

# CPLR 7511(b)(1)(ii): Arbitration Award Affirmed, Where Challenged Arbitrator Had Prior Attorney-Client Relationship with One Party, When Opposing Party Knowingly Waived Its Objection

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where the ninety-day statute of limitations<sup>203</sup> is pleaded as an affirmative defense, the date of delivery of the award must be stated.

*CPLR 7511(b)(1)(ii): Arbitration award affirmed, where challenged arbitrator had prior attorney-client relationship with one party, when opposing party knowingly waived its objection.*

CPLR 7511(b)(1)(ii) empowers a court to vacate an arbitration award when a "neutral" arbitrator is actually "partial."<sup>204</sup> In *Baar & Beards, Inc. v. Oleg Cassini, Inc.*,<sup>205</sup> the parties made an exclusive licensing agreement which provided for the arbitration of disputes according to current rules of the American Arbitration Association (AAA). A dispute arose, and Baar & Beards, Inc., the appellant, sought arbitration. One of the arbitrators appointed by the AAA had represented the appellant's president six years earlier, a fact of which Oleg Cassini, Inc., the respondent, was immediately notified by the appellant. The respondent objected, but the AAA refused to remove the contested arbitrator. The respondent subsequently signed a statement accepting the arbitration panel.

Following the award, the appellant sought confirmation in the Supreme Court, New York County, and the respondent opposed on the grounds of bias and misconduct. The court vacated the award as unfair. The Appellate Division, First Department,<sup>206</sup> affirmed, holding that the appearance of bias was present.

The Court of Appeals reversed and ordered the matter remitted to special term for proceedings in accordance with its decision. In reviewing the order vacating the award, the Court held that the respondent had knowingly waived its objection.<sup>207</sup>

#### COURT OF CLAIMS ACT

*Ct. Cl. Act § 10: Statutes of limitations or conditions precedent?*

In *Lewis v. State*,<sup>208</sup> the Court of Claims recently held that the time provisions set forth in section 10(2) of the Court of Claims Act for wrongful death actions against the state are conditions precedent

<sup>203</sup> The ninety-day period is a limitations provision which establishes a maximum time for proceeding, but sets no minimum time period, and does not impinge on a party's right to move under other CPLR sections. *Foreign Operations, Ltd. v. Miller*, 52 Misc. 2d 828, 276 N.Y.S.2d 942 (Sup. Ct. N.Y. County 1967).

<sup>204</sup> See H. WACHTELL, *NEW YORK PRACTICE UNDER THE CPLR* 368-71 (3d ed. 1970). See generally *The Quarterly Survey*, 43 ST. JOHN'S L. REV. 302, 345 (1968).

<sup>205</sup> 30 N.Y.2d 649, 282 N.E.2d 624, 331 N.Y.S.2d 670 (mem.), motion for reargument denied, 30 N.Y.2d 790, 285 N.E.2d 322, 334 N.Y.S.2d 1027 (1972).

<sup>206</sup> 37 App. Div. 2d 106, 322 N.Y.S.2d 462 (1st Dep't 1971), discussed in *The Quarterly Survey*, 46 ST. JOHN'S L. REV. 335, 385 (1971).

<sup>207</sup> 30 N.Y.2d at 649, 282 N.E.2d at 685, 331 N.Y.S.2d at 670.

<sup>208</sup> 69 Misc. 2d 1031, 332 N.Y.S.2d 292 (Ct. Cl. 1972) (mem.).