accordingly, file the original with the clerk of the court where the action was commenced or, if the action was transferred, the court to which it was transferred, and notify the parties of such filing.

(b) Unless a demand is made for trial de novo, or the award vacated, the award shall be final and judgment shall be entered thereon by the clerk of the court where the action was commenced or, if the action was transferred, the clerk of the court to which it was transferred, with costs and disbursements taxed in accordance with the Civil Practice Law and Rules, the Uniform City Court Act, the New York City Civil Court Act, or the Uniform District Court Act, as the case may be.

§ 28.12. Trial De Novo

(a) Demand may be made by any party not in default for a trial de novo in the court where the action was commenced or, if the action was transferred, the court to which it was transferred, with or without a jury. Any party who is not in default, within 30 days after service upon such party of the notice of filing of the award with the appropriate court clerk, or if service is by mail, within 35 days of such service, may file with the clerk of the court where the award was filed and serve upon all adverse parties a demand for a trial de novo.

(b) If the demandant either serves or files a timely demand for a trial de novo but neglects through mistake or excusable neglect to do one of those two acts within the time limited, the court where the action was commenced or, if the action was transferred, the court to which it was transferred, may grant an extension of time for curing the omission.

(c) The demandant shall also, concurrently with the filing of the demand, pay to the court clerk where the award was filed the amount of the fees payable to the panel by the administrative office for the courts pursuant to section 28.10 of this Part. Where a judicial hearing officer has heard and determined the arbitration, the amount payable shall be the same as would have been payable to a single arbitrator or a panel of three arbitrators, as the case may be, if such judicial hearing officer had not been assigned. Such sum shall not be recoverable by the demandant upon a trial de novo or in any other proceeding.

(d) The arbitrators shall not be called as witnesses nor shall the report or award of the arbitrators be admitted in evidence at the trial de novo.

(e) If the judgment upon the trial de novo is not more favorable than the arbitration award in the amount of damages awarded or the type of relief granted to the demandant, the demandant shall not recover interest or statutory costs and disbursements from the time of the award, but shall pay such statutory costs and disbursements to the other party or parties from the time of the filing of the demand for the trial de novo.

(f) If a judicial hearing officer has heard and determined an arbitration, the trial de novo may not be presided over by a judicial hearing officer, except upon consent of the parties.

§ 28.13. Motion to Vacate Award

(a) Any party, except one who has demanded a trial de novo, within 30 days after the award is filed, may serve upon all other parties who have appeared and file with the appropriate court clerk a motion to vacate the award on only the grounds that the rights of the moving party were prejudiced because:

(1) there was corruption, fraud or misconduct in procuring the award;

(2) the panel making the award exceeded its power or so imperfectly executed it that a final and definite award was not made; or

(3) there was a substantial failure to follow the procedures established by or pursuant to these rules;

unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection.

(b) Copies of the motion papers shall be served upon the commissioner within two days after filing. If the motion to vacate is granted, the case shall be returned to the top of the arbitration calendar and submitted to a new panel.

§ 28.14. General Power of Court

The court where the action was commenced or, if the action was transferred, the court to which it was transferred, shall hear and determine all collateral motions relating to arbitration proceedings.

§ 28.15. Training Courses

The Chief Administrator of the Courts may provide for such orientation courses, training courses and continuing education courses for attorneys applying to be arbitrators and for arbitrators as the Chief Administrator may deem necessary and desirable.

§ 28.16. Judicial Hearing Officers

(a) An arbitration under this part may be heard and determined by a judicial hearing officer instead of a panel of arbitrators, without regard for whether the arbitration otherwise would be triable before a single arbitrator or a panel of three arbitrators. The judicial hearing officer shall be assigned by the commissioner, with the approval of the appropriate administrative judge, to hear and determine such proceedings as shall be assigned by the commissioner. When a judicial hearing officer presides over an arbitration, the procedures followed shall be as set forth in the provisions of this part.

(b) Judicial hearing officers serving as arbitrators pursuant to this part shall receive compensation as provided in section 122.8 of the rules of the Chief Administrator. A location in which a hearing of the arbitration is held shall be deemed a “facility designated for court appearances” within the meaning of that section.

