

CELEBRATING OUR 25TH ANNIVERSARY

Who Decides Arbitral Venue - an Arbitrator or the Court?



Judge Abraham J.
Gafni (Ret.)

Perhaps no arbitration issue has been litigated more frequently in recent years than determining "arbitrability." Repeatedly, courts have been called upon to decide whether they or the arbitrators have the authority to resolve particular aspects of a dispute.

A recent opinion, *Bamberger Rosenheim, (Israel) (Profimex) v. OA Development, (United States) (OAD)*, 862 F. 3d. 1284 (11th Cir., 2017), arising out of an international business dispute, considers that question when there is a disagreement as to the appropriate arbitral venue; and, incidentally, it provides guidance to counsel seeking to assure that the intent of parties will be realized generally.

Profimex was an Israeli company that raised money for real estate investments. OAD was a corporation incorporated in the state of Georgia that developed real estate. The two companies entered into a Solicitation Agreement which provided for the submission of disputes to binding arbitration, to be conducted in accordance with the Rules of the International Chamber of Commerce. With respect to venue, the agreement provided that: "Any such proceedings shall take place in Tel Aviv, Israel, in the event the dispute is submitted by OAD, and in Atlanta, Georgia, in the event the dispute is submitted by Profimex." [READ MORE](#)

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