

Alternate Dispute Resolution

Consider the Alternative: The Alternative Procedure for Dispute Resolution Act

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The Alternative Procedure for Dispute Resolution Act, N.J.S.A. 2A:23A-1 to 19 (“APDRA”), is an underutilized tool for parties seeking an alternative to court. APDRA was enacted to:

create a new procedure for dispute resolution which would be an alternative to the present civil justice system and arbitration system of settling civil disputes. It is intended to provide a speedier and less expensive process for resolution of disputes than traditional civil litigation and would provide parties with rights that are not currently available under New Jersey’s Arbitration Act. [Governor’s Reconsideration and Recommendation Statement to Assembly Bill No. 296 at 1 (January 7, 1987), reprinted at N.J.S.A. 2A:23A-1.]

APDRA creates a voluntary procedure for dispute resolution that becomes operable upon agreement. Importantly, if the par-

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ties opt to proceed pursuant to APDRA, upon the granting of an order confirming, modifying or correcting an arbitration award, there shall be no further appeal or review of the judgment or decree. Our hope is that by familiarizing counsel with APDRA’s practical advantages, the use of this statute, enacted more than 20 years ago, will become more mainstream and perhaps increase clients’ confidence in the efficiency of arbitration.

More than ever, clients are concerned with the expense and unpredictable nature and length of litigation. APDRA offers parties a cost-effective, expeditious alternative to litigation. A party-selected umpire works rather informally with the parties to provide a final resolution to the parties’ dispute.

Practitioners initially were leery that APDRA may not have been the efficacious alternative to litigation that it appeared to be, perhaps because of potential challenges to the constitutionality of the parties’ waiver of appeal rights. But challenges to APDRA’s constitutionality, including *Mt. Hope Dev. Assoc. v. Mt. Hope Waterpower Project, L.P.*, 154 N.J. 141 (1998), have demonstrated that such fears were unfounded and practitioners would be well advised to consider adopting APDRA in their arbitration agreements if finality and expediency are critical.

Pursuant to APDRA, parties must specifically signify their intention to resolve their dispute by expressly referencing “The New Jersey Alternative Procedure for

Dispute Resolution Act” in their agreement. N.J.S.A. 2A:23A-2. Arbitration agreements failing to indicate the proceeding is governed by APDRA are subject to New Jersey’s Uniform Arbitration Act enacted in 2003, N.J.S.A. 2A:23B-1 through 32 (the “Uniform Act”). A critical distinction exists between the two statutes as the Uniform Act permits appeals from orders confirming, modifying or vacating final arbitration awards albeit upon enumerated grounds.

In APDRA arbitration, the umpire has full jurisdiction to provide all relief and determine all claims and disputes arising thereunder, including whether a particular issue is covered by the arbitration agreement and whether there was fraud in the inducement of the entire agreement. N.J.S.A. 2A:23A-5. The umpire’s authority includes the issuance of injunctive relief, attachment and *or/replevin*. N.J.S.A. 2A:23A-6. To further its goal of expeditious and cost effective dispute resolution, APDRA first limits umpire review of the arbitration award to extremely limited circumstances and then limits court review to certain enumerated grounds without the right to further appeal. As a further deterrent to unnecessary delay, the statute permits a reviewing court to charge reasonable expenses to the party filing a pleading that improperly seeks intermediate review. N.J.S.A. 2A:23A-7.

Discovery, inclusive of depositions, is specifically permitted by APDRA but must be completed within 60 days follow-

ing the demand for alternative resolution or entry of the final order compelling alternative resolution unless extended by the umpire. Document discovery may require production within 15 days after service of the request. N.J.S.A. 2A:23A-10. The hearing itself proceeds as follows: (1) the umpire considers a factual/legal submission from each party submitted before the hearing; (2) the submission governs, controls and limits the facts and legal issues to be determined in the proceedings; (3) witnesses are subject to direct and cross-examination; and (4) to the extent directed by the umpire, the parties may be required to obtain impartial expert evidence and such fees shall be paid as directed by the umpire. N.J.S.A. 2A:23A-11.

