

ARBITRATION PROCEDURES
of
The Real Estate Board of New York, Inc.

Since 1915, The Real Estate Board of New York, Inc. (the “Board”) has provided for the settlement of disputes by arbitration, under Article XI of its constitution (the “Constitution”).

Arbitration of disputes is compulsory between members of the classes specified in Article XI if one party to a dispute demands it of the other. Arbitration is not required of other Board members, but they, as well as non-members of the Board, may by agreement submit their differences to the Board for determination by a panel consisting of one to three arbitrators. The Board reserves the right, in its sole discretion to decline jurisdiction over disputes involving only non-members.

A. Governing Law

Arbitrations under the auspices of the Board shall be conducted and enforced in accordance with the provisions of Article 75 of New York State’s Civil Practice Law and Rules, as amended.

B. Arbitration Conditions and Requirements

In addition to the requirements listed under Article XI of the REBNY Constitution, the following conditions shall be satisfied before proceeding to arbitration:

- The controversy is not pending in any court.
- If the controversy involves a claim of commission, the arbitration must be brought within one hundred-eighty (180) calendar days after the closing of the transaction or within one-hundred eighty (180) calendar days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later.

During the arbitration, the following requirements shall be observed:

- Any findings and/or determinations of the Ethics Committee, or its sub-committee(s), may not be admitted into evidence in any arbitration proceeding.
- Membership status and affiliation shall be determined as of the time when any such dispute(s) arose relating to the business relations between such members. The membership status of any party commencing an arbitration must be current and the member must be current in the payment of all fees/dues.

C. Procedures

Demand Letter and Supporting Documents

The party seeking arbitration (the “Proponent”) must submit a demand letter to the Arbitration Committee (the “Committee”) of the Board setting forth the name of the other party or parties to the dispute (“Respondent” or “Respondents”), and a statement of claim in sufficient detail, including a brief statement of the facts, to acquaint the arbitrators and the Respondent(s) with the position and claims of the Proponent.

If applicable, the demand letter will include a copy of the arbitration clause set forth in any lease, contract or agreement where the arbitration is demanded pursuant to said lease, contract, or agreement.

Any and all documents and evidence supporting the Proponent's claim should be attached to the demand letter. Each document or item of evidence shall be separately marked as an "Exhibit" with a corresponding number (i.e., Exhibit 1, Exhibit 2, etc.). Providing documents and evidence in advance will expedite the hearing process and prevent costly, unnecessary continuances.

Along with the demand letter and supporting documents, the Proponent will pay \$1,000.00 filing fee, which will be applied to the total cost of the arbitration.

Arbitration Agreement

Upon receipt of the demand letter, supporting documents and filing fee, the Committee will send the parties an arbitration agreement (the "Agreement") to be signed by both the Proponent and the Respondent(s).

Respondent(s) shall return the executed Agreement to the Board within twenty (20) calendar days of the date the Board sent the Agreement to the parties. If the Respondent(s) fails to sign the Agreement within this time period, then, at the request of the Proponent, the Committee may demand that the arbitration proceed as if the Agreement had been executed.

Respondent's Submission

Within ten (10) calendar days after signing the Arbitration Agreement (or, after the Committee's determination to proceed with the arbitration in the absence of Respondent(s)' endorsement of the Agreement), the Respondent(s) shall file with the Committee its or their answer(s) to the claim in sufficient detail to acquaint the arbitrators and the Proponent with the position and defenses of the Respondent(s). Along with its or their answer(s), Respondent(s) will attach any and all documents and evidence that support Respondent(s)' position. Each document or item of evidence shall be separately marked as an "Exhibit" with a corresponding letter (i.e., Exhibit A, Exhibit B, etc.). Respondent will serve a copy of the answer with the supporting documents to the Proponent and give written notice to the Committee that it completed the service of the answer with the supporting documents. Providing documents and evidence in advance will expedite the hearing process and prevent costly, unnecessary continuances.

