

# Alternative dispute resolution. letter essay



**ASSIGN  
BUSTER**

Assignment 1 DATE: March 13, 2012 FROM: Dani Prefontaine Maria, 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. And finally, he argues that *Curry* has waived his right to enforce the arbitration clause by choosing to sue *Kuchinsky* in an Illinois state court.

The court granted arbitration to Curry. Even though, it will make Kuchinsky travel outside his state it was still enforced by New York Courts. By the New York Court granting to compel arbitration in both of the above cases tells me the courts are highly compelled to use ADR methods. Each of these cases embarks on your concern for the desirability of using ADR methods to settle disputes. Both cases had a valid arbitration clause according to 9 U. S.

C. S. 2. § 2. Validity, irrevocability, and enforcement of agreements to arbitrate A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

Directly quoted; The FAA was designed to “ ensure judicial enforcement of privately made agreements to arbitrate”. The FAA represents “ a strong federal policy favoring arbitration as an alternative means of dispute resolution”. Therefore, “ under the FAA, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration”. Based on my research, and the New York courts positive attitude in using arbitration I would encourage you to pursue the ADR methods to settle disputes.

Sincerely, Dani Prefontaine