



# Anatomy of a Construction Arbitration

## Preliminary Hearing/Scheduling Order



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Anatomy of a Construction Arbitration  
September 12, 2016 | New Jersey

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- Form of Award
  - Transcripts
  - Pre-Hearing Motions



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# SCHEDULING ORDER

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## American Arbitration Association

Preliminary Hearing Scheduling Order # \_\_\_\_\_ Case # \_\_\_\_\_

### REPORT OF PRELIMINARY HEARING AND SCHEDULING ORDER

# # #

9. a) **Form of Award: (Circle one)**

1. **Standard Award**
2. **Reasoned Award**
3. **Findings of fact and conclusions of law**

b) **Court Reporter:** (Y) (N) \_\_\_\_\_

c) **Other:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

## **SR-18 Form of the Award.**

**a) Any award shall be in writing and signed by the arbitrator. It shall be executed in the form and manner required by law and shall be no longer than three (3) pages.**

**b) In all cases, unless waived by agreement of the parties, the arbitrator shall provide a concise written financial breakdown of any monetary awards, and if there are non-monetary components of the claims or counterclaims, the arbitrator shall include a line item disposition of each non-monetary claim or counterclaim.**

**c) Should the parties require a reasoned award or findings of fact and conclusions of law, the arbitration shall be administered under the Regular or Large, Complex Procedures of the American Arbitration Association's Construction Industry Arbitration Rules along with its associated fees.**

## **R-44 Form of Award**

**a) Any award shall be in writing and signed by a majority of the arbitrators. It shall be executed in the form and manner required by law.**

**b) In all cases, unless waived by agreement of the parties, the arbitrator shall provide a concise written financial breakdown of any monetary awards and, if there are non-monetary components of the claims or counterclaims, the arbitrator shall include a line item disposition of each non-monetary claim or counterclaim.**

**c) The parties may request a specific form of award, including a reasoned opinion, an abbreviated opinion, findings of fact or conclusions of law no later than the conclusion of the first Preliminary Management Hearing. If the parties agree on a form of award other than that specified in R-44(b) of these Rules the arbitrator shall provide the form of award agreed upon. If the parties disagree with respect to the form of the award, the arbitrator shall determine the form of the award. After the conclusion of the Preliminary Management Hearing, the parties may not change the form of the award without the arbitrator's express consent. In such event, the arbitrator shall confirm the nature of the change to the form of award.**

## **R-45 Scope of Award**

**a) The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, equitable relief and specific performance of a contract.**

**b) In addition to the final award, the arbitrator may make other decisions, including interim, interlocutory, or partial rulings, orders, and awards. In any interim, interlocutory, or partial award, the arbitrator may assess and apportion the fees, expenses, and compensation related to such award as the arbitrator determines is appropriate.**

**c) In the final award, the arbitrator shall assess fees, expenses, and compensation as provided in Sections R-52, R-53 , and R-54. The arbitrator may apportion such fees, expenses, and compensation among the parties in such amounts as the arbitrator determined is appropriate.**

**d) The award of the arbitrator may include:**

**(i) interest at such rate and from such date as the arbitrator may deem appropriate; and**

**(ii) an award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement.**

## **R-46 Award Upon Settlement**

**a) If the parties settle their dispute during the course of the arbitration and if the parties so request, the arbitrator may set forth the terms of the settlement in a “consent award.” A consent award must include an allocation of arbitration costs, including administrative fees and expenses as well as arbitrator fees and expenses.**

**b) The consent award shall not be released to the parties until all administrative fees and all arbitrator compensation amounts have been paid in full.**

## **R-47 Delivery of Award to Parties**

**Parties shall accept as notice and delivery of the award the placing of the award or a true copy thereof in the mail addressed to the parties or their representatives at the last known address, person or electronic service of the award, or the filing of the award in any other manner that is permitted by law**



## **R-48 Modification of Award**

**a) Within 20 calendar days after the transmittal of an award, the arbitrator on his or her initiative, or any party, upon notice to the other parties, may request that the arbitrator correct any clerical, typographical, technical or computational errors in the award. The arbitrator is not empowered to re-determine the merits of any claim already decided.**

**b) If the modification request is made by a party, the other parties shall be given 10 calendar days to respond to the request. The arbitrator shall dispose of the request within 20 calendar days after transmittal by the AAA to the arbitrator of the request or any response thereto.**

**c) If applicable law provides a different procedural time frame, that procedure shall be followed.**

## **R-28 Stenographic Record**

**a) Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements at least 7 calendar days in advance of the hearing. The requesting party or parties shall pay the cost of the record.**

**b) No other means of recording the proceedings will be permitted absent the agreement of the parties or per the direction of the arbitrator.**

**c) If the transcript or any other recording is agreed by the parties and determined by the arbitrator to be the official record of the proceeding, it must be provided to the arbitrator and made available to the other parties for inspection, at a date, time, and place determined by the arbitrator.**

**d) The arbitrator may resolve any disputes with regard to apportionment of the costs of the stenographic record or other recording.**

## N.J.S.A. 2A:23B-23 Vacating award.

a. Upon the filing of a summary action with the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

- (1) the award was procured by corruption, fraud, or other undue means;
- (2) the court finds evident partiality by an arbitrator; corruption by an arbitrator; or misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
- (3) an arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to section 15 of this act, so as to substantially prejudice the rights of a party to the arbitration proceeding;
- (4) an arbitrator exceeded the arbitrator's powers;
- (5) there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection pursuant to subsection c. of section 15 of this act not later than the beginning of the arbitration hearing; or
- (6) the arbitration was conducted without proper notice of the initiation of an arbitration as required in section 9 of this act so as to substantially prejudice the rights of a party to the arbitration proceeding.

# Pre-Hearing Motions

**R-23** \* \* \* At the Preliminary Management Hearing the matters to be discussed may include:

**(a) The issues to be arbitrated . . .**

**(f) The need for pre- or post-hearing submissions and schedules for the same . . .**

**(h) The form of award. \* \* \***

# Head's Up

*Morgan v. Sandford Brown Institute Career Ed. Corp.*, 225 N.J. 289 (2016), 2016 WL 3248016 (June 14, 2016)

**Courts, not arbitrators, should determine whether a dispute is arbitrable unless the arbitration agreement clearly and unmistakably delegates that authority to the arbitrator.**