

# ADROPTIONS<sup>®</sup>

Settling Cases Since 1993

MEDIATION

ARBITRATION

MOCK TRIALS

*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.*

## Must the Arbitrator, Arbitral Forum or Selection Process be Identified in the Agreement?



Arbitration agreements vary significantly. Some set out precise and extensive details with respect to each aspect of the arbitration process. Others name an arbitrator or arbitral forum to conduct the arbitration. Many merely state, however, that in the event of a dispute, the parties will arbitrate, but provide no further detail suggesting how, when, where and under whose direction it will proceed.

Does a simple reference to arbitration assure its being required if the provision does not state how and by whom the arbitration will be conducted? This issue was faced most recently by the New Jersey Supreme Court when it reversed its Appellate Division. (*Flanzman v. Jenny Craig*, (company), A-66 September Term, 2018, (N.J. Sept. 11, 2020).

Flanzman was an 83-year-old company employee who sued claiming, inter alia, age discrimination and constructive discharge. The company moved to dismiss the lawsuit and compel arbitration.

Flanzman had signed an employment agreement that provided, “Any and all claims or controversies arising out of or relating to employee’s employment, the termination thereof, or otherwise arising between employee and company shall, in lieu of a jury or other civil trial, be settled by final and binding arbitration.” This was followed by an extensive list of issues that might be arbitrated. The agreement also provided that the arbitrator “shall not have the authority to add to, subtract from or modify any of the terms of this agreement.”

Flanzman opposed the company's motion, alleging that the arbitration agreement was invalid because it identified no forum for the proposed arbitration. The trial court, recognizing the policy favoring arbitration in both the Federal Arbitration Act (FAA) and the New Jersey Arbitration Act (NJAA) rejected this contention. (It should be noted that the provisions of the NJAA referenced in this article are similar to those contained in Pennsylvania's Revised Statutory Arbitration Act.)

The New Jersey Appellate Division agreed that the failure to name a specific arbitrator in the Agreement would not render it unenforceable, as the NJAA provides for the judicial selection of an arbitrator in such circumstances.

However, it added that if an "arbitral forum" was not identified, the agreement must at least identify "the general process for selecting an arbitration mechanism or setting." It reasoned that the identification of an arbitral forum or mechanism "informs the parties at a minimum about that institution's general arbitration rules and procedure."

Otherwise stated, "the failure to identify in the arbitration agreement the general process for selecting an arbitration mechanism or setting in the absence of a designated arbitral institution ... or any other ADR setting—*deprived the parties of knowing what rights replaced their right to judicial adjudication.*" **READ MORE..**

**To schedule a mediation or arbitration with Judge Gafni or any of our neutrals, please email [mcarney@adroptions.com](mailto: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](mailto:mcarney@adroptions.com) powered by



Try email marketing for free today!