

## Arbitrator Impartiality: What Should be Disclosed?



Hon. Abe Gafni

Arbitration integrity is based upon an assumption that arbitrators will not accept appointments unless they are impartial in fact or disclose any information that might raise a question as to their impartiality. But what must be disclosed to assure that the parties are appropriately and sufficiently apprised of the prospective arbitrator's relationship to the parties or matter to be arbitrated?

A recent case from the U.S. Court of Appeals for the Ninth Circuit, and provisions now included in the Pennsylvania version of the Revised Uniform Arbitration Act (RUAA), reflect that both arbitrators and parties should give careful attention to the issue of "evident partiality" in the arbitrator-selection process.

*Monster Energy v. City Beverages*, 943 F. 3d 1130 (9th Cir., 2019) (hereafter *Monster and Beverages*) involved a dispute as to whether Monster had improperly terminated Beverages' distribution rights under their agreement.

As their agreement provided for arbitration to be conducted by JAMS, an arbitrator was selected by the parties from a list provided by JAMS. The arbitrator submitted a disclosure statement at the commencement of the arbitration. It recited: "I practice in association with JAMS. Each JAMS neutral, including me, has an economic interest in the overall financial success of JAMS. In addition, because of the nature and size of JAMS, the parties should assume that one or more of the other neutrals who practice with JAMS has participated in an arbitration, mediation or other dispute resolution proceeding with the parties, counsel or insurers in this case and may do so in the future."

After the arbitrator ruled in favor of Monster, Beverages filed a motion for vacatur, claiming evident arbitrator partiality based on undisclosed, later-discovered information that the arbitrator was a co-owner of JAMS. [READ MORE..](#)

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