

STATE OF NEW YORK

6889

2023-2024 Regular Sessions

IN ASSEMBLY

May 8, 2023

Introduced by M. of A. LAVINE -- read once and referred to the Committee on Judiciary

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

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision (a) of section 7502 of the civil practice law
2 and rules is amended by adding a new paragraph (v) to read as follows:

3 (v) If there are multiple parties seeking arbitration against the same
4 party or parties, the proceeding may be brought in any court and county
5 where any of the parties seeking arbitration resides or is doing busi-
6 ness or where the arbitration was held or is pending.

7 § 2. Subdivision (c) of section 7503 of the civil practice law and
8 rules, as amended by chapter 1028 of the laws of 1973, is amended to
9 read as follows:

10 (c) Notice of intention to arbitrate. A party may serve upon another
11 party a demand for arbitration or a notice of intention to arbitrate,
12 specifying the agreement pursuant to which arbitration is sought and the
13 name and address of the party serving the notice, or of an officer or
14 agent thereof if such party is an association or corporation, and stat-
15 ing that unless the party served applies to stay the arbitration within
16 twenty days after such service he shall thereafter be precluded from
17 objecting that a valid agreement was not made or has not been complied
18 with and from asserting in court the bar of a limitation of time. Such
19 notice or demand shall be served in the same manner as a summons or by
20 registered or certified mail, return receipt requested. An application
21 to stay arbitration must be made by the party served within twenty days
22 after service upon him of the notice or demand, or he shall be so
23 precluded. Notice of such application shall be served in the same
24 manner as a summons or by registered or certified mail, return receipt
25 requested. Service of the application may be made upon the adverse

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

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1 party, or upon his attorney if the attorney's name appears on the demand
2 for arbitration or the notice of intention to arbitrate. Service of the
3 application by mail shall be timely if such application is posted within
4 the prescribed period. Any provision in an arbitration agreement or
5 arbitration rules which waives the right to apply for a stay of arbi-
6 tration or prescribes a manner of notifying a party of an intention to
7 commence arbitration that is more burdensome than that described in this
8 section is hereby declared null and void.

9 § 3. Subdivision (d) of section 7506 of the civil practice law and
10 rules is amended to read as follows:

11 (d) Representation by attorney. A party has the right to be repres-
12 ented by an attorney and may claim such right at any time as to any part
13 of the arbitration or hearings which have not taken place. This right
14 may not be waived. If a party is represented by an attorney, papers to
15 be served on the party shall be served upon his attorney. Any agreement
16 which discriminates against or penalizes a party for retaining the
17 services of counsel in an arbitration is null and void.

18 § 4. The civil practice law and rules is amended by adding three new
19 sections 7513-a, 7513-b and 7517 to read as follows:

20 § 7513-a. Fees and expenses of arbitration initiation. (a) (i) In an
21 employment or consumer arbitration that requires, either expressly or
22 through application of state or federal law or the rules of the arbi-
23 tration provider, that the drafting party shall pay certain fees and
24 costs before the arbitration can proceed, if the fees or costs to initi-
25 ate an arbitration proceeding are not paid within thirty days after the
26 due date, the drafting party is in material breach of the arbitration
27 agreement, is in default of the arbitration, and waives its right to
28 compel arbitration.

29 (ii) After an employee or consumer meets the filing requirements
30 necessary to initiate an arbitration, the arbitration provider shall
31 immediately provide an invoice for any fees and costs required before
32 the arbitration can proceed to all of the parties to the arbitration.
33 The invoice shall be provided in its entirety, shall state the full
34 amount owed and the date that payment is due, and shall be sent to all
35 parties by the same means on the same day. To avoid delay, absent an
36 express provision in the arbitration agreement stating the number of
37 days in which the parties to the arbitration must pay any required fees
38 or costs, the arbitration provider shall issue all invoices to the
39 parties as due upon receipt.

40 (b) If the drafting party materially breaches the arbitration agree-
41 ment and is in default under subdivision (a) of this section, the
42 employee or consumer may do either of the following:

43 (i) withdraw the claim from arbitration and proceed in a court of
44 appropriate jurisdiction; or

45 (ii) compel arbitration in which the drafting party shall pay reason-
46 able attorneys' fees and costs related to the arbitration.

47 (c) If the employee or consumer withdraws the claim from arbitration
48 and proceeds with an action in a court of competent jurisdiction under
49 paragraph (i) of subdivision (b) of this section, the statute of limita-
50 tions with regard to all claims brought or that relate back to any claim
51 brought in arbitration shall be tolled as of the date of the first
52 filing of a claim in a court, arbitration forum, or other dispute resolu-
53 tion forum.

54 (d) If the employee or consumer proceeds with an action in a court of
55 competent jurisdiction, the court shall impose sanctions on the drafting
56 party in accordance with this chapter.

