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Form of Award

- Arbitrators should examine the parties' agreement, consult with the parties, and incorporate form of award in Scheduling Order.
- AHLA Commercial Rule 7.7
 - Award should provide a concise statement of the reasons supporting the award unless parties agree prior to completion of arbitration hearing that a reasoned award is not required.

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How to Ensure Your Award is Enforceable and Not Subject to Vacature

Compliance with an Arbitration award happens when:

- The losing party voluntarily satisfies the award, or
- The award is confirmed as a judgment of the court.

An award must be “final” to be confirmed by a federal district court under FAA Section 9.

Issues of finality arise when the arbitrator issues an interim order or partial award, so arbitrators need to be sensitive to the finality requirement.

Making a Definite and Final Award Upon the Matter Submitted

Arbitrators must ensure that the final award issued in the arbitration proceeding:

- (1) addresses issues submitted to the arbitrators (and only such issues),
- (2) is issued in a timely manner, and
- (3) grants full and complete relief as authorized by the parties’ agreement and applicable rules and law.

Partial Final Awards

Arbitrators may issue partial final awards that finally determine some, but not all, of the submitted issues, with the caveat that issuance of such an award will normally prohibit the arbitrators from reconsidering the merits of the issues decided in the partial award.

Examples are awards of preliminary injunctions, bonds for security, awards for preservation of assets, bifurcated issues, separate and independent claims.

Bifurcation of liability & damages may cause a party to claim an award was final, but if it leaves a portion of the parties' dispute unresolved, it is not final.

Nonfinal Interim Orders and Nonfinal Substantive Interlocutory Arbitral Decisions

In appropriate circumstances, arbitrators may issue interim awards of substantive interlocutory decisions that are temporary and nonfinal adjudications of some issue in that case.

In such case these Orders or Decisions should be referenced in and incorporated in the Final Award.

Merits vs. Attorney Fees

- AHLA Commercial Rule 7.1—
 - Arbitrator must issue an award within 30 days after the hearing is closed unless the arbitrators and all parties agree to extend deadlines.
- AHLA Commercial Rule 7.6—
 - Allocation of attorney fees & expenses per the agreement, unless it is contrary to applicable law, or use the AHLA standard allocation Rule provision to pay own attorney fees and split arbitrator's fees.
- Closing of the “merits” evidence rather than closing the hearing.
Add a statement that there will be evidence on attorney fees determined after a decision on the merits, if that is the agreed procedure, and that hearing will remain open for consideration of attorney fee evidence & seek agreement of parties to extend deadlines.

AHLA RULE 7 FINAL AWARDS



7.2 Basis

Except as provided in Rules 7.3 and 7.4, the Final Award must be based on evidence presented at a hearing. If a party fails to attend the hearing its evidence need not be considered.

7.3 Consent Award

If the parties settle a case before a final award is issued, they may request the arbitrator to issue the terms of the agreement in the form of a consent award. The consent award must set forth how costs and fees associated with the arbitration will be paid, including but not limited to attorneys' fees and the arbitrator's fees and expenses.

7.4 Failure to Prosecute

If prior to the close of the hearing, a party fails to pursue a claim or counterclaim, the arbitrator may issue a final award dismissing all or part of a case either with or without prejudice.

7.5 Scope of Relief

An arbitrator may award any relief authorized by contract or applicable law that appears to be fair under the circumstances, including specific performance of a contract.

7.6 Fees and Expenses

(a) **BY AGREEMENT:** If the parties have agreed on the allocation of the arbitrator's fees and expenses, and/or the parties' attorney fees, an arbitrator must implement their agreement unless it is contrary to applicable law.

(b) **STANDARD ALLOCATION:** Except as is set forth in paragraph (c) below, if the parties have not specified how fees and expenses should be allocated, an arbitrator will:

(1) require the parties to pay their own attorney's fees and the expenses of the witnesses they produce; and

(2) split the costs of the arbitration process, including the arbitrator's fees and expenses, evenly between the parties.

(c) **MISBEHAVIOR:** An arbitrator may require a party to pay the fees and expenses incurred by the arbitrator and/or the attorney fees of other parties, or any portion thereof, as a result of the party's lack of cooperation or abuse of the process.

7.9 Corrections

- Within 15 days after receiving an award, a party may request the arbitrator to correct clerical, typographical, or computational errors in the award.
- The other parties will have 15 days to respond to this request.
- The arbitrator must respond within 30 days after receiving the request.
- An arbitrator may not reconsider the merits of an award after it has been issued. He or she may alter the award only to correct inadvertent mistakes.

Considerations When Drafting Final Award

Does the Award:

1. Clearly state that it is a Final Award?
2. Review relevant factual and procedural background?
3. Review the claims and counterclaims raised by the parties?
4. Describe the agreement to arbitrate and the applicable law?
5. Determine which party is responsible for payment of legal fees and the costs of the arbitration?
6. Clarify any aspect of the record?
7. Incorporate all prior Orders issued in the proceeding?
8. Provide a concise statement of the reasons supporting the award unless the parties have agreed prior to the completion of the arbitration hearing that a reasoned award is not required?
9. Fully and finally resolve all claims and counterclaims presented in the arbitration?
10. Contain your signature and date of the award?

Remember: Awards are written not only for the parties, but also for a reviewing court.



Questions?






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