

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR COLLIER COUNTY, FLORIDA
CIVIL ACTION

Plaintiff,

vs.

CASE NO:

Defendant.

ORDER/REFERRAL TO NON-BINDING ARBITRATION

(Effective October 2020)

Pursuant to F.S. 44.103 and F.R. Civ.P. 1.800, this Court finds that the issues(s) in dispute is/are appropriate for nonbinding arbitration and the Court has determined that this section of such nature that arbitration will be of benefit to the litigants and the Court thus the parties herein are hereby ordered into same.

ORDERS and ADJUDGED:

A. This case is ordered to non-binding arbitration as to all triable issues pursuant to *Florida Statutes, Section 44.103(2)* and the *Florida Rules of Civil Procedure, Rule 1.800*. Said non-binding arbitration shall be conducted and completed within (90) ninety days before the date of the (PTC) Pre Trial Conference, in conformance with Florida Statutes, Section 44.103, generally, including all subparts thereof, as well as the applicable Rules of Civil Procedure. **ABSOLUTELY NO DEADLINES ARE TO BE EXTENDED BY STIPULATION. ANY DEVIATION OF TIME DEADLINES MUST BE MODIFIED AND APPROVED BY COURT ORDER. ADDITIONALLY, PLEASE NOTE THAT ALTHOUGH AN ORDER SETTING THIS MATTER FOR TRIAL MAY HAVE PREVIOUSLY BEEN ISSUED, OR MAY SUBSEQUENTLY FOLLOW THIS ORDER, IT IS ONLY FOR PURPOSES OF PLACE HOLDING (AND FINALIZATION OF DEADLINES) IN THE EVENT A PARTY TIMELY MOVES FOR TRIAL DE NOVO. IF A PARTY FAILS TO PROPERLY AND TIMELY MOVE FOR DE NOVO ANY SUCH RESERVED DATES FOR TRIAL WILL BE CANCELLED AND A JUDGMENT ENTERED IN ACCORDANCE WITH THE ARBITRATION DECISION.**

B. Plaintiff's counsel is appointed as lead attorney to coordinate and schedule the arbitration. Within fifteen (15) days of the date of this Order, said counsel shall consult with all other counsel to select a mutually acceptable arbitrator, if possible from the suggested arbitrators list (**DROPDOWN NBA LIST**). Upon selection of such arbitrator, counsel will consult with the arbitrator to set arbitration. **Plaintiff's counsel shall file a Notice of Agreement of Arbitrator that informs the Court that the Parties have agreed upon an arbitrator within this time period.**

C. **Failing agreement of counsel as to an arbitrator, (a) counsel shall notify the court in writing within 15 days of this Order and the court will appoint the arbitrator(s). (b) If the parties fail to notify the Court within 15 days of this Order as to their selection of the**

arbitrator(s), the Court will appoint the arbitrator(s) *sua sponte*, along with the direction that the arbitrator(s) notice and conduct the arbitration proceeding as soon as practicable. ACCORDINGLY, PLEASE IMMEDIATELY NOTIFY THE COURT OF ANY ARBITRATOR(S) SELECTED AND THE SELECTED DATE, TIME, AND LOCATION OF THE ARBITRATION PROCEEDING BY FILING A NOTICE OF COMPLIANCE IN THE COURT FILE AND SENDING A COURTESY COPY DIRECTLY TO THE COURT.

D. The following procedures shall apply to the arbitration. See also, *Florida Statutes, Section 44.103 and Florida Rule of Civil Procedure 1.820* (“Hearing Procedures for Non-Binding Arbitration”):

1. Cases referred to arbitration shall be assigned to an arbitrator or to a panel of arbitrators. In the absence of an agreement by the parties as to the designation of the arbitrator(s), the Court shall determine the number of arbitrators and designate the arbitrators within 15 days after service of the order of referral to non-binding arbitration as previously noted herein. In the case of a panel, one of the arbitrators shall be appointed or designated as the chief arbitrator.

2. The arbitration fees shall be equally divided and paid by the parties. “At no time may an arbitrator charge more than \$1,500 per diem, unless all of the parties agree otherwise.” *Florida Statutes, Section 44.103(3)*. The arbitrator(s) shall be compensated pursuant to *Florida Statutes, Section 44.103(3)*, or as otherwise agreed to by the arbitrator(s) and the parties.