1 § 7513-b. Fees and expenses of arbitration continuance. (a) (i) In an
2 employment or consumer arbitration that requires, either expressly or
3 through application of state or federal law or the rules of the arbi-
4 tration provider, that the drafting party shall pay certain fees and
5 costs during the pendency of an arbitration proceeding, if the fees or
6 costs required to continue the arbitration proceeding are not paid with-
7 in thirty days after the due date, the drafting party is in material
8 breach of the arbitration agreement, is in default of the arbitration,
9 and waives its right to compel the employee or consumer to proceed with
10 that arbitration as a result of the material breach.

11 (ii) The arbitration provider shall provide an invoice for any fees
12 and costs required for the arbitration proceeding to continue to all of
13 the parties to the arbitration. The invoice shall be provided in its
14 entirety, shall state the full amount owed and the date that payment is
15 due, and shall be sent to all parties by the same means on the same day.
16 To avoid delay, absent an express provision in the arbitration agreement
17 stating the number of days in which the parties to the arbitration must
18 pay any required fees or costs, the arbitration provider shall issue all
19 invoices to the parties as due upon receipt. Any extension of time for
20 the due date shall be agreed upon by all parties.

21 (b) If the drafting party materially breaches the arbitration agree-
22 ment and is in default under subdivision (a) of this section, the
23 employee or consumer may unilaterally elect to do any of the following:

24 (i) withdraw the claim from arbitration and proceed in a court of
25 appropriate jurisdiction. If the employee or consumer withdraws the
26 claim from arbitration and proceeds with an action in a court of appro-
27 priate jurisdiction, the statute of limitations with regard to all
28 claims brought or that relate back to any claim brought in arbitration
29 shall be tolled as of the date of the first filing of a claim in any
30 court, arbitration forum, or other dispute resolution forum;

31 (ii) continue the arbitration proceeding, if the arbitration provider
32 agrees to continue administering the proceeding, notwithstanding the
33 drafting party's failure to pay fees or costs. The neutral arbitrator or
34 arbitration provider may institute a collection action at the conclusion
35 of the arbitration proceeding against the drafting party that is in
36 default of the arbitration for payment of all fees associated with the
37 employment or consumer arbitration proceeding, including the cost of
38 administering any proceedings after the default;

39 (iii) petition the court for an order compelling the drafting party to
40 pay all arbitration fees that the drafting party is obligated to pay
41 under the arbitration agreement or the rules of the arbitration provid-
42 er; or

43 (iv) pay the drafting party's fees and proceed with the arbitration
44 proceeding. As part of the award, the employee or consumer shall recover
45 all arbitration fees paid on behalf of the drafting party without regard
46 to any findings on the merits in the underlying arbitration.

47 (c) If the employee or consumer withdraws the claim from arbitration
48 and proceeds in a court of competent jurisdiction pursuant to paragraph
49 (i) of subdivision (b) of this section, both of the following shall
50 apply:

51 (i) the employee or consumer may bring a motion, or a separate action,
52 to recover all attorneys' fees and all costs associated with the aban-
53 doned arbitration proceeding. The recovery of arbitration fees, inter-
54 est, and related attorneys' fees shall be without regard to any findings
55 on the merits in the underlying action or arbitration; and

1 (ii) the court shall impose sanctions on the drafting party in accord-
2 ance with this chapter.

3 (d) If the employee or consumer continues in arbitration pursuant to
4 paragraph (ii), (iii) or (iv) of subdivision (b) of this section, the
5 arbitrator shall impose appropriate sanctions on the drafting party,
6 including monetary sanctions, issue sanctions, evidence sanctions, or
7 terminating sanctions.

8 § 7517. Breach of arbitration agreement; sanctions. (a) The court
9 shall impose a monetary sanction against a drafting party that mate-
10 rially breaches an arbitration agreement by ordering the drafting party
11 to pay the reasonable expenses, including attorneys' fees and costs,
12 incurred by the employee or consumer as a result of the material breach.

13 (b) In addition to the monetary sanction described in subdivision (a)
14 of this section, the court may order any of the following sanctions
15 against a drafting party that materially breaches an arbitration agree-
16 ment, unless the court finds that the party subject to the sanction
17 acted with substantial justification or that other circumstances make
18 the imposition of the sanction unjust:

19 (i) an evidence sanction by an order prohibiting the drafting party
20 from conducting discovery in the civil action;

21 (ii) a terminating sanction by one of the following orders:

22 (1) an order striking out the pleadings or parts of the pleadings of
23 the drafting party; or

24 (2) an order rendering a judgment by default against the drafting
25 party; or

26 (iii) a contempt sanction by an order treating the drafting party as
27 in contempt of court.

28 § 5. This act shall take effect immediately.