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ARTICLE 75—ARBITRATION

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Cross References

- Hospital service corporation or health service corporation, submission of dispute with hospital, see Insurance Law § 4315.
- Personal injury claim by employee, arbitration, see Employers' Liability Law § 11.

United States Code Annotated

- Applicability of federal rules to arbitration proceedings, see Fed.Rules Civ.Proc. Rule 81, 28 USCA.

§ 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. (L.1962, c. 308. Amended L.1963, c. 532, § 47.)

Cross References

Agreement for determination of issue, arbitration procedure applicable, see CPLR 7601.

Infants, incompetents, and conservatees, arbitrations involving, see CPLR 1209.

United States Code Annotated

Applicability of rules, see Fed.Rules Civ.Proc. Rule 81, 28 USCA.

Arbitration and award as affirmative defense, see Fed.Rules Civ.Proc. Rule 8, 28 USCA.

Validity, irrevocability, and enforcement of agreements to arbitrate, see 9 USCA § 2.

§ 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

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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.

(L.1962, c. 308. Amended L.1985, c. 253, § 1; L.2000, c. 226, § 1, eff. Aug. 16, 2000; L.2001, c. 567, § 1, eff. Dec. 19, 2001; L.2005, c. 703, § 1, eff. Oct. 4, 2005.)

United States Code Annotated

Petition to court, see 9 USCA § 4.

§ 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.

(L.1962, c. 308. Amended L.1964, c. 388, § 28; L.1973, c. 1028, § 1.)

United States Code Annotated

Arbitration and award as affirmative defense, see Fed.Rules Civ.Proc. Rule 8, 28 USCA.
Stay of proceedings, see 9 USCA § 3.

§ 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.

(L.1962, c. 308.)

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United States Code Annotated

Appointment of arbitrators or umpire, see 9 USCA § 5.

§ 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.

(L.1962, c. 308.)

§ 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.

(L.1962, c. 308.)

United States Code Annotated

Hearing and determination, see 9 USCA § 4.

§ 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

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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.

(L.1962, c. 308. Amended L.1981, c. 952, § 1.)

United States Code Annotated

Award of arbitrators, see 9 USCA § 9.

Defense arbitration and award, pleading, see Fed.Rules Civ.Proc. Rule 8, 28 USCA.

§ 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 abitrator ¹.

(L.1962, c. 308.)

¹ So in original. Probably should be "arbitrator".

United States Code Annotated

Defense of arbitration and award, pleading, see Fed.Rules Civ.Proc. Rule 8, 28 USCA.

§ 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.

(L.1962, c. 308.)

United States Code Annotated

Modification or correction of award, see 9 USCA § 11.

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§ 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.

(L.1962, c. 308.)

Cross References

Jurisdiction to enter judgment on award of arbitrators,

City court, see UCCA § 206.

District court, see UDCA § 206.

New York City civil court, see NY City Civ. Ct. Act § 206.

United States Code Annotated

Confirmation of award, see 9 USCA § 9.

§ 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.

(L.1962, c. 308.)

United States Code Annotated

Vacation of award, see 9 USCA § 10.

§ 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.

(L.1962, c. 308.)

§ 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.

(L.1962, c. 308.)

§ 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.

(L.1962, c. 308. Amended L.1963, c. 532, § 48; L.1964, c. 388, § 29.)

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