S T A T E O F N E W Y O R K

7002--C

2011-2012 Regular Sessions

I N A S S E M B L Y

April 7, 2011

Introduced by M. of A. TITONE, COLTON, GOTTFRIED, REILLY, BRONSON, P. RIVERA, LAVINE -- Multi-Sponsored by -- M. of A. ABINANTI, CALHOUN, COOK, GABRYSZAK, GIBSON, MONTESANO -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- ordered to a third reading -- committed to Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the civil practice law and rules, in relation to grounds for vacating an arbitration award on the basis of partiality of the arbitrator

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Article 75 of the civil practice law and rules is amended by adding a new section 7500 to read as follows:

S 7500. DEFINITIONS. AS USED IN THIS ARTICLE:

(A) "ARBITRATION" MEANS A FORM OF DISPUTE RESOLUTION THAT IS AN ALTERNATIVE TO LITIGATION, IN WHICH THE PARTIES AGREE TO BE BOUND BY THE DETERMINATION OF A NEUTRAL THIRD PARTY ARBITRATOR.

(B) "NEUTRAL THIRD PARTY ARBITRATOR" MEANS AN ARBITRATOR OR PANEL OF ARBITRATORS EACH OF WHOM DOES NOT HAVE AN UNDISCLOSED KNOWN, DIRECT, AND MATERIAL INTEREST IN THE OUTCOME OF THE ARBITRATION PROCEEDING OR A KNOWN, EXISTING, AND SUBSTANTIAL RELATIONSHIP WITH A PARTY, COUNSEL, OR REPRESENTATIVE OF A PARTY.

S 2. Section 7501 of the civil practice law and rules, as amended by chapter 532 of the laws of 1963, is amended to read as follows:

S 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

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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to enforce it and to enter judgment on an award; PROVIDED, HOWEVER, THAT ANY LANGUAGE REQUIRING THE CONTROVERSY BE SUBMITTED TO AN ARBITRATOR OR ARBITRATION ORGANIZATION THAT IS NOT A NEUTRAL THIRD PARTY ARBITRATOR, AS THAT TERM IS DEFINED IN SUBDIVISION (B) OF SECTION SEVENTY-FIVE HUNDRED OF THIS ARTICLE, SHALL BE DEEMED VOID; PROVIDED THAT IT SHALL BE VALID WITH RESPECT TO THE REQUIREMENT THAT THE CONTROVERSY BE ARBITRATED. THE REQUIREMENT THAT THE CONTROVERSY BE HEARD BY A NEUTRAL THIRD PARTY ARBITRATOR MAY NOT BE WAIVED BY PARTY PRIOR TO THE SERVICE ON SUCH PARTY OF A DEMAND FOR ARBITRATION. UPON DISCLOSURE PURSUANT TO SECTION SEVENTY-FIVE HUNDRED FIVE-A OF THIS ARTICLE OF A KNOWN, DIRECT, AND MATERIAL INTEREST IN THE OUTCOME OF THE ARBITRATION PROCEEDING OR A KNOWN EXISTING AND SUBSTANTIAL RELATIONSHIP WITH A PARTY, COUNSEL, OR REPRESENTATIVE OF A PARTY, A PARTY SHALL BE DEEMED TO HAVE WAIVED ANY OBJECTION TO THE ARBITRATOR OR COMPOSITION OF ANY ARBITRATION PANEL, BY FAILING TO RAISE SAME PRIOR TO THE COMMENCEMENT OF THE ARBITRATION HEARING. 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.

S 3. The civil practice law and rules is amended by adding a new section 7505-a to read as follows:

S 7505-A. DISCLOSURE BY ARBITRATOR. (A) BEFORE ACCEPTING APPOINTMENT, AN INDIVIDUAL WHO IS REQUESTED TO SERVE AS AN ARBITRATOR, AFTER MAKING A REASONABLE INQUIRY, SHALL DISCLOSE TO ALL PARTIES TO THE AGREEMENT TO ARBITRATE AND THE ARBITRATION PROCEEDING AND TO ANY OTHER ARBITRATORS ANY KNOWN FACTS THAT A REASONABLE PERSON WOULD CONSIDER LIKELY TO AFFECT THE IMPARTIALITY OF THE ARBITRATOR IN THE ARBITRATION PROCEEDING, INCLUDING:

(1) A FINANCIAL OR PERSONAL INTEREST IN THE OUTCOME OF THE ARBITRATION PROCEEDING; AND

(2) AN EXISTING OR PAST RELATIONSHIP WITH ANY OF THE PARTIES TO THE AGREEMENT TO ARBITRATE OR THE ARBITRATION PROCEEDING, THEIR COUNSEL OR REPRESENTATIVES, A WITNESS, OR ANOTHER ARBITRATOR.

(B) AN ARBITRATOR HAS A CONTINUING OBLIGATION TO DISCLOSE TO ALL PARTIES TO THE AGREEMENT TO ARBITRATE AND THE ARBITRATION PROCEEDING AND TO ANY OTHER ARBITRATORS ANY FACTS THAT THE ARBITRATOR LEARNS AFTER ACCEPTING APPOINTMENT WHICH A REASONABLE PERSON WOULD CONSIDER LIKELY TO AFFECT THE IMPARTIALITY OF THE ARBITRATOR.

(C) IF AN ARBITRATOR DISCLOSES A FACT REQUIRED BY SUBDIVISION (A) OR (B) OF THIS SECTION TO BE DISCLOSED AND A PARTY TIMELY OBJECTS TO THE APPOINTMENT OR CONTINUED SERVICE OF THE ARBITRATOR BASED UPON THE FACT DISCLOSED, THE OBJECTION MAY BE A GROUND FOR VACATING AN AWARD MADE BY THE ARBITRATOR.

(D) IF THE ARBITRATOR DID NOT DISCLOSE A FACT AS REQUIRED BY SUBDIVISION (A) OR (B) OF THIS SECTION, UPON TIMELY OBJECTION BY A PARTY, THE COURT MAY VACATE AN AWARD.

(E) AN ARBITRATOR APPOINTED AS A NEUTRAL ARBITRATOR WHO DOES NOT DISCLOSE A KNOWN, DIRECT, AND MATERIAL INTEREST IN THE OUTCOME OF THE ARBITRATION PROCEEDING OR A KNOWN, EXISTING, AND SUBSTANTIAL RELATIONSHIP WITH A PARTY IS PRESUMED TO ACT WITH EVIDENT PARTIALITY.

S 4. This act shall take effect immediately.