

Is That Decision-Maker an Expert or an Arbitrator?



Hon. Abe Gafni

In commercial transactions, parties often seek to resolve a disagreement by designating an expert who will decide a particular issue based upon that individual's expertise. On other occasions, an arbitrator is selected to issue an award to resolve the dispute.

What distinguishes an expert from an arbitrator, however, and how might the difference affect the dispute resolution process?

Two recent cases in the Chancery Court of Delaware, decided only four days apart, reflect these differences, and how counsel may assure that parties' expectations have been incorporated into their agreement.

Agiliance, Inc. ("Seller") v. Resolver SOAR LLC ("Buyer") (No. 2018-0389-TMR, 2019 Del. Ch. LEXIS 3, Jan. 25, 2019), involved a sale which required a post-closing purchase price adjustment based on the difference between estimated net working capital and final net working capital. The agreement also contained a provision to arbitrate disputes. When the parties disagreed as to the final net capital working amount, Seller sought to compel arbitration. Buyer objected, however, contending that Seller had forfeited its right to arbitration by failing to satisfy required notice provisions.

The agreement provided that if the parties were unable to resolve the matter themselves, "such disagreement shall be submitted for arbitration by a nationally recognized accounting firm that agrees to use its best efforts to complete such arbitration within thirty (30) days)" with each side submitting its calculations to the accounting firm. The accounting firm would then [READ MORE..](#)

Judge Klein Receives Pennsylvania Advocacy Award

We congratulate Judge Stephanie Klein for receiving the Pennsylvania Advocacy Award. Judge Klein was recognized on Saturday, March 23rd by the National Congress of Black Women at their annual Dr. C. Delores Tucker brunch.

Judge Klein was recognized for her tireless dedication, commitment and service throughout the state of Pennsylvania.



Hon. Stephanie Klein

To schedule a mediation or arbitration with [Judge Gafni](#), [Judge Klein](#) or any of our [neutrals](#), please email mcarney@adroptions.com or click below:

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