Current through 2008

1. Where, pursuant to paragraph (a) of subdivision three of section thirty-nine of this article, the chief administrator of the courts determines that a political subdivision has ceased or failed during a state fiscal year to provide goods, services and facilities of a specified value, he or she may not notify the state comptroller of his or her determination in accordance with such paragraph unless the chief executive officer of the affected political subdivision is first notified thereof and provided a period of thirty days in which to request mediation in accordance with subdivisions three and four of this section. Where mediation is so requested, the chief administrator may only notify the state comptroller of his or her determination, pursuant to paragraph (a) of subdivision three of section thirty-nine of this article, under the circumstances set forth in subdivision four of this section.
2. In the event that the court facilities capital review board determines not to approve an assessment and plan submitted by the chief executive officer of a political subdivision pursuant to section sixteen hundred eighty-c of the public authorities law, or the board fails to act upon such assessment and plan within sixty days of submission thereof to the board and the chief administrator disapproves the assessment and plan, the chief administrator shall consult with such chief executive officer in an effort to resolve any matters in dispute, and shall, if the chief executive officer so requests, request mediation in accordance with subdivisions three and four of this section.
3. Mediation shall consist of expedited proceedings to effectuate the voluntary resolution of any dispute between the court facilities capital review board and a political subdivision concerning approval of a capital plan pursuant to section sixteen hundred eighty-c of the public authorities law or the chief administrator's determination pursuant to paragraph (a) of subdivision three of section thirty-nine of this article. The mediator shall be appointed by agreement of the chief administrator and the chief executive officer of the affected political subdivision from a list of mediators submitted by the American Arbitration Association.
4. In mediating the dispute, the mediator shall take into consideration, in addition to any other relevant factors, the political subdivision's legal obligation under section thirty-nine of this article to provide goods, services and facilities suitable and sufficient for the transaction of business, and the financial ability of the political subdivision to pay for the goods, services and facilities in light of the totality of its needs and the resources available. In the event the chief administrator and the chief executive officer of the political subdivision fail to achieve agreement within ninety days after commencement of the mediation, or such longer period as they may agree upon, the chief administrator may notify the state comptroller as provided in paragraph (a) of subdivision three of section thirty-nine of this article provided:
 - (a) mediation was requested pursuant to subdivision one of this section, or
 - (b) mediation was requested pursuant to subdivision two of this section and at least twenty-four months have elapsed since the effective date of this section.

ALTERNATIVE METHOD OF DISPUTE RESOLUTION BY ARBITRATION

Section 28.1. Definitions

(a) The words panel of arbitrators or panel in this Part shall mean: (1) a group of three attorneys chosen to serve as arbitrators by the arbitration commissioner pursuant to section 28.4 of this Part; or (2) a single attorney assigned by the arbitration commissioner, as the Chief Administrator of the Courts, (hereinafter denominated the Chief Administrator), shall designate from time to time in a particular county or court; or (3) a single arbitrator in the event the parties, by stipulation, provide for arbitration before a single arbitrator in those cases where a panel of three arbitrators otherwise is required.

(b) The term chairperson shall mean the attorney so designated by the arbitration commissioner pursuant to section 28.4 of this Part, or the single arbitrator.

Section 28.2. Mandatory submission of actions to arbitration

(a) The Chief Administrator may establish in any trial court in any county the arbitration program authorized by this Part.

(b) In each county where an arbitration program is established by order of the Chief Administrator, all civil actions for a sum of money only, except those commenced in small claims parts and not subsequently transferred to a regular part of court, that are noticed for trial or commenced in the Supreme Court, County Court, the Civil Court of the City of New York, a District Court or a City Court, on or after the effective date of the order where recovery sought for each cause of action is \$6,000 or less, or \$10,000 or less in the Civil Court of the City of New York, or such other sum as may be authorized by law, exclusive of costs and interest, shall be heard and decided by a panel of arbitrators. The Chief Administrator may also, at any time, upon the establishment of the program in any particular court or county or thereafter, provide for the submission to arbitration of actions, seeking recovery of such sums, that are pending for trial in those courts on the effective date of the order.

