

# ARBITRATION IN THE CONSTRUCTION INDUSTRY

Stuart H. Sobel (March 1996)

---

## ARBITRATION AS A MEANS OF DISPUTE RESOLUTION

There are two basic methods to resolve disputes in our legal system: litigation in the court system and arbitration before a neutral person or panel, chosen by the parties to hear and determine the dispute. Recently, more and more construction disputes are being submitted to arbitration, where the arbitrators are often more familiar with the construction process and construction related issues, than judges.

Florida has ratified the Uniform Arbitration Act, which is codified as the Florida Arbitration Code, at §§682.01-682.22 of the Florida Statutes. Additionally, the American Arbitration Association has adopted Construction Industry Arbitration Rules that define the standards of the arbitration proceeding as applied to the construction industry.

## VALIDITY OF ARBITRATION AGREEMENTS

There is a strong public policy favoring arbitration.<sup>1</sup> Florida courts have ruled that arbitration is the favored means of dispute resolution as an alternative to litigation.<sup>2</sup> Because arbitration is voluntary, it cannot be invoked unilaterally and parties cannot be compelled to arbitrate.<sup>3</sup> Written agreements to arbitrate disputes including those that might arise in the future, however, are valid, irrevocable and enforceable.<sup>4</sup> A court may compel arbitration, if there is a written agreement containing an arbitration agreement and an arbitrable issue.<sup>5</sup> Whether one has manifest his intention to submit a particular issue to arbitration requires an analysis of the scope of the arbitration clause under consideration; that is, whether it effectively operates to submit all or merely certain types of disputes to arbitration.

Whether an issue is arbitrable, therefore, depends entirely on the language of the arbitration agreement. The parties are free to contractually prescribe which issues shall be submitted to arbitration and which shall be reserved for litigation. The "jurisdiction" of the arbitration panel is conferred through the breadth and scope of the arbitration clause.<sup>6</sup>

Certain arbitration clauses have acquired a proven breadth for use in cases in which the parties want all possible disputes related to the underlying contractual relationship referred to arbitration. The most universal of the "broad form" arbitration clauses used in the construction industry reads:

---

Any controversy or claim arising out of or relating to the contract or breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator or arbitrators may be entered in any Court having jurisdiction thereof, except those waived as provided for in paragraph 4.3.5...<sup>7</sup>

Construction disputes often involve a number of parties, all of whom are potential participants in an arbitration proceeding. Typical construction scenarios usually involve an owner, design professional, general contractor and several subcontractors. Because of arbitration's contractual nature, however, there are generally only two parties to the agreement to arbitrate. Thus, a preliminary issue regarding arbitration of a dispute becomes whether a dispute involving various parties, but having similar factual issues can be consolidated into one proceeding when the parties are not in contractual privity with one another. Not surprisingly, there is a divergence of court opinion on this question.<sup>8</sup> Questions pertaining to propriety of consolidation can be avoided through the inclusion of an appropriate agreement in the arbitration provision:

In the event that any dispute, for which demand for arbitration is made, relates to the work or responsibility of the owner, other contractor, or any subcontractor on this project, the parties hereto agree to a joint arbitration with said owner, other contractor or subcontractor.

In the absence of such a clause, one may be forced to litigate the question. The general arguments in favor of consolidation are (1) the contract implicitly recognizes the right to a consolidated proceeding and (2) public policy favors judicial economy and the avoidance of inconsistent results. The arguments against consolidation include: (1) the contract does not specifically sanction a consolidated arbitration; (2) the arbitration clause itself prohibits consolidation; and (3) consolidation of the proceedings would prejudice one's rights by increasing expense and requiring arbitration against a party in the absence of contractual privity.

Current AIA documents commonly in use in the construction industry do not permit consolidation of arbitrations between architect/owner and owner/contractor, without the written consent of all the parties.<sup>9</sup> Consolidation of separate arbitrations between owner-contractor and contractor-subcontractor is permitted, however, if there are common questions of fact or law.<sup>10</sup> The purported justification for this distinction in positions of consolidation lies in the difference in legal standards applicable to each. The former

---

involves proof of a professional standard (akin to malpractice), and the latter situation involves performance in accordance with contract.

