

In addition to providing socially-distant arbitration and mediation hearings, we also offer fully virtual hearings and hybrid hearings with some parties meeting in person and others via video conference. Click [HERE](#) to request more information.

Setting the Scope of the Arbitrator's Authority



Perhaps no arbitration issue has been litigated as frequently in recent years as the scope of an arbitrator's authority. Most often, this has involved "arbitrability," i.e., whether arbitrators may decide if they have the authority to decide the conflict as a whole, or any particular issue that has been brought before them. These issues may include rulings on prehearing dispositive motions, equitable relief, attorney fees and costs, punitive damages and the like.

Indeed, last month in this column (as authored by Charles Forer), attorney Bob, submitted a motion for summary judgment to his arbitrator. Unfortunately, in that hypothetical situation, because neither an arbitration agreement nor the incorporated rules of a dispute resolution provider included provisions relating to summary judgment motions, Bob was barred from seeking such relief. (See Forer, "Seeking Summary Judgment in an Arbitration Proceeding," *The Legal Intelligencer*, July 27, 2020).

But what if the arbitration agreement and the rules of the arbitration provider had contained provisions relating to summary judgment motions that were contradictory or ambiguous? How then would the matter be resolved?

Federal courts have repeatedly considered the effect of incorporated provider rules as they relate to arbitrability itself. See, e.g., *Richardson v. Coverall North America (Richardson)*, 18-3393 (3d Cir. April 28, 2020) (not precedential); *Blanton v. Domino's Pizza Franchising (Blanton)*, No. 19-2388 (6th Cir. June 17, 2020).

The court in *Richardson* made clear, however, that incorporation of the AAA rules may not always be determinative if a corresponding separate contract has also been executed. It noted that, "While 'virtually every circuit to have considered the issue has determined that incorporation of the [AAA] arbitration rules constitutes 'clear and unmistakable evidence' that the parties agreed to arbitrate arbitrability, we need not determine whether such a rule always applies ... Even when an agreement incorporates the AAA rules, a contract might still otherwise muddy the clarity of the parties' intent to delegate."

Such muddying of "the clarity of the parties' intent" as to arbitrator authority was recently considered in an unpublished opinion in the Minnesota Court of Appeals, *Faith Technologies (Faith) v. Aurora Distributed Solar (Aurora)*, (Minn. App. June 20, 2020). **[READ MORE..](#)**

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

[Submit a Case](#)

[Directions](#) | [Phone](#) | [Email](#) | [Website](#)



ADR Options, Inc. | 1800 John F. Kennedy Boulevard, Suite 1110, Philadelphia, PA 19103

[Unsubscribe {recipient's email}](#)

[Update Profile](#) | [About our service provider](#)

Sent by mcarney@adroptions.com powered by



Try email marketing for free today!