

CCA 103: Operation of the Conference and Assignment Method of Disposition of Cases

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arbitrator would remain a designated arbitrator.²⁰⁹ Both parties finally signed a statement signifying their acceptance of the panel.

After the award, petitioner made application for confirmation and respondent cross moved to vacate. The salient issue before the Supreme Court, New York County, was whether a reasonable individual would conclude that the challenged arbitrator *gave the appearance* of partiality by reason of his prior fiduciary relationship with petitioner's president. The court held that the appearance of bias was present, and the Appellate Division, First Department, affirmed.²¹⁰ The AAA, which was obligated to select neutral arbitrators, should have removed the challenged arbitrator.²¹¹

The appellate court cited *Commonwealth Coatings Corp. v. Continental Casualty Co.*,²¹² in which the United States Supreme Court interpreted the Federal Arbitration Act,²¹³ which is in part similar to section 18 of the AAA's Commercial Arbitration Rules. In *Commonwealth*, the Court enunciated the principle "that any tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid *even the appearance of bias*."²¹⁴

Respondent's written acceptance of the panel was procured under circumstances in which it was apparent that further protest would have been unavailing.²¹⁵ If the arbitration award were sustained, confidence in that procedure certainly would be undermined. Hence, the courts have rendered a decision which is both equitable and pragmatic.

NEW YORK CITY CIVIL COURT ACT

CCA 103: Operation of the conference and assignment method of disposition of cases.

In *De La Cruz v. Kahama Realty Inc.*,²¹⁶ counsel failed to answer the calendar on the scheduled day, so the action was dismissed. Counsel

²⁰⁹ The challenged arbitrator was a member of the Board of Directors of the AAA. It is understandable that a Tribunal Administrator might find it difficult to exercise his power to remove this arbitrator from the panel. *Id.* at 109, 322 N.Y.S.2d at 465.

²¹⁰ *Id.* at 110, 322 N.Y.S.2d at 465. See AMERICAN ARBITRATION ASSOCIATION, RULES OF COMMERCIAL ARBITRATION No. 18, which imposes upon a "neutral Arbitrator" the duty to "disclose any circumstances likely to create a presumption of bias or which he believes might disqualify him as an impartial Arbitrator" (emphasis added). However the provision further provides that the arbitration proceeding may proceed if after disclosure of such circumstances the parties sign a written waiver.

²¹¹ 37 App. Div. 2d at 109, 322 N.Y.S.2d at 465.

²¹² 393 U.S. 145 (1968).

²¹³ 9 U.S.C. § 10 (1970).

²¹⁴ 393 U.S. at 150 (emphasis added).

²¹⁵ See note 209 *supra*. Furthermore, the challenged arbitrator had indicated that he would not disqualify himself. 37 App. Div. 2d at 107, 322 N.Y.S.2d at 463.

²¹⁶ 66 Misc. 2d 770, 322 N.Y.S.2d 126 (N.Y.C. Civ. Ct. N.Y. County 1971).

moved to vacate the dismissal, on the ground that the court had not notified him of his default and given him a subsequent day on which to appear.²¹⁷ The New York City Civil Court, New York County, rejected counsel's contention.²¹⁸ Nevertheless, it restored the case to the trial calendar, even though it had been dismissed and restored once before, on the ground that a viable cause of action had been shown.²¹⁹ Restoration was conditioned upon payment of \$100 to the adverse party.²²⁰

The instant case is noteworthy because it concisely summarizes the civil court procedure regarding the "conference and assignment method of disposition of cases inaugurated by . . . the Administrative judge of the Civil Court."²²¹ This was established pursuant to CCA 103.

It provides for teams of three judges who sit in rotation as Conference judges and then as Trial judges. Cases appear first on the calendar of the Judge presiding in the Conference and Assignment Part. If they are not settled as a result of conference they are assigned for trial by the Conference Judge to the two members of his team then sitting as trial judges. The cases so assigned remain with the trial judge to whom they have been assigned until final disposition²²²

Under this system a notice appears in the *New York Law Journal* to inform counsel when and where his case will appear before a conference judge. Upon such publication, counsel is charged with knowledge of its contents.²²³ The *De La Cruz* case had been assigned to a trial judge by a conference judge, so counsel should have been aware that it soon would be tried or settled.²²⁴ Under these facts, counsel had no valid excuse for his inadvertent failure to see the case on the calendar. Thus, it was only because his client had a viable cause of action that the court decided to conditionally restore the case.

²¹⁷ The basis of this contention was a directive from the administrative judge to court clerks. The directive stated in part that cases on Conference Part calendars should not be dismissed until a defaulting party has been informed of the default and given a subsequent date on which to appear. *Id.* at 771, 322 N.Y.S.2d at 128.

²¹⁸ The court interpreted the directive as a mere internal regulation promulgated to aid the court and not a grant of rights to parties appearing before the court. *Id.*

²¹⁹ *Id.* at 774, 322 N.Y.S.2d at 131, citing *Giordano v. St. Clare's Hosp.*, 24 App. Div. 2d 568, 262 N.Y.S.2d 61 (2d Dep't 1965) (mem.).

²²⁰ *Id.* at 774, 322 N.Y.S.2d at 132.

²²¹ *Id.* at 773, 322 N.Y.S.2d at 130.

²²² *Id.*

²²³ If counsel overlooks this notice and defaults, the calendar clerk should telephone him pursuant to the directive. Once counsel knows a case is in a Conference Part, however, there is no requirement under the directive for additional reminders. *Id.* at 773-74, 322 N.Y.S.2d at 130-31.

²²⁴ *Id.*