(c) In addition, upon stipulation filed with the clerk of the court where the action was commenced or, if the case was transferred, the clerk of the court to which it has been transferred, any civil action for a sum of money only, pending or thereafter commenced in such courts, including actions removed to a court of limited jurisdiction from the Supreme Court pursuant to CPLR 325(d), regardless of the amount in controversy, shall be arbitrated, and in any such action the arbitration award shall not be limited to the amounts provided in subdivision (b) of this section, or to the monetary jurisdiction of the court. Any stipulation pursuant to this section may set forth agreed facts, defenses waived or similar terms, and to that extent shall replace the pleadings.

(d) In any action subject to arbitration under these rules or submitted to arbitration by stipulation, the arbitration panel shall have jurisdiction of any counter-claim or cross-claim for a sum of money only that has been interposed, without regard to amount.

(e) All actions subject to arbitration shall be placed on a separate calendar known as the arbitration calendar, in the order of filing of the note of issue, notice of trial or stipulation of submission, except

that where a defendant is in default, the plaintiff may seek a default judgment pursuant to the provisions of CPLR 3215.

(f) The appropriate administrative judge, with the approval of the Deputy Chief Administrator, may direct a pretrial calendar hearing by the court of actions pending on the arbitration calendar. If an action is not settled or dismissed, or judgment by default is not directed upon the hearing, it shall be processed thereafter in accordance with the provisions of this Part.

Section 28.3. Arbitration commissioner

(a) The Chief Administrator shall designate, in each county where arbitration is established pursuant to this Part, an arbitration commissioner. The compensation, if any, payable to a commissioner, other than a full-time public official or employee who shall receive no compensation as such commissioner, shall be determined by the Chief Administrator within the appropriation made available for that purpose.

(b) The commissioner shall maintain complete and current records of all cases subject to arbitration under this Part and a current list of attorneys consenting to act as arbitrators.

Section 28.4. Selection of panels of arbitrators

(a) The members of each panel of arbitrators shall be appointed by the commissioner from the list established by the Chief Administrator of the Courts of attorneys-at-law admitted to practice in the State of New York. The Chief Administrator may establish procedures to evaluate the qualifications of applicants for placement on the list. No attorney shall be appointed unless he or she shall have filed with the commissioner a consent to act and an oath or affirmation equitably and justly to try all actions coming before him or her. An attorney may be removed from the list in the discretion of the commissioner upon approval of the Chief Administrator.

(b) Names of attorneys shall be drawn at random from the list. Where a three-arbitrator panel is utilized, the first name drawn for each three-arbitrator panel shall be the chairperson thereof. The chairperson of each panel shall have been admitted to practice in New York State as an attorney for at least five years; and the second and third members must be admitted to practice but not for any specified period of time, unless the Chief Administrator shall, by order, otherwise determine. Not more than one member or employee of a partnership or firm shall be appointed to any panel.

(c) No attorney who has served as an arbitrator shall be eligible to serve again until all other attorneys on the current list have had an opportunity to serve.

(d) An arbitrator who is related by blood, marriage or professional ties to a party or his counsel shall be disqualified for cause. An arbitrator may disqualify himself upon his own application, or by application of a party made within five days of the receipt of the notice of the hearing as provided by section 28.6 of this Part. Should a party object to the arbitrator's refusal to disqualify himself or herself for cause, the party may apply to the arbitration commissioner for a ruling. The commissioner's ruling shall be binding on all parties. If an arbitrator is disqualified, the commissioner shall select another arbitrator in the manner authorized by this section.

Section 28.5. Assignment of actions to panel

(a) The commissioner shall assign to each panel at least the first three, but no more than six, actions pending on the arbitration calendar.

(b) If an action is settled or discontinued before the hearing, the attorney for the plaintiff shall immediately notify the chairperson and the commissioner. If the plaintiff is not represented by an attorney, the chairperson, upon receiving notice of such settlement or discontinuance, shall immediately notify the commissioner. The commissioner, upon receiving such notice, shall assign the next available action to the panel.

Section 28.6. Scheduling of arbitration hearings

(a) The hearing shall be held in a place provided by the court, by the commissioner, by the chairperson of the panel or, at the request of the chairperson, by a member of the panel. Unless otherwise agreed by the panel, parties and counsel, such place shall be within the county.