3. All parties, including non-counsel representatives of corporate parties with full authority to settle the matter, must attend the arbitration hearing. If insurance is involved, whether or not named as a party, the insurance company shall have a representative present with full authority to resolve the case. Parties may be represented by counsel; however, counsel shall not be considered a representative of the party for purposes of this section. Hearings may continue without the presence of counsel. If a party fails to attend the scheduled hearing, the chief arbitrator may proceed with the hearing, and the arbitrator(s) shall render a decision based upon the facts and circumstances as presented by the parties present. Failure to attend the hearing may also result in the Court applying sanctions including the striking of pleadings or portions thereof, the awarding of fees and costs and/or contempt proceedings.

4. The parties shall submit case summaries to each arbitrator at least 10 days prior to the hearing.

5. “[The] arbitrator or, in the case of a panel, the chief arbitrator, shall have such power to administer oaths or affirmations and to conduct the proceedings as the rules of court shall provide. The hearing shall be conducted informally. Presentation of testimony shall be kept to a minimum and facts and issues shall be presented to the arbitrator(s) primarily through documents and the statements and arguments of counsel.” *Florida Statutes, Section 44.103(4)*.

6. Any party may have a record and transcript made of the arbitration hearing at that party’s expense.

7. Arbitration shall be completed within 30 days of the first arbitration hearing unless extended by Order of the Court on motion of the Chief Arbitrator or of a party. No extension of time shall be for a period exceeding 60 days from the date of the first arbitration hearing. Upon the completion of the arbitration process, the arbitrator(s) shall render a decision. In the case of a

panel, a decision shall be by a majority vote of the panel.

8. If the decision identifies or otherwise clearly demonstrates a party to be the prevailing party, the decision shall make a finding as to the assessment of costs, and the reasonable amount of those costs.

While the issue of attorney’s fees, if appropriate, is normally reserved for the trial court, see Turnberry Associates v. Service Station Aid, Inc., 651 So.2d 1173 (Fla. 1995); Raubvogel v. Credit Suisse Securities, 123 So.3d 1155 (Fla. 4 DCA 2013), the parties can waive this right and have the arbitrator(s) render a finding in entitlement and/or the reasonable amount of the attorney’s fees. See Moser v. Barron Chase Securities, Inc. 783 So.2d 231(Fla. 2001), and Kesler v. Chatfield Dean & Co., 794 So. 2d 577 (Fla. 2001). Such waiver should be in writing.

9. **Within 10 days of the final adjournment of the arbitration hearing, the arbitrator(s) shall provide the parties with a written decision pursuant to Florida Statutes, Section 44.103(5).** The arbitration decision may set forth the issues in controversy, findings of fact and conclusions of law. The original written decision and the original of any transcripts shall be sealed and filed with the Clerk at the time the parties are notified of the decision.

10. Any party may file a motion for trial de novo, pursuant to *Florida Statutes, Section 44.103(5)*. **“An arbitration decision shall be final if a request for trial de novo is not filed within the time provided by the rules promulgated by the Supreme Court...** If no request for trial de novo is made within the time provided, the decision shall be referred to the presiding judge, who shall enter such orders and judgments as may be required to carry out the terms of the decision.” *Florida Statutes, Section 44.104(5); Florida Rules of Civil Procedure, Rule 1.820(h)*.

11. **In the event any party moves for trial de novo, this matter will be set on the next available trial docket at least sixty (60) days out (notwithstanding any previously executed trial order). This means the parties should be fully prepared to try the case at the time of arbitration so that a full presentation of the facts can be properly presented to the arbitrator. A “loss” at arbitration, or the supposed need for additional discovery, or there being a deficiency with respect to discovery during arbitration is not a basis to reopen or continue discovery, nor is it a basis to continue the case from proceeding to trial.**

12. If a trial de novo is requested and the judgment at trial is not more favorable than the decision of the arbitrator(s), the Court may assess the party requesting the trial, the other party’s expenses, costs and fees, including reasonable attorneys fees. *Florida Statutes, Section 44.103(6)*.

DONE and ORDERED in Chambers at Naples, Collier County, Florida
on _____..

Judge HUGH D. HAYES
Circuit Judge of the Twentieth Judicial Circuit, Collier

County

Copies provided through the E-Portal to: