WOMEN AT WORK

Arbitration is useful tool, but it pays to know rules

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The dictionary definition of arbitration is a process by which the parties to a dispute submit their differences to the judgment of an impartial person or group appointed by mutual consent. When parties do not want to go to court, they can pick someone to decide the case informally.

Arbitration has existed for centuries.

Aristotle wrote: "For an arbitrator goes by the equity of a case, a judge by the law, and arbitration was invented with the express purpose of securing full power for equity."

Arbitration, as an alternative to litigation, can be perceived as a quick, low-cost method of dispute resolution that serves the interests of all concerned. But generally speaking, lawyers hate arbitration. Why is that? Lawyers have very little control over the arbitrator's decision.

The moment a businessperson signs a business contract, the feeling can parallel the "bliss of love." Initially, everything is wonderful! However ... (the) business relationship can grow to be overripe to the point that one of the parties could be stepping on the other party's kumquat. The businessperson could then turn to her contracts and find the following remedy clause: "Any controversies or claims arising out of or relating to this contract shall be settled by arbitration in accordance with the rules of the arbitration association."

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Arbitration cannot validly occur unless the parties have specifically agreed to use this process to settle their dispute. Sometimes, parties don't realize they agreed to arbitration as part of the business contract because they focused more on making things go right in the relationship than on remedies for dispute.

Now the cash register commences to ring. A nonrefundable filing and administrative fee is associated with an arbitration association, which is a sliding fee based on the amount of the claim. The arbitrator's fee can be quite high based on the complexity of the case. The promise of quick, low-cost dispute resolution may not be realized if arbitration becomes as hard-fought as court battles. Discovery could be abused by lawyers using "vacuum-cleaner" tactics to gain all available evidence and at the same time burden one of the parties with heavy production requirements.

Using arbitration requires awareness of its limitations:

Arbitration is final and binding on the parties.

Parties are waiving their right to seek remedies in court, including the right to a jury trial.

Discovery can be more limited or excessive but is different from discovery in judicial proceedings.

The arbitrator's award is not required to include factual findings or legal reasoning and any party's right to appeal or to seek modification of the rulings is strictly limited.

The arbitrator may be affiliated with an industry where there is a conflict of interest.

Rules relative to admissibility of evidence and applicable law are not the same as in a courtroom.

Critics of arbitration complain that some arbitrators are inattentive in the proceedings, ignorant of the relevant law and of arbitration procedures, capricious and inconsistent in their rulings and biased in favor of a particular industry.

The bottom line is that arbitration is a tactic that can be used for settling disputes rather than using litigation. But to achieve a successful outcome, business owners need to be aware of how it works and its limitations.

They should also ensure their business contracts clearly explain how contract disputes will be managed with that contract party. □

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About the column

This column is written by members of the Rochester Women's Network, whose focus is to help women connect, grow and succeed. For more information, go to www.rwn.org.