Forming the Arbitration Panel

The Proponent and the Respondent(s) will receive a roster of eligible arbitrators to hear and determine the claim. Each side is entitled to preemptorily strike a certain number of arbitrators which is determined by multiplying the number of eligible arbitrators by a ratio where the numerator is one and the denominator is the total number of parties plus one. For example, if there are 60 eligible arbitrators, and there is one proponent and one respondent, the number of preemptory strikes for each party is 20 ($60 \times 1/3$).

All eligible arbitrators not challenged by either party will be deemed to be acceptable arbitrators for the matter. From these remaining arbitrators, the Committee shall select not more than three arbitrators, who are otherwise unconflicted, to serve on an Arbitration Panel (the "Panel") to hear the claim. Any Panel consisting of less than three arbitrators shall be as agreed to by both parties.

For landlord and tenant lease disputes the parties may agree upon an arbitrator from the names of three Board members provided by the Committee. The selected arbitrator then directs the proceedings until a decision is rendered.

Scheduling the Arbitration Hearing

The Committee will work with the Parties to find a convenient date for the hearing and will notify the Parties of the date and place of hearing not less than eight (8) calendar days before such hearing. Each side is permitted one adjournment. Any further adjournments must be made in writing, and shall only be granted by the Committee if a party can demonstrate good cause for the adjournment.

Witness Testimony: If a party intends to call any witness to be heard by the Panel, then at least ten (10) calendar days prior to the hearing date, the party must submit to the Committee and the opposing party a list of all witnesses the party wishes to call. Each party shall arrange for their witnesses to be present at the time and place designated for the hearing. At the discretion of the Panel, witnesses may testify through remote means.

Attorney Representation

Any party to the proceeding has the right to be represented by an attorney; a party may claim this right at any time, as to any part of the arbitration or hearing which has not taken place.

The Panel may, in its discretion, consult with outside counsel of its choosing at any time during the proceeding. Such counsel shall act solely as an advisor to the Panel and shall be cleared of all actual and potential conflicts of interest with the arbitrating parties prior to any advisement. Such counsel shall not substitute its judgment for the judgment of the arbitrators in rendering a final determination. Such counsel's fees shall be applied to the total arbitration cost outlined below.

Panel Determination

The parties and their witnesses will be fully but informally heard by the Panel. Stenographic minutes are not taken. Notwithstanding the failure of a party duly notified to appear, the Panel may hear and determine the controversy upon the testimony and evidence produced. After the parties are fully heard, the Panel shall render its decision in the form of a written award, which is signed and affirmed by each arbitrator serving on the Panel.

Arbitration Fees

The fees of the arbitrators are \$500 per arbitrator per arbitration session. In addition, there shall be an administration fee in accordance with the attached Arbitration Fee Schedule payable to the Board. There shall also be a charge for the use of the hearing room amounting to \$300 per arbitration session. All fees are payable as directed by the award. Any party granted an adjournment of a scheduled hearing within twenty-four (24) hours of the date thereof shall pay the Board a service charge of \$150.

If a party to an arbitration intends to request costs and/or counsel fees, that request must be included in their initial submissions. The Panel, as part of its determination, will decide if such an award of expenses and/or counsel fees is to be made.

Challenging a Demand to Arbitrate

Any member who pursuant to the provisions of Article XI is asked to submit to arbitration may, in appropriate circumstances, challenge in writing their obligation to do so within twenty (20) calendar days from the date of the demand. In such case, the Committee shall examine this preliminary question and shall be the sole and final judge as to whether such member is required to submit to arbitration and if such challenging party fails or refuses to abide promptly by the decision or ruling and execute the Agreement, the arbitration shall be conducted in the absence of such party, subject to actions under law.