(b) The chairperson shall fix a hearing date and time, not less than 15 nor more than 30 days after the case is assigned, and shall give written notice to the members of the panel and the parties or their counsel at least 10 days before the date set. The commissioner may, on good cause shown, extend for a reasonable period the time within which the hearing shall be commenced. Such date and time shall not be a Saturday, Sunday, legal holiday or during evening hours except by agreement of the panel, parties and counsel. Adjournments may be granted at the discretion of the chairperson only upon good cause shown.

(c) If the chairperson is unable to schedule a hearing within 30 days after the case is assigned, or within such further period as the commissioner may set, he shall notify the commissioner in writing of the reasons for such inability. The commissioner shall mark the action "continued" and place it on the arbitration calendar, and shall assign another action to the panel.

(d) Any action which is continued twice, after assignment to two panels, shall be referred by the commissioner to the court where the action was commenced or, if the action was transferred, to the court to which it was transferred, for a hearing on the cause of the inability to hold an arbitration hearing. The court, upon such hearing, may order a dismissal, or authorize the entry of judgment by default pursuant to CPLR 3215, or refer the action to the commissioner for assignment to another panel.

Section 28.7. Defaults

(a) Where a party fails to appear at the hearing, the panel shall nonetheless proceed with the hearing and shall make an award and decision, as may be just and proper under the facts and circumstances of the action, which may be entered as a judgment forthwith pursuant to section 28.11(b) of this Part. The judgment, if any, the default and the award may be vacated and the action may be restored to the arbitration calendar only upon order of the court where the action was commenced or, if the action was transferred, the court to which it was transferred, upon good cause shown. Such order of restoration shall be upon condition that the moving party pay into the court an amount equal to the total fees

payable by the administrative office for the courts to the panel.

(b) Should all parties fail to appear at the hearing, the panel must file a report and award dismissing the action. The action may be restored to the arbitration calendar only upon order of the court where the action was commenced or, if the action was transferred, the court to which it was transferred, upon good cause shown. Such order or restoration may provide for the payment by any party into the court of such part of the panel fees payable by the administrative office for the courts to the panel as the court may determine to be just and proper.

Section 28.8. Conduct of hearings

(a) The panel shall conduct the hearing with due regard to the law and established rules of evidence, which shall be liberally construed to promote justice. In personal injury cases, medical proof may be established by the submission into evidence of medical reports of attending or examining physicians upon stipulation of all parties.

(b) The panel shall have the general powers of a court, including but not limited to:

- (1) subpoenaing witnesses to appear;
- (2) subpoenaing books, papers, documents and other items of evidence;
- (3) administering oaths or affirmations;
- (4) determining the admissibility of evidence and the form in which it is to be offered; and
- (5) deciding questions of law and facts in the actions submitted to them.

Section 28.9. Costs of hearings; stenographic record

(a) Witness fees shall be the same as in the court in which the action was commenced or, if the action was transferred, the court to which the action was transferred and the costs shall be borne by the same parties as in court.

(b) The panel shall not be required to cause a stenographic record to be made, but if any party, at least five days before the hearing, requests such record be kept and deposits \$50 or such additional sum as the panel may fix to secure payment therefor, the panel shall provide a stenographer. Any surplus deposited shall be returned to the party depositing it. The cost of the stenographer shall not be a taxable disbursement.

Section 28.10. Compensation of arbitrators

(a) The Chief Administrator shall provide for the compensation, including expenses, payable to each arbitrator to the extent of money available to the administrative office for the courts for this purpose. Claims for such compensation shall be made to the commissioner after entry of the award on forms prescribed by the Chief Administrator, except that a claim for compensation of the chairperson of a panel also may be made where the action is settled or withdrawn after a panel hearing date has been scheduled but before the hearing is commenced, and a claim for compensation of an arbitrator other

than a chairperson may be made where the action is settled or withdrawn within three days of the date scheduled for the hearing. The commissioner shall forward all claims approved by him to the Chief Administrator. Any arbitrator may apply to the commissioner for reimbursement of extraordinary expenses necessarily incurred by him in the same manner as provided for application for ordinary compensation.

Section 28.11. Award

(a) The award shall be signed by the panel of arbitrators or at least a majority of them. The chairperson shall file a report and the award with the commissioner within 20 days after the hearing, and mail or deliver copies thereof to the parties or their counsel. The commissioner shall mark his files accordingly, file the original with the clerk of the court where the action was commenced or, if the action was transferred, the court to which it was transferred, and notify the parties of such filing.