A related problem may arise where not all of the contracts between the various parties include an agreement to arbitrate.<sup>11</sup> Often an arbitration clause is read broadly, so as to bring within its ambit, claims and parties that might not, at first glance, appear subject to the arbitration clause. In such a scenario, where some, but not all of the various contracts contain arbitration clauses, certain claims that are not subject to arbitration may be stayed pending arbitration, while other claims, not dependent on the outcome of the arbitration, may proceed in litigation, contemporaneously with arbitration. For example, in Post Tensioned Engineering Corporation v. Fairways Plaza Associates<sup>12</sup>, an owner raised claims of structural defects against the design engineer, general contractor and various subcontractors. Only the owner/general contractor agreement contained an arbitration clause. However, since a determination, in arbitration, that the general contractor was not negligent would necessarily, under the doctrine of respondeat superior,<sup>13</sup> be a determination that the subcontractors were not negligent, litigation against the subcontractors was stayed, pending the owner/general arbitration. To the contrary, the outcome of the arbitration would not be determinative of the owner's claim against the engineer. Therefore, that claim was permitted to go forward, in litigation.

A fraud claim against an officer of a construction company, individually, brought by a customer of the company was held to be arbitrable since the liability of the officer was vicarious and the company's liability in the nature of respondeat superior. There, the arbitration clause in the contractor/owner contract required that all disputes be submitted to arbitration.<sup>14</sup>

The issue of whether a participant in the construction process can be made to arbitrate when that entities' direct contract contains no arbitration agreement can be avoided by incorporating, by reference, other contracts which require arbitration.<sup>15</sup>

### ARBITRATION AND LITIGATION

Arbitration does not operate completely apart from the judicial system. The court is sometimes the forum that decides whether particular disputes are even arbitrable, by construing scope of the arbitration clause at issue.<sup>16</sup> Moreover, court assistance may also be sought if one of the parties seeks to frustrate the arbitration process,<sup>17</sup> where enforcement of a subpoena issued by the arbitrators is needed,<sup>18</sup> and where enforcement of the arbitration award itself must be compelled.<sup>19</sup>

---

Since courts favor arbitration as a means of expediting claims and reducing litigation,<sup>20</sup> a decision to arbitrate will not lightly be ignored by the courts. Therefore, it is wise to consider the respective advantages and disadvantages of litigation and arbitration at the earliest stage of contract negotiation. The American Arbitration Association claims that "arbitration has proven to be an effective way to resolve disputes privately, promptly and economically."<sup>21</sup>

Arbitration is generally considered to be faster and less expensive than traditional litigation. Whether this is actually true has not been conclusively determined.

While parties to arbitration avoid the expense of full discovery, the filing fees, arbitrators' compensation and arbitration expenses can amount to a substantial expense, which may equal, or exceed, the cost of full discovery.<sup>22</sup>

The absence of discovery invites surprise and uncertainty in arbitration. There is no mechanism for a court ordered mediation in advance of arbitration. A party who might otherwise settle a case when the strengths and weaknesses are disclosed through discovery and discussed in mediation, may not have that opportunity in arbitration and will be forced to endure what perhaps would otherwise be avoidable.<sup>23</sup>

Once the arbitrator or panel of arbitrators is selected, scheduling is done through a pre-hearing conference and the matter is scheduled for prompt hearings. Unlike the court system, the arbitrators will not have hundreds of cases to juggle. Consequently, they will be better able to promptly become familiar with the case and devote the time necessary to fully hear and decide the case. Further, unlike a court hearing a non-jury trial, which has no fixed deadline by which it must rule, the panel of arbitrators is required to render its decision within 30 days after closing the hearing.<sup>24</sup> Under the expedited procedures of the Construction Industry Arbitration Rules, for claims involving less than \$50,000.00, the award must be made within 14 days of hearing closure.<sup>25</sup>

Arbitration is also speedier than litigation since the hearing is able to commence much more quickly than can trial. Trial cannot commence until discovery of the opposition's positions, witnesses and documents is completed. In arbitration, discovery is generally not permitted, absent agreement or application to and approval by the arbitrator(s).<sup>26</sup> The parties may not even be permitted to inspect their opposition's documents before seeing them for the first time, as they are presented to a witness during questioning or submitted to the panel of arbitrators. In return for this concession, however, hearings can be scheduled to commence shortly after the panel of arbitrators is se

---

lected.