D. Procedural Review of Determination

- 1) A party may file a written request for procedural review of the determination of an arbitration proceeding with the Committee within ninety (90) calendar days after the award has been served on the parties; any such request must be accompanied by a non-refundable fee of \$500. The request shall set forth any procedural irregularities which the party believes prejudiced its rights and constitute grounds for overturning the action of the arbitration hearing panel, provided that such grounds shall be limited to bribery, coercion, partiality of an arbitrator, corruption, improper exclusion of evidence and fraud, and further provided that the requesting party shall have raised the asserted grounds at the hearing if such party was then aware of the facts constituting the asserted irregularity(ies). The request for procedural review shall be reviewed by the Committee only for the purpose of determining whether the request states a proper basis for consideration by the Committee. If determined to be insufficient, it shall be returned for additional detail to be received by the Committee within ten (10) calendar days of the date of return.
- 2) When a request for procedural review (as originally filed if in proper form, or as originally filed if no amendment is submitted, or as amended even if still deemed to be lacking) is received, the Committee shall immediately send a copy to the other party, notify all parties of the time and place of the review by the Committee at least ten (10) calendar days in advance, and bring the matter before the Committee for review.
- 3) The request for procedural review shall be heard by an appeals panel of no less than three members of the Committee appointed by the Chair for that purpose. The decision of this appeals panel shall be final and binding and shall not be subject to further review by the Board.
- 4) At the procedural review hearing, the party filing the request will have an opportunity to explain the basis on which the party is requesting that the award of the arbitrators be overturned. The Chairperson of the hearing panel will have an opportunity to respond to the allegations. The other party shall have the opportunity to present to the appeals panel reasons why the hearing panel's award should not be overturned.
- 5) The appeals panel shall not hear any evidence or argument with respect to the merits of an arbitration award, except as the same may directly bear upon a claim of one or more of grounds specified in Section D(1) above. The appeals panel shall render its decision promptly. The decision may be summary; it need not specify findings or reasoning.
- 6) If the appeals panel determines that one or more of the specified grounds has been established, then it shall invalidate the original arbitration award and direct that the matter be referred to the Committee for a hearing on the merits before a different arbitration hearing panel, or, alternatively, the appeals panel may release the parties from their obligation to arbitrate if the appeals panel concludes that the Board will be unable to impanel an impartial hearing panel. Otherwise it shall confirm the award of the arbitration hearing panel.

E. Disputes between Owners and Members of the Commercial Brokerage Division

Disputes between (x) an owner ("Owner") of real property which owner is, or is controlled by, a member of the Owners and Builders Division or of the Commercial Brokerage Division or an associate of a member of the Commercial Brokerage Division and (y) a broker ("Broker") who is a member of the Commercial Brokerage Division or a licensed associate of a member of the Commercial Brokerage Division concerning a claim for a commission in connection with leasing or sale of commercial real property shall be subject to compulsory arbitration upon demand of a party to the dispute, provided that:

- i. the total commission, all or part of which is in dispute, shall not exceed \$1,500,000
- ii. if the party demanding arbitration is a Broker, then such Broker shall have the burden of establishing that the owner of the premises is an Owner;
- iii. if the Owner has already paid a commission to another broker in connection with the leasing or sale of the real property in question, then arbitration under this section shall be unavailable;
- iv. if an Owner recognizes and intends to pay a specified commission to a Broker (the "Primary Broker") but, prior to such payment, receives written notice by certified mail from another Broker that it claims a commission in connection with the leasing or sale of the real property in question and the Owner and the Primary Broker elect to proceed hereunder, then the Owner shall place the commission in escrow with REBNY and the commission shall be awarded in accordance with arbitration hereunder, and the Owner's liability shall be limited to the escrowed commission and its role in the arbitration shall be limited to giving testimony;
- v. if there is a dispute under arbitration hereunder and a party to the dispute knows or has reason to believe that there is or may be another claimant for brokerage commissions in connection with the leasing or sale of the real property in question, then the other claimant, if a Broker, shall be made in a party to the arbitration;
- vi. it shall be a condition of any award of brokerage commissions under this section that the Broker to whom the commission is awarded, and his or her firm, shall agree in writing, in form and substance satisfactory to the Owner, to defend, hold harmless and indemnify the Owner against any other claim for brokerage commissions with respect to the leasing or sale of the real property in question, provided that the liability of the indemnifying Broker and firm shall not exceed the amount he or she has collected; and
- vii. the arbitration shall be conducted in accordance with the provisions herein, except that in the case of inconsistency between the provisions of such sections and those of this section E, then the provisions of this section E shall govern.