Arbitration – A Useful Form of Alternative Dispute Resolution

by: Chaim J. Jaffe

In my last article, I discussed the mediation process which, if utilized properly, can serve as a valuable method to resolve disputes. There are however, situations where mediation is not productive in which event, parties to a dispute can decide whether to proceed with resolving their issues through the court system or through the arbitration process.

Like mediation, arbitration can serve as a very useful form of alternative dispute resolution. Parties to a written agreement can contract to have any dispute that arises under their agreement resolved through the arbitration process. Like mediation, the arbitration process usually proceeds more quickly than court initiated litigation and, in many instances, is less expensive.

There are many organizations, some industry regulated, that provide arbitration services. Perhaps the most recognized organization is the American Arbitration Association ("AAA") which provides services across many disciples.

When parties to a written agreement have a dispute and one party determines that the dispute is subject to the arbitration clause, he can serve the opposing party with a Demand For Arbitration. Shortly thereafter, the demanding party will file a Statement of Claim with the AAA which sets forth the nature of the dispute and the relief requested. The demanding party will also have to pay the appropriate filing fee, the amount of which is based on the size of the claim. Once the Statement of Claim is filed and served, the defending party will be provided with a period of time within which to serve a response and explain why the claims set forth in the Statement of Claim have no merit. In this regard, the arbitration process is similar to the traditional court system where an action is commenced by the filing of a complaint and the defendant then responds with an answer.

After a response to the Statement of Claim has been filed and served, the AAA will provide the parties with a list of potential arbitrators from which they can chose. Sometimes, the parties' agreement stipulates the number of arbitrators that will hear the dispute. When drafting an arbitration clause, the parties should pay careful attention to the number of arbitrators they want to employ since they will be required to pay the arbitrators' fees which are usually billed on an hourly basis. The obligation to pay the arbitrators is an expense above and beyond the initial filing fees. In most cases, the parties that agree that regardless of the outcome, they will equally share the expenses associated with the arbitration process, exclusive of their respective counsel fees.

When the parties are provided with the pool of potential arbitrators, the AAA will also provide resumes for each candidate so that the parties can properly evaluate each person's skills and qualifications. The parties are required by the AAA to rank their preferences from the list provided. Once the AAA receives the parties' rankings, the AAA will select the arbitrator(s) that will comprise the arbitration panel.

Once the panel has been selected, the arbitrator(s) will schedule a conference call with counsel for the parties to review the nature of the case, the defenses that have been asserted and other procedural issues. Unlike mediation, the parties will be provided with a period of time within which to exchange discovery. Although this sounds similar to the traditional discovery process that takes place within the court system, arbitration related discovery takes place more quickly and with a bit less formality.

After discovery is completed and prior to the commencement of the actual arbitration hearing, the parties will be required to file pre-hearing arbitration statements which, in effect, lay out their entire case. These pre-hearing submissions are not served on opposing counsel.

The actual arbitration hearing proceeds similar to a court trial, although in a much less formal setting. The rules of evidence that traditionally apply to a court proceeding are relaxed. Parties and witnesses are examined and cross-examined. Once the hearing is concluded, the parties are then asked to submit a post-hearing submission in which they summarize what they believe the testimony and evidence showed.

After the hearing is closed and the parties have submitted their post-submission statements, the arbitration panel will issue what is known as an award. The award is similar to a jury verdict or a court rendered decision insofar as it sets forth the panel's decision. Under New York Law, a party can have the award turned into a formal judgment which is then docketed with the appropriate county clerk.

There are very limited circumstances under which an award issued by an arbitration panel will be reversed. New York Civil Practice Law and Rules Section 7511 provide a list of the grounds on which an award can be vacated. Although grounds exist, it is very difficult to vacate an award.

Having read my discussion of the arbitration process, you are probably thinking to yourself that it sounds much like a traditional court supervised litigation matter. In many regards you are correct. However, the arbitration process proceeds much quicker and if handled correctly, can be concluded at a significantly less expense.

If you have any questions or require guidance as to how your agreement to arbitrate should be drafted, feel free to contact me.