By agreeing to arbitrate, parties can keep their dispute private, but are held to have given up some other important safeguards they enjoy in court. Besides wide open discovery parties to arbitration are held to have waived their right to have the evidence presented at arbitration weighed in accordance with legal principles<sup>27</sup> or to full appellate review of the arbitration award.<sup>28</sup>

Parties to arbitration retain the right to representation by counsel.<sup>29</sup>

Arbitration is less formal than trial.<sup>30</sup> There is, of course, no right to a jury. The proceedings

are governed by the style of the particular arbitrator or panel of arbitrators. Arbitrators may issue subpoenae to compel the attendance of witnesses, which subpoenae are enforceable according to law.<sup>31</sup> Practically speaking, however, enforcement of a subpoena issued by an arbitrator is more cumbersome than enforcement of a clerk issued subpoena during litigation, since the court is not directly involved.

Review of an arbitration award is severely limited by statute. An arbitration award can only be vacated if it can be shown to have been procured through corruption, fraud or undue means, the award exceeded the jurisdiction of the arbitrators or was on a subject not properly submitted to arbitration or a postponement of arbitration was wrongfully denied.<sup>32</sup> It can only be modified where there is an evident miscalculation of figures, the award is imperfect as to form or includes an award on a matter not submitted for determination, which can be corrected without affecting the merits of the decision upon properly submitted issues.<sup>33</sup> Notably absent as a ground for vacating or modifying an award is mistake of law or an award which is contrary to the manifest weight of the evidence. A mistaken interpretation or failure to follow the law is not grounds for vacation or modification of an award, cannot prevent confirmation of an award, and will not be redressed on appeal.<sup>34</sup>

Perhaps the most important difference between arbitration and litigation as a means of dispute resolution in the construction industry is the background of the fact finder. Typically, in trial, the judge handles a myriad of different kinds of cases, from car accident to eminent domain. The court, then, may, but more likely than not, will not have any substantial construction related experience. The court may not have ever handled a construction claim before taking the bench and will, almost certainly not have any actual experience working in the construction industry. Arbitrators, on the other hand, are selected from a panel of qualified candidates. Very often, they will have substantial con

---

struction experience, either first hand or as an attorney specializing in construction claims. The AAA Construction ADR Task Force has made several thoughtful and important suggestions for improving further, the quality of the panel of neutral arbitrators available to serve.<sup>35</sup> This will likely result in a selection of well qualified arbitrators from which to choose.

### PROTECTING STATUTORY INTERESTS

An action to enforce a construction lien must be commenced within one year from the recording of the claim of lien.<sup>36</sup> In order for the commencement of the action to serve as protection of the priority of the lien against creditors or subsequent purchasers of the property, the contractor must record a notice of lis pendens.<sup>37</sup> Under Fla. R. Civ. P. 1.050, an action is "commenced" upon the filing of a complaint or petition. Commencement, in this sense, does not include invoking arbitration. The recordation of a lis pendens requires the existence of a claim in litigation.<sup>38</sup> Thus, litigation must be instituted to protect one's lien rights and the priority of that lien, where the resolution of the claim may take a year or longer. However, a right to arbitration may be waived by participation in litigation or taking action inconsistent

with the intention to arbitrate, including a failure to timely assert it.<sup>39</sup> How, then, does a lienor protect its lien, while preserving its desire to arbitrate? Since the suit is a necessary prerequisite to an effective *lis pendens* and the continued viability of the lien, it is respectfully suggested that the complaint in litigation include a prayer for stay pending arbitration, and certainly by filing the demand for arbitration first, or simultaneously with the litigation.<sup>40</sup> Of course, a motion to stay litigation and compel arbitration should be promptly raised, as well.<sup>41</sup>

A defendant in litigation who wishes to arbitrate, should also move promptly to compel arbitration and be careful not to participate in litigation based discovery. Such actions have been deemed to waive the right of arbitration.<sup>42</sup>

### PREHEARING ACTIVITIES

Arbitration is invoked by the filing of a demand for arbitration, with an appropriate filing fee, and service of the demand, by certified mail, upon the adverse party. The demand is analogous to a complaint in litigation and usually contains a statement setting forth the basis for claiming arbitration, the names of the parties, the nature of the dispute, the amount involved, any particular remedies sought and the location requested for conduct of hearings.<sup>43</sup> If the opposing party refuses to participate, a motion to compel

---

arbitration may be filed in an appropriate court or, where litigation has already been brought, a motion to stay and compel arbitration may be heard.

