

CPLR 7510: One-Year Statute of Limitations Runs from Date Arbitrators Render Final Determination and Not from Date of Original Award

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obstacles it thought precedent had established¹⁸³ and decided that legislative policy required that such salesmen on commission "should not be insulated from creditor claims when ordinary wage earners are not."¹⁸⁴ The court further held that, even where there is a genuine system of loans made by the employer, with a fixed obligation of repayment, the employer, once he is on notice of the judgment creditor's claim, is bound by the statute to withhold the ten per cent. Finally, the court in *Goldwater* developed a simple, practical formula delineating the exact extent to which such a drawing account is subject to income execution. Under the *Goldwater* rule,

once the advances prior to execution [are] fully repaid, the employer [is] bound to honor that execution and apply ten per cent not of the weekly drawings, but of the employee's actual earnings by way of commission thereafter until the execution was satisfied.¹⁸⁵

What the court did in *Goldwater* was to develop a viable formula to replace the vague case law which surrounded CPA § 684. The *Goldwater* rule offers an effective solution to the problems which drawing account situations have hitherto caused in income execution. It is fair to the employers who make these advances, since only the earnings of their employees after the levy is made are subject to the ten per cent withholding provision. It relegates the employee receiving these drawing-account advances to the same position as any ordinary wage earner for the purposes of income execution. Finally, it provides judgment creditors with an effective tool with which to reach the income of judgment debtors who are paid by this drawing account arrangement.

ARTICLE 75 — ARBITRATION

CPLR 7510: One-year statute of limitations runs from date arbitrators render final determination and not from date of original award.

Under prior law, the arbitrators' authority to alter or review an award terminated once their decision was announced.¹⁸⁶ If any formal errors were involved in the decision, such as mathematical mistakes or defects in form, an application to correct the defects could be made to the court.¹⁸⁷ In any event, it was necessary to petition the court to confirm the award within one year from the

¹⁸³ *Id.* at 671, 265 N.Y.S.2d at 545.

¹⁸⁴ *Id.* at 672, 265 N.Y.S.2d at 546.

¹⁸⁵ *Ibid.* (Emphasis added.)

¹⁸⁶ SECOND REP. 144.

¹⁸⁷ CPLR 7511(c).

date of decision. Otherwise, the adverse party could defend on the ground of the statute of limitations.¹⁸⁸ The justification for this one-year period of limitation, retained in the CPLR, lies in the fact that arbitration is designed as an expeditious method of disposing of disputes and therefore, a motion on the award should not be brought years later.¹⁸⁹

CPLR 7509 was enacted in order to relieve court congestion by giving the arbitrators, upon timely application of a party, the power to correct mere formal errors in their original decision. They cannot, however, "re-examine the grounds of the award or . . . alter the decision."¹⁹⁰ Since the award must be confirmed within a year from the decision pursuant to CPLR 7510, the enactment of CPLR 7509 also affects the commencement date of the statute of limitations.

In *Belli v. Matthew Bender & Co.*,¹⁹¹ petitioner moved for confirmation of an arbitration award pursuant to CPLR 7510. Notice of the award had been forwarded to the parties on October 29, 1963. Within twenty days after notice, respondent, under CPLR 7509, requested modification of the award. On December 10, 1963, the arbitrators reaffirmed their initial decision. Thereafter, on November 25, 1964, the present motion was made. Respondent opposed the motion on the ground that it should have been made within one year from the date of the original award. The court rejected the respondent's contention, holding that the statute of limitations commences upon the arbitrators' decision on a section 7509 application. The court reasoned that since the revisers expressly authorized the court to stay proceedings involving arbitration while an application is pending before the arbitrators, they impliedly intended the statute to run from final disposition. Otherwise, the confirmation time would be extended only by the arbitrators' actual modification, but no extension could occur if the arbitrators, as in this case, considered the application but refused to alter the decision.

This new procedure, therefore, allows the parties more time in which to submit an application to confirm an award and thus delays enforcement of the arbitration award.¹⁹²

¹⁸⁸ CPLR 7510. In order to prevent circumvention of the one-year confirmation period CPLR 215(5) was enacted. 7B MCKINNEY'S CPLR 7510, commentary 588 (1963).

¹⁸⁹ See 8 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 7510.03 (1965).

¹⁹⁰ SECOND REP. 144.

¹⁹¹ 24 App. Div. 2d 72, 263 N.Y.S.2d 846 (1st Dep't 1965).

¹⁹² See 8 WEINSTEIN, KORN & MILLER, NEW YORK CIVIL PRACTICE ¶ 7509.03 (1965), wherein the authors express the view that the court should determine the motion if an application made to the arbitrators pursuant to CLPR 7509 is used solely for delay.