



Alternative Dispute Resolution. Letter

Assignment 1 DATE: March 13, 2012 FROM: Dani Prefontaine Marla, a client in Buffalo, New York calls and says, "as you know, I am a contractor who specializes in repair of problems that arise in commercial buildings. I'm thinking of inserting a provision in all of my contracts that requires any dispute to first be mediated and if that does not work, to be arbitrated by an arbitrator who is a member of the American Arbitration Association.

I am nervous as to whether the New York state courts will enforce these sorts of provisions, especially if they are part of my form contract. Do me a favor: Do some research from federal and state case law in New York and let me know what New York courts' attitudes have been to arbitration and mediation clauses, and in general what the courts have said about the desirability of using ADR methods to settle disputes. Dear Maria, As per your request, I did research New York case law on the attitudes of using arbitration and mediation clauses, and the enforceability of such. The two cases are relevant to your request in the matter of ADR clauses. Management Recruiters of Albany and Erikson v. Management Recruiters International , 643 F Sup.

750; (N. D. N. Y.

1986), Defendant franchiser moved to compel arbitration pursuant to the terms of an agreement and to stay trial pending arbitration in an action based on an alleged breach of a franchise agreement. The plaintiff's argue that defendant should be estopped from requesting arbitration because of their alleged breach of agreement. there is an assumption that the mediation arbitration process is an inferior method of resolving the present controversy. This assumption was belied by the strong federal policy favoring arbitration. Finally the plaintiff's argue the enforcement of the agreement will contravene New York's Franchise Law because the agreement calls for arbitration in Ohio and application of Ohio law.

This was also rejected by the court that considerations of state law or policy could defeat the effect of an arbitration clause in a contract involving interstate commerce. The court noted: "an agreement to arbitrate in New York does not pose unconscionable difficulties". The federal policy in favor of arbitration overrides any state policy proscribing arbitration of state law claims. Kuchinsky v.

Curry, U. S. Dist. (S.

D. N. Y. 2009), This case deals with an agreement which contains a broad arbitration clause that encompasses each of the claims asserted in the amended complaint.

It provides upon written request of any party to the agreement controversy or claim arising to or relating to the construction or terms is subject to arbitration. Kuchinsky resists arbitration with three arguments. He contends the agreement is unconscionable and therefore enforceable, he also attacks the fairness of the arbitration clause which requires him to arbitrate his claims in Chicago, although he lives in New York

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Daniela Niemeyer



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