Assuming there is no resistance by the party receiving the demand for arbitration, or once that resistance is overcome by an appropriate court order, there may be an attempt to examine the opposing parties witnesses and documents. As previously noted, there are generally no rules for discovery in arbitral proceedings, unless contractually agreed upon or ordered by the arbitrator. Under the Federal Arbitration Act, the arbitrator clearly has discretion to allow or prohibit discovery.<sup>44</sup>

In large or complex cases, a pre-arbitration hearing may be convened where the parties (through their counsel) and the panel of arbitrators set ground rules for any limited discovery or evidentiary issues, schedule hearings, agree upon the scope of the submission to arbitration, the issues to be resolved, stipulate to uncontested facts and the nature of the award.<sup>45</sup> It is here where the arbitrators are given their first exposure to the nature of the claims, defenses and counterclaims. Witnesses are also disclosed at this time, to avoid any conflict that might otherwise arise.

### SELECTION OF ARBITRATOR

The arbitration clause will generally set forth a method for selection of the arbitrator or arbitrators. One method is for party appointed arbitrators to mutually select the third "neutral" arbitrator. The parties may name a particular person or entity, such as the American Arbitration

Association to preside over the arbitration. The method for selection of arbitrators used by the American Arbitration Association consists of a ranking procedure, where the parties are provided a list of potential arbitrators. Each side strikes one or more unacceptable arbitrators peremptorily and ranks the remaining arbitrators in order of preference. The acceptable arbitrators with the highest rankings are then chosen to serve as the arbitrator or arbitral panel.<sup>46</sup>

It may designate whether one or three arbitrators shall hear the matter<sup>47</sup> and can set forth such limitations and requirements, as the parties may agree, pertaining to discovery and the formality, manner and timing of hearings and award. The parties may agree that an award must be unanimous or by a majority vote of the arbitrators.<sup>48</sup> In the absence of such designation, parties to an arbitration agreement may petition the court for appointment of arbitrators.<sup>49</sup>

Many arbitration clauses provide that arbitration shall proceed under the auspices of the American Arbitration Association, Construction Industry Arbitration Rules. This

---

clause is specifically enforceable.<sup>50</sup> Generally, the AAA allows for 3 arbitrators by majority vote, to decide cases involving \$250,000.00 or more. Cases where the claims do not exceed \$250,000.00 are decided by a single arbitrator.

As of April 1, 1996, substantial changes in the AAA construction industry arbitration rules will take effect. The Construction Alternative Dispute Resolution Task Force of the American Arbitration Association proposes to divide construction disputes into three "tracks," depending on the amount in controversy, with different rules for resolution.<sup>51</sup> When including a designation of the AAA in an arbitration clause, careful thought should be given to the particular rules to which the dispute will be subject.

### THE ARBITRATION HEARING

Although arbitration proceedings are not conducted with courtroom formality, because they are quasi-judicial in nature, they require certain minimal procedural safeguards. Written notice must be given prior to a hearing.<sup>52</sup> Each party is entitled to a hearing in the presence of the other party unless this right is waived by agreement or conduct.

At the hearing itself, the parties are entitled to be heard, to present evidence material to the controversy and to cross examine witnesses.<sup>53</sup> Parties have a non-waivable right to representation through counsel "or other authorized representative."<sup>54</sup> Arbitrators may receive and consider affidavits, and other legally irrelevant or immaterial evidence, giving such evidence whatever weight the arbitrators determine appropriate.<sup>55</sup> Arbitrators are not constrained by formal rules of evidence or procedure and are the final judges of the admissibility and relevance of evidence.<sup>56</sup>

### VENUE OF THE HEARING

Under the AAA Construction Industry Arbitration Rules<sup>57</sup> the demand for arbitration may be filed in any AAA regional office. The demand should request a particular venue for the hearing and the arbitrator may set the place of the hearing.

### THE AWARD

The arbitration panel is empowered to award a party any damages that are a consequence of the issues being decided. Arbitrators enjoy broader discretion than courts do, in fashioning remedies.<sup>58</sup> As long as the award falls within the scope of the delegation of authority contained in the agreement to arbitrate, the award may "grant any remedy or relief that the arbitrator deems just or equitable." This includes direct and consequential damages, specific performance of a contract, and liquidated damages, so long as they bear some relationship to actual damages awarded.<sup>59</sup> Even punitive damages may be awarded in

---

arbitration.<sup>60</sup>

There is no required form of award, only that it be by majority, in writing and rendered within the time fixed by the agreement to arbitrate, which rarely exceeds thirty days after closing of the hearings.<sup>61</sup> The award need not set forth reasoning or explanation.<sup>62</sup> The award should include an assessment of arbitration fees, expenses and arbitrators' compensation<sup>63</sup>.

