STATE OF NEW YORK

3684

2019-2020 Regular Sessions

IN SENATE

February 12, 2019

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to arbitration agreements

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:

§ 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 or material interest, including a financial or personal interest in the outcome of the arbitration proceeding, or a known, 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.

(c) "Employment" means a relationship between an employer and an employee as defined in section three of the Fair Labor Standards Act of 1938 (29 U.S.C. § 203).

(d) "Consumer" means a natural person residing in this state.

(e) "Consumer goods" means goods, wares, paid merchandise or services purchased or paid for by a consumer, the intended use or benefit of which is intended for the personal, family or household purposes of such consumer.

§ 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:

§ 7501. Effect of arbitration agreement. A written agreement to submit any controversy thereafter arising or any existing controversy to

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

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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; provided, however, that any portion of an agreement or contract requiring the controversy concerning employment or the providing of consumer goods be submitted to an arbitrator or arbitration organization that is not a neutral third party arbitrator, shall be deemed void. The requirement that the controversy be heard by a neutral third party arbitrator may not be waived by a 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, 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.

Arbitration of any employment or consumer dispute shall be conducted by a neutral third party arbitrator. Appointment of any arbitrator shall reasonably ensure the personal objectivity of the arbitrator and the right of each party to present its case, to be in attendance during any presentation made by the other party and to rebut or refute such presentation.

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

§ 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 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 based on such non-disclosure.

(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 in rendering an award.

§ 4. Section 7506 of the civil practice law and rules is amended to read as follows:

§ 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.

(d) **Postponements and adjournments. The arbitrator may for good cause postpone or adjourn the hearing upon request of a party or upon the arbitrator's own initiative.** Notwithstanding the failure of a party duly notified to appear, the arbitrator may hear and determine the controversy upon the evidence produced. **If a party to an arbitration intends to present testimony from a witness at the hearing, absent good cause shown, the identity of the witness must be given to all parties at least seven calendar days prior to the hearing.**

(e) 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 **or her** attorney**. It shall be discretionary with the arbitrator to permit the attendance of any other persons**.

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

[~~(f)~~] **(g)** Waiver. Except as provided in subdivision [~~(d)~~]**(e)**, 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.

§ 5. Section 7507 of the civil practice law and rules, as amended by chapter 952 of the laws of 1981, is amended to read as follows:

§ 7507. Award; form; time; delivery. **(a)** 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.

(b) In a matter involving a consumer arbitration or an arbitration between an employer and an employee, as defined in section three of the Fair Labor Standards Act of 1938 (29 U.S.C. § 203), where arbitration was held pursuant to a contract, the award shall state the issues in dispute and shall contain the arbitrator's findings of fact and conclusions of law. The award shall contain a decision on all issues submitted to the arbitrator.

(c) 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 **or she** notifies the arbitrator in writing of his **or her** objection prior to the delivery of the award to him **or her**.

(d) 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.

§ 6. Subparagraph (iv) of paragraph 1 of subdivision (b) of section 7511 of the civil practice law and rules is amended and a new subparagraph (v) is added to read as follows:

(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[~~.~~]; or

(v) the arbitrator evidenced a manifest disregard of the law in rendering the award.

§ 7. The civil practice law and rules is amended by adding two new sections 7516 and 7517 to read as follows:

§ 7516. Prohibited predispute arbitration agreements. (a) Definitions. (i) The term "consumer dispute" means a dispute between an individual who seeks or acquires real or personal property, services (including services relating to securities and other investments), money, or credit for personal, family or household purposes and the seller or provider of such property, services, money or credit.

(ii) The term "employment dispute" means a dispute between an employer and employee arising out of the relationship of employer and employee as defined in section three of the Fair Labor Standards Act of 1938 (29 U.S.C. § 203).

(iii) The term "predispute arbitration agreement" means any agreement to arbitrate a dispute that had not yet arisen at the time of the making of the agreement.

(b) Prohibition. Notwithstanding any other provision of this article, no predispute arbitration agreement shall be valid or enforceable if it requires arbitration of an employment dispute or consumer dispute.

§ 7517. Prohibited provisions. (a) Prohibition of effect of certain arbitration clauses or agreements. Mandatory arbitration clauses or agreements covering consumers and employees are contrary to the established public policy of this state. Because employees and consumers are forced to assent to these agreements as a condition of being an employee or consumer before any dispute has arisen with the employer or merchant, these agreements do not offer employees and consumers a meaningful choice about how to resolve their disputes with the employer or merchant. In addition, mandatory arbitration agreements prevent employees and consumers from effectively vindicating their rights under state law. For these reasons, except when inconsistent with federal law, the state prohibits the formation and enforcement of mandatory arbitration agreements in employment and consumer contracts.

(b) Prohibition of arbitration clauses in employment contracts for workers exempted from the Federal Arbitration Act. A mandatory arbitration agreement within or part of any written contract of employment of seamen, railroad employees or any other class of workers engaged in foreign or interstate commerce is unenforceable and void. Any such arbitration agreement shall be considered severable, and all other provisions of the employment contract shall remain in effect and given full force.

(c) Prohibition of arbitration clauses that are not governed by federal law. Any mandatory arbitration agreement, or portion thereof, in an employment or consumer contract is invalid, unenforceable and void, when the enforceability of such arbitration agreement, or the portion at issue, is governed by state law. Any such arbitration agreement shall be considered severable, and all other provisions of the employment contract shall remain in effect and given full force.

(d) Exclusion. The provisions of this section shall not apply to agreements negotiated with any labor union through collective bargaining.

§ 8. Enforcement. Any private person and any enforcement agency or official responsible for enforcing the provisions of this act may bring suit for injunctive relief against an entity that violates such provisions, and may recover reasonable attorney fees and other costs if an injunction or equivalent relief is awarded. Injunctive relief shall be the only relief available in a suit arising from failure to comply with this act.

§ 9. Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

§ 10. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.