(b) Unless a demand is made for a trial de novo, or the award vacated, the award shall be final and judgment shall be entered thereon by the clerk of the court where the action was commenced or, if the action was transferred, the clerk of the court to which it was transferred, with costs and disbursements taxed in accordance with the Civil Practice Law and Rules, the Uniform City Court Act, the New York City Civil Court Act, or the Uniform District Court Act, as the case may be.

Section 28.12. Trial de novo

(a) Demand may be made by any party not in default for a trial de novo in the court where the action was commenced or, if the action was transferred, the court to which it was transferred, with or without a jury. Any party who is not in default, within 30 days after service upon such party of the notice of filing of the award with the appropriate court clerk, or if service is by mail, within 35 days of such service, may file with the clerk of the court where the award was filed and serve upon all adverse parties a demand for a trial de novo.

(b) If the demandant either serves or files a timely demand for a trial de novo but neglects through mistake or excusable neglect to do one of those two acts within the time limited, the court where the action was commenced or, if the action was transferred, the court to which it was transferred, may grant an extension of time for curing the omission.

(c) The demandant shall also, concurrently with the filing of the demand, pay to the court clerk where the award was filed the amount of the fees payable to the panel by the administrative office for the courts pursuant to section 28.10 of this Part. Where a judicial hearing officer has heard and determined the arbitration, the amount payable shall be the same as would have been payable to a single arbitrator or a panel of three arbitrators, as the case may be, if such judicial hearing officer had not been assigned. Such sum shall not be recoverable by the demandant upon a trial de novo or in any other proceeding.

(d) The arbitrators shall not be called as witnesses nor shall the report or award of the arbitrators be admitted in evidence at the trial de novo .

(e) If the judgment upon the trial de novo is not more favorable than the arbitration award in the amount of damages awarded or the type of relief granted to the demandant, the demandant shall not

recover interest or statutory costs and disbursements from the time of the award, but shall pay such statutory costs and disbursements to the other party or parties from the time of the filing of the demand for the trial de novo.

(f) If a judicial hearing officer has heard and determined an arbitration, the trial de novo may not be presided over by a judicial hearing officer, except upon consent of the parties.

Section 28.13. Motion to vacate award

(a) Any party, except one who has demanded a trial de novo , within 30 days after the award is filed, may serve upon all other parties who have appeared and file with the appropriate court clerk a motion to vacate the award on only the grounds that the rights of the moving party were prejudiced because:

(1) there was corruption, fraud or misconduct in procuring the award;

(2) the panel making the award exceeded its power or so imperfectly executed it that a final and definite award was not made; or

(3) there was a substantial failure to follow the procedures established by or pursuant to these rules;

unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection.

(b) Copies of the motion papers shall be served upon the commissioner within two days after filing. If the motion to vacate is granted, the case shall be returned to the top of the arbitration calendar and submitted to a new panel.

Section 28.14. General power of court

The court where the action was commenced or, if the action was transferred, the court to which it was transferred, shall hear and determine all collateral motions relating to arbitration proceedings.

Section 28.15. Training courses

The Chief Administrator of the Courts may provide for such orientation courses, training courses and continuing education courses for attorneys applying to be arbitrators and for arbitrators as the Chief Administrator may deem necessary and desirable.

Section 28.16. Judicial hearing officers

(a) An arbitration under this Part may be heard and determined by a judicial hearing officer instead of a panel of arbitrators, without regard for whether the arbitration otherwise would be triable before a single arbitrator or a panel of three arbitrators. The judicial hearing officer shall be assigned by the commissioner, with the approval of the appropriate administrative judge, to hear and determine such proceedings as shall be assigned by the commissioner. When a judicial hearing officer presides over an arbitration, the procedures followed shall be as set forth in the provisions of the Part.

(b) Judicial hearing officers serving as arbitrators pursuant to this Part shall receive compensation as

provided in section 122.8 of the Rules of the Chief Administrator. A location in which a hearing of the arbitration is held shall be deemed a "facility designated for court appearances" within the meaning of that section.