Although §682.11 F.S. prohibits the arbitrators from awarding attorney's fees and reserves this power to the court, the parties to arbitration may waive this statutory right and convey right to award fees upon the arbitrators.<sup>64</sup>

### ENFORCEMENT AND APPEALABILITY OF THE ARBITRAL AWARD

A potential disadvantage of arbitration, mentioned earlier, is the limited scope of judicial review of arbitration awards. Theoretically, an arbitration award is not appealable. Given the broad authority an arbitrator has over the conduct of the proceeding, the absence of formal constraints imposed by rules of evidence or procedure, and the vast ability to fashion remedies, the absence of a meaningful avenue of judicial review, the decision to arbitrate must be carefully considered.

Arbitrators have no obligation to provide a rationale for their decision. The decision carries a presumption of correctness and will only be vacated upon a showing that there was no agreement to arbitrate, it was procured through fraud or corruption, exceeded the jurisdiction of the arbitrators, there was evident partiality or misconduct by an arbitrator or where a postponement was improperly denied.<sup>65</sup>

The arbitrators need not follow precedent and, thus, they are free to make a decision without the constraint of prior case law. Nevertheless, advocates generally present relevant legal precedent as persuasive, even if not binding. A mistake of law or fact will not justify vacating an award.<sup>66</sup> The fact that relief granted in arbitration was such that it could not or would not be granted by a court in law or equity is not a ground to vacate or refuse confirmation of an arbitration award.<sup>67</sup>

An award may be modified so as to effectuate the true intent of the award and promote justice between the parties when there has been an evident miscalculation of figures, the award is based on matters extrinsic to the hearing or the award is imperfect in form.<sup>68</sup>

An application to vacate or modify and award must be brought within 90 days after delivery of the award.<sup>69</sup> Absent grounds for vacating or modifying an award, an award must

---

be confirmed, upon motion. In reviewing a motion to vacate or modify, the court does have the power to remand the matter to the arbitrators for clarification.<sup>70</sup>

Even under the cited statutory provisions of vacation and modification, it is extremely difficult to convince a court to overturn an arbitral award because of the belief that, having agreed to arbitrate, the parties should be bound by the result except in only the most extraordinary circumstances. Generally, courts conclude that within their arbitral domain, arbitrators are the sole triers of fact and law, and the judiciary will not lightly intervene.<sup>71</sup> Therefore, once any application for vacation or modification is denied, the court will enter an enforceable final judgment which mandates compliance with the arbitration award.<sup>72</sup>

#### EFFECT OF ARBITRATION AWARD ON THE SURETY

Another relatively undeveloped area of arbitration law lies in the application of arbitral proceedings and resultant awards to non-signatory sureties. This issue might be analogized in the litigation context to the collateral estoppel effect of an arbitral award, that is, is a non-signatory surety bound by an adverse arbitral award against its principal when there was no participation by the surety in the arbitration proceedings?

In this unsettled area, one school of thought maintains that a surety should not be bound, since it was not a party to the contractual undertaking to arbitrate. On the other hand, where a surety has knowledge of the arbitration and the opportunity to participate, it will be held liable for an award adverse to its principal on the basis that the surety impliedly acquiesced to the terms of the principal's contract when it issued the bond, whether or not it actually chooses to participate.<sup>73</sup> A surety will not be permitted to stay an arbitration between its principal and a subcontractor, where the principal and subcontractor are bound to arbitrate.<sup>74</sup>

H:\CASE\\_ATTYS\SHS\ARBITRAT.BK

<sup>1</sup> Lapidus v. Arlen Beach Condominium Association, 394 So.2d 1102 (Fla. 3rd DCA 1981).

<sup>2</sup> Roe v. Amica Mutual Insurance Company, 533 So.2d 279 (Fla. 1988).

<sup>3</sup> Failure to include a provision for arbitration in an agreement may preclude that remedy in the future. Ojus Industries, Inc. v. Mann, 221 So.2d 780 (Fla. 3rd DCA 1969).

<sup>4</sup> §682.02 F.S.

<sup>5</sup> Chicago Insurance Co. v. Tarr, 638 So.2d 106 (Fla. 3rd DCA 1994).