The award is required to state findings of all relevant material facts and make all applicable determinations of law. The umpire may award attorney's fees and/or costs to either or both parties. N.J.S.A. 2A:23A-17. APDRA parties retain the right to request umpire modification of the award upon certain enumerated grounds, including: (1) miscalculation of figures or mistake in a description; (2) decision of a matter not before the arbitrator; (3) imperfect form; and (4) erroneous application of controlling law. The parties must request modification within 20 days of delivery of award and the receiving party has 10 days to respond. The umpire shall dispose of the request within 30 days of receipt or after the time for serving an objection to the request has expired. N.J.S.A. 2A:23A-12.

Parties have 45 days to file a summary application in the Superior Court for vacation, modification or correction of the award, but only 30 days if the award was modified. The grounds to vacate the award are: (1) corruption, fraud or misconduct in procuring the award; (2) partiality of the umpire; (3) umpire exceeding power or so imperfectly executing that power that a final or definite

award was not made; (4) failure to follow APDRA's procedures; and (5) prejudicial error in application of law. Review of the first four grounds is de novo. If the grounds are misapplication of law, the court shall, after vacating or modifying the erroneous determination of the umpire, appropriately set forth the applicable law and arrive at an appropriate determination under the applicable facts determined by the umpire and then confirm the award. N.J.S.A. 2A:23A-13. By contrast, the Uniform Act does not permit parties to move to vacate an award on the basis of the arbitrator's misapplication of law. APDRA parties, however, are free not to adopt this ground as part of their arbitration agreement. *Mt. Hope*, supra, 154 N.J. at 149 (citing *Tretina Printing Inc. v. Fitzpatrick & Assoc., Inc.*, 135 N.J. 349, 358 (1994)).

A central component of APDRA is its proscription on appeals from the Superior Court's determination as to the propriety of the arbitration award. N.J.S.A. 2A:23A-2, N.J.S.A. 2A:23A-18(b), N.J.S.A. 2A:23A-5(b), N.J.S.A. 2A:23A-19. It is important to note that a trial court's decision to reduce attorney's fees awarded by an umpire was held reviewable by the Appellate Division notwithstanding APDRA's proscription of appeals. *Allstate Ins. Co. v. Sabato*, 380 N.J. Super. 463 (App. Div. 2005).

Pursuant to the Uniform Act, parties may appeal from: (1) an order denying a summary action to compel arbitration; (2) an order granting a summary action to stay arbitration; (3) an order confirming or denying confirmation of an award; (4) an order modifying or correcting an award; (5) an order vacating an award without directing a rehearing; or (6) a final judgment entered pursuant to this act. N.J.S.A. 2A:23B-28. Contrast those broad rights of appeal with APDRA: "Upon the granting of an order confirming, modifying or correcting an award, a judgment or decree shall be entered by the court in conformity

therewith and be enforced as any other judgment or decree. There shall be no further appeal of the judgment or decree." N.J.S.A. 2A:23A-18(b).

Importantly, APDRA specifically provides that applications to the Superior Court shall be "summary in nature and expedited." N.J.S.A. 2A:23A-19. This means Rule 4:67 governs. Furthermore, APDRA specifically provides that the Act shall be liberally construed to effectuate its remedial purpose of allowing parties by agreement to have resolution of factual and legal issues in accordance with informal proceedings and limited judicial review in an expedited manner.

While it is largely understood that arbitration is not the panacea for parties leery of entering the fray of litigation, most attorneys present arbitration as a means for their clients to avoid a public, expensive and drawn-out legal battle. Practitioners must be realistic in counseling, however, because despite the parties' expressed intentions at the outset of a dispute to avoid lengthy litigation, many times a party disgruntled with an arbitration award obtained under the Uniform Act attempts to drag the award through the courts, causing in effect double the time and expense had the parties litigated their dispute from the outset.

Parties that are inclined to consider arbitration as a less costly, more efficient alternative to litigation, therefore, should consider invoking APDRA and APDRA's goal of expedient resolution evident at each step of the arbitration from discovery through award and its proscription on appeal beyond confirmation. Counsel should not overlook APDRA when recommending arbitration to their clients, unless of course the client is intent on preserving an "escape hatch," and for these clients, counsel might well be advised to forego arbitration and proceed directly to litigation. ■