STATE OF NEW YORK

6889--A

2023-2024 Regular Sessions

IN ASSEMBLY

May 8, 2023

Introduced by M. of A. LAVINE, WALLACE, KIM, STECK, HEVESI, SIMON, ZEBROWSKI, SIMONE, DINOWITZ, BURGOS -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

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

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

(c) Notice of intention to arbitrate. A party may serve upon another party a demand for arbitration or a notice of intention to arbitrate, specifying the agreement pursuant to which arbitration is sought and the name and address of the party serving the notice, or of an officer or agent thereof if such party is an association or corporation, and stating that unless the party served applies to stay the arbitration within twenty days after such service [~~he~~] **such party** shall thereafter be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time. Such notice or demand shall be served in the same manner as a summons or by registered or certified mail, return receipt requested. An application to stay arbitration must be made by the party served within

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

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twenty days after service upon [~~him~~] **such party** of the notice or demand, or [~~he~~] **such party** shall be so precluded. Notice of such application shall be served in the same manner as a summons or by registered or certified mail, return receipt requested. Service of the application may be made upon the adverse party, or upon [~~his~~] **such party's** attorney if the attorney's name appears on the demand for arbitration or the notice of intention to arbitrate. Service of the application by mail shall be timely if such application is posted within the prescribed period. Any provision in an arbitration agreement or arbitration rules which waives the right to apply for a stay of arbitration **or prescribes a manner of notifying a party of an intention to commence arbitration that is more burdensome than that described in this section** is hereby declared null and void.

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

(d) 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~~] **such party's** attorney. **Any agreement which discriminates against or penalizes a party for retaining the services of counsel in an arbitration is null and void.**

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

§ 7513-a. Fees and expenses of arbitration initiation. (a) (i) In an employment or consumer arbitration, except an arbitration agreement included in the terms of a collective bargaining agreement, that requires, either expressly or through application of state or federal law or the rules of the arbitration provider, that the drafting party shall pay certain fees and costs before the arbitration can proceed, if the fees or costs to initiate an arbitration proceeding are not paid within thirty days after the due date, the drafting party is in material breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel arbitration.

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

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

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

(ii) compel arbitration in which the drafting party shall pay reasonable attorneys' fees and costs related to the arbitration.

(c) If the employee or consumer withdraws the claim from arbitration and proceeds with an action in a court of competent jurisdiction under paragraph (i) of subdivision (b) of this section, the statute of limitations with regard to all claims brought or that relate back to any claim

brought in arbitration shall be tolled as of the date of the first filing of a claim in a court, arbitration forum, or other dispute resolution forum.

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

§ 7513-b. Fees and expenses of arbitration continuance. (a) (i) In an employment or consumer arbitration, except an arbitration agreement included in the terms of a collective bargaining agreement, that requires, either expressly or through application of state or federal law or the rules of the arbitration provider, that the drafting party shall pay certain fees and costs during the pendency of an arbitration proceeding, if the fees or costs required to continue the arbitration proceeding are not paid within thirty days after the due date, the drafting party is in material breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel the employee or consumer to proceed with that arbitration as a result of the material breach.

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

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

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

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

(iii) petition the court for an order compelling the drafting party to pay all arbitration fees that the drafting party is obligated to pay under the arbitration agreement or the rules of the arbitration provider; or

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

(c) If the employee or consumer withdraws the claim from arbitration and proceeds in a court of competent jurisdiction pursuant to paragraph

(i) of subdivision (b) of this section, both of the following shall apply:

(i) the employee or consumer may bring a motion, or a separate action, to recover all attorneys' fees and all costs associated with the abandoned arbitration proceeding. The recovery of arbitration fees, interest, and related attorneys' fees shall be without regard to any findings on the merits in the underlying action or arbitration; and

(ii) the court shall impose sanctions on the drafting party in accordance with this chapter.

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

§ 7517. Breach of arbitration agreement; sanctions. (a) The court shall impose a monetary sanction against a drafting party that materially breaches an arbitration agreement, except an arbitration agreement included in the terms of a collective bargaining agreement, by ordering the drafting party to pay the reasonable expenses, including attorneys' fees and costs, incurred by the employee or consumer as a result of the material breach.

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

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

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

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

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

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

§ 5. This act shall take effect immediately.