<sup>6</sup> Florida Department of Insurance v. World Re, Inc., 615 So.2d 267 (Fla. 5th DCA

---

1993); Stinson-Head, Inc. v. City of Sanibel, 661 So.2d 119 (Fla. 2nd DCA 1995).

<sup>7</sup> AIA Document A-201, §4.5.1 (1987).

<sup>8</sup> Compare: Karlen v. Gulf & Western Industries, Inc., 336 So.2d 461 (Fla. 3d DCA 1976) with Simpson v. Robinson, 376 So.2d 415 (Fla. 1st DCA 1979).

<sup>9</sup> AIA Document A-201 §4.5.5 (1987).

<sup>10</sup> *Ibid.*

<sup>11</sup> Similarly, where two parties are involved in multiple contracts, only disputes pertaining to contracts which contain an agreement to arbitrate are properly submitted to arbitration. See Lee v. All Florida Construction Co., 662 So.2d 365 (Fla. 3d DCA 1995).

<sup>12</sup> 429 So.2d 1212 (Fla. 3rd DCA 1983).

<sup>13</sup> It should be noted that there was no claim by the Owner that the general contractor gave improper direction to the subcontractors. In such case, the general might be liable to the owner, while the subcontractors, who merely properly followed inappropriate direction, would not. Post Tension did not comment on whether such case would require a different result.

<sup>14</sup> Fernandez v. Smith Commercial Group, Inc., 560 So.2d 1389 (Fla. 3rd DCA 1990).

<sup>15</sup> Frank J. Rooney, Inc. v. Charles W. Ackerman of Florida, Inc., 219 So.2d 110 (Fla. 3d DCA 1969).

<sup>16</sup> Chicago Insurance Company v. Tarr, 638 So.2d 106 (Fla. 3DCA 1994).

<sup>17</sup> §682.03(1), Florida Statutes.

<sup>18</sup> §682.08(3) Florida Statutes.

<sup>19</sup> §682.15. Florida Statutes; Mills v. Robert W. Gottfried, Inc. 272 So.2d 837 (Fla. 4DCA 1973).

<sup>20</sup> Midwest Mutual Insurance Company v. Santiesteban, 287 So.2d 665 (Fla. 1973).

<sup>21</sup> American Arbitration Association, Construction Industry Arbitration Rules, November 1, 1993, Introduction, page 3.

<sup>22</sup> See: Administrative fee schedule in American Arbitration Association Construction Industry

Arbitration Rules. It is not unusual for a panel of three arbitrators to receive \$600.00 per day, each for their services.

<sup>23</sup> The American Arbitration Association does provide a commercial mediation service. However, without the force of a court order requiring participation as a prerequisite to commencing a trial, AAA mediation is not often invoked.

<sup>24</sup> American Arbitration Association, Construction Industry Arbitration Rules, November 1, 1993, Rule 41.

<sup>25</sup> American Arbitration Association, Construction Industry Arbitration Rules, November 1, 1993, Rule 57.

---

<sup>26</sup> §682.08(2), Florida Statutes.

<sup>27</sup> Affiliated Marketing, Inc. v. Dyco Chemicals & Coatings, Inc., 340 So.2d 1240 (Fla. 2nd DCA 1976)

<sup>28</sup> §682.12, Florida Statutes.

<sup>29</sup> §682.07 F.S.

<sup>30</sup> See American Arbitration Association Construction Industry Arbitration Rules 29, 30 and 31.

<sup>31</sup> §682.08 F.S.

<sup>32</sup> §682.13 F.S.

<sup>33</sup> §682.14, Florida Statutes

<sup>34</sup> Schnurmacher Holding, Inc. v Noriega, 542 So.2d 1327 (Fla. 1989); City of Miami Beach v. Turchin/CRS, 641 So.2d 471 (Fla. 3rd DCA 1994); Lozano v. Maryland Casualty Company, 850 F.2d 1470 (11 Cir. 1988).

<sup>35</sup> See pages 9 and 26-28 of the Report of the Construction ADR Task Force of the American Arbitration Association, October 26, 1995. The new Construction Industry Arbitration Rules take effect April 1, 1996 and provide for fast track arbitration of claims involving less than \$50,000.00. In addition, new standards for construction arbitrator eligibility include a requirement of at least 10 years experience in the industry (or as an attorney devoting 50% of his or her practice to construction law., the ability to schedule the hearings promptly and training as an arbitrator.

