

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:

1 Section 1. Article 75 of the civil practice law and rules is amended
2 by adding a new section 7500 to read as follows:
3 S 7500. DEFINITIONS. AS USED IN THIS ARTICLE:
4 (A) "ARBITRATION" MEANS A FORM OF DISPUTE RESOLUTION THAT IS AN ALTER-
5 NATIVE TO LITIGATION, IN WHICH THE PARTIES AGREE TO BE BOUND BY THE
6 DETERMINATION OF A NEUTRAL THIRD PARTY ARBITRATOR.
7 (B) "NEUTRAL THIRD PARTY ARBITRATOR" MEANS AN ARBITRATOR OR PANEL OF
8 ARBITRATORS EACH OF WHOM DOES NOT HAVE AN UNDISCLOSED KNOWN, DIRECT, AND
9 MATERIAL INTEREST IN THE OUTCOME OF THE ARBITRATION PROCEEDING OR A
10 KNOWN, EXISTING, AND SUBSTANTIAL RELATIONSHIP WITH A PARTY, COUNSEL, OR
11 REPRESENTATIVE OF A PARTY.
12 S 2. Section 7501 of the civil practice law and rules, as amended by
13 chapter 532 of the laws of 1963, is amended to read as follows:
14 S 7501. Effect of arbitration agreement. A written agreement to
15 submit any controversy thereafter arising or any existing controversy to
16 arbitration is enforceable without regard to the justiciable character
17 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.

LBD09411-08-2

1 to enforce it and to enter judgment on an award; PROVIDED, HOWEVER, THAT
2 ANY LANGUAGE REQUIRING THE CONTROVERSY BE SUBMITTED TO AN ARBITRATOR OR
3 ARBITRATION ORGANIZATION THAT IS NOT A NEUTRAL THIRD PARTY ARBITRATOR,
4 AS THAT TERM IS DEFINED IN SUBDIVISION (B) OF SECTION SEVENTY-FIVE
5 HUNDRED OF THIS ARTICLE, SHALL BE DEEMED VOID; PROVIDED THAT IT SHALL BE
6 VALID WITH RESPECT TO THE REQUIREMENT THAT THE CONTROVERSY BE ARBI-
7 TRATED. THE REQUIREMENT THAT THE CONTROVERSY BE HEARD BY A NEUTRAL THIRD
8 PARTY ARBITRATOR MAY NOT BE WAIVED BY PARTY PRIOR TO THE SERVICE ON SUCH
9 PARTY OF A DEMAND FOR ARBITRATION. UPON DISCLOSURE PURSUANT TO SECTION
10 SEVENTY-FIVE HUNDRED FIVE-A OF THIS ARTICLE OF A KNOWN, DIRECT, AND
11 MATERIAL INTEREST IN THE OUTCOME OF THE ARBITRATION PROCEEDING OR A
12 KNOWN EXISTING AND SUBSTANTIAL RELATIONSHIP WITH A PARTY, COUNSEL, OR
13 REPRESENTATIVE OF A PARTY, A PARTY SHALL BE DEEMED TO HAVE WAIVED ANY
14 OBJECTION TO THE ARBITRATOR OR COMPOSITION OF ANY ARBITRATION PANEL, BY
15 FAILING TO RAISE SAME PRIOR TO THE COMMENCEMENT OF THE ARBITRATION HEAR-
16 ING. In determining any matter arising under this article, the court
17 shall not consider whether the claim with respect to which arbitration
18 is sought is tenable, or otherwise pass upon the merits of the dispute.

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

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

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

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

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

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

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

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

50 S 4. This act shall take effect immediately.