<sup>36</sup> §713.22, F.S.

<sup>37</sup> §713.22 F.S.

<sup>38</sup> §48.23 F.S.; Bowers v. Pearson 135 So. 562 (Fla. 1931).

<sup>39</sup> Hough v. JKP Development, Inc. 654 So.2d 1241 (Fla. 3d DCA 1995).

<sup>40</sup> Beverly Hills Development Corp. v. George Wimpy of Florida, Inc., 661 So.2d 969 (Fla. 5th DCA 1995).

<sup>41</sup> An order determining a party's entitlement to arbitration is immediately appealable, pursuant to Fla. R. App. P. 9.130(a)(3)(v).

<sup>42</sup> Hardin International, Inc. v. Firepak, 567 So.2d 1019 (Fla. 3d DCA 1990); Rolls v. Bliss & Nyitray, Inc., 408 So.2d 229 (Fla. 3d DCA 1981).

<sup>43</sup> AAA Construction Industry Arbitration Rules, §6.

<sup>44</sup> See 9 U.S.C. §1, et. seq. and Stanton v. Paine, Webber, Jackson & Curtis, Inc., 685 F.Supp. 1241 (S.D. Fla. 1988).

<sup>45</sup> AAA Construction Industry Arbitration Rules, §10 (1993).

---

<sup>46</sup> AAA Construction Industry Arbitration Rules, §13 (1993).

<sup>47</sup> AAA Construction Industry Arbitration Rules, §17 (1993).

<sup>48</sup> §§ 682.04 and 682.05 F.S.

<sup>49</sup> §682.04, Florida Statutes.

<sup>50</sup> 682.04 F.S.

<sup>51</sup> See: October 26, 1995 Report of the Task Force.

<sup>52</sup> AAA Construction Industry Arbitration Rules, §21 (1993).

<sup>53</sup> §682.06(2) F.S.

<sup>54</sup> §682.07 F.S.; AAA Construction Industry Arbitration Rules, §22 (1993).

<sup>55</sup> AAA Construction Industry Arbitration Rules, §§ 31, 32 (1993).

<sup>56</sup> Tallahassee Memorial Regional Medical Center, Inc. v. Kinsey, 655 So.2d 1191 (Fla. 1st DCA 1995).

<sup>57</sup> §§5, 6(b) and 21 (1993).

- <sup>58</sup> Kintzele v. J.B. & Sons, Inc., 658 So.2d 130 (Fla. 1st DCA 1995).
- <sup>59</sup> AAA Construction Industry Arbitration Rules, §43 (1993).
- <sup>60</sup> Kintzele v. J.B. & Sons, Inc., 658 So.2d 130 (Fla. 1st DCA 1995).
- <sup>61</sup> § 682.09 F.S. and AAA Construction Industry Arbitration Rules, §42 (1993).
- <sup>62</sup> Schmidt v. Finberg, 942 F.2d 1571 (CA 11 [Fla.] 1991).
- <sup>63</sup> AAA Construction Industry Arbitration Rules, §43 (1993).
- <sup>64</sup> Turnberry Associates v. Service Station Aid, Inc., 655 So.2d 1173 (Fla. 1995).
- <sup>65</sup> §682.13 F.S.
- <sup>66</sup> McDonald v. Hardee County School Board, 448 So.2d 593 (Fla. 2nd DCA 1984).
- <sup>67</sup> Applewhite v. Sheen Financial Resources, Inc., 608 So.2d 80 (Fla. 4th DCA 1992).
- <sup>68</sup> §682.14 F.S.
- <sup>69</sup> §682.13 F.S. A motion to vacate an award based on fraud or corruption must be brought within 90 days of constructive discovery of the grounds supporting the motion.
- <sup>70</sup> Dade County Police Benevolent Ass'n v. City of Homestead, 642 So.2d 24 (Fla. 3rd DCA 1994).
- <sup>71</sup> McDonald v. Hardee County School Board, 448 So.2d 593 (Fla. 2nd DCA 1984).
- <sup>72</sup> §682.13(4) F.S.
- <sup>73</sup> Von Engineering Company v. R.W. Roberts Construction Co., Inc. 457 So.2d 1080 (Fla. 5th DCA 1984).
- <sup>74</sup> Kidder Electric of Florida, Inc. v. United States Fidelity Guaranty Co., 530 So.2d 475 (Fla. 5th DCA 1984).
-