



## Alternative Dispute Resolution. Letter

Assignment 1 DATE: March 13, 2012 FROM: Dani Prefontaine Marla, a client in Buffalo, New York calls and says, "as you know, I am a contractor who specializes in repair of problems that arise in commercial buildings. I'm thinking of inserting a provision in all of my contracts that requires any dispute to first be mediated and if that does not work, to be arbitrated by an arbitrator who is a member of the American Arbitration Association.

I am nervous as to whether the New York state courts will enforce these sorts of provisions, especially if they are part of my form contract. Do me a favor: Do some research from federal and state case law in New York and let me know what New York courts' attitudes have been to arbitration and mediation clauses, and in general what the courts have said about the desirability of using ADR methods to settle disputes. Dear Maria, As per your request, I did research New York case law on the attitudes of using arbitration and mediation clauses, and the enforceability of such. The two cases are relevant to your request in the matter of ADR clauses. Management Recruiters of Albany and Erikson v. Management Recruiters International, 643 F Sup.

750; (N. D. N. Y.

1986), Defendant franchiser moved to compel arbitration pursuant to the terms of an agreement and to stay trial pending arbitration in an action based on an alleged breach of a franchise agreement. The plaintiff's argue that defendant should be estopped from requesting arbitration because of their alleged breach of agreement. there is an assumption that the mediation arbitration process is an inferior method of resolving the present controversy. This assumption was belied by the strong federal policy favoring arbitration. Finally the plaintiff's argue the enforcement of the agreement will contravene New York's Franchise Law because the agreement calls for arbitration in Ohio and application of Ohio law.

This was also rejected by the court that considerations of state law or policy could defeat the effect of an arbitration clause in a contract involving interstate commerce. The court noted: "an agreement to arbitrate in New York does not pose unconscionable difficulties". The federal policy in favor of arbitration overrides any state policy proscribing arbitration of state law claims. Kuchinsky v.

Curry, U. S. Dist. (S.

D. N. Y. 2009), This case deals with an agreement which contains a broad arbitration clause that encompasses each of the claims asserted in the amended complaint.

It provides upon written request of any party to the agreement controversy or claim arising to or relating to the construction or terms is subject to arbitration. Kuchinsky resists arbitration with three arguments. He contends the agreement is unconscionable and therefore unenforceable, he also attacks the fairness of the arbitration clause which requires him to arbitrate his claims in Chicago, although he lives in New York.

# Alternative Dispute Resolution Letter

**Xiaolong Qi**



## **Alternative Dispute Resolution Letter:**

A Practical Approach to Alternative Dispute Resolution Susan Blake, Julie Browne, Stuart Sime, 2014 A Practical Approach to Alternative Dispute Resolution provides a comprehensive and easily digestible commentary on all the major areas of ADR. Designed to support teaching and learning on the Bar Professional Training Course it will also be of interest to practitioners who are looking for a clear exposition of the range of ADR processes. Written by an authoritative and highly respected author team A Practical Approach to Alternative Dispute Resolution contains a range of features designed to enhance the reader's understanding of the key points including sample documentation, flow diagrams, tables and examples drawn from a range of different types of practice. Numerous cross references to relevant websites and further resources are also provided. This second edition has been brought fully up to date on current practice and issues affecting ADR including the development of the role of the Civil Mediation Council, online ADR options and the forthcoming implementation of the Jackson Review reforms. The book's expanded coverage also makes it a suitable text for LLM courses on ADR. Online Resource Centre Updates to cases and procedures including the implementation of the EU Directive on Mediation. Useful links for each chapter. Diagrams and figures from the book. *Sourcebook, Federal Agency Use of Alternative Means of Dispute Resolution* Marguerite S. Millhauser, 1987 **Alternative Dispute Resolution Handbook**, 2003 **Alternative Dispute Resolution** Edward J. Brunet, Charles B. Craver, 2001 The Law of Alternative Dispute Resolution Margaret C. Jasper, 2000 The Law of Dispute Resolution focuses on the process of litigation and explores the alternative approaches to dispute resolution and the circumstances under which they are applied. It also discusses the roles of individuals who are involved with these procedures and the guidelines which they are required to follow. The Legal Almanac series serves to educate the general public on a variety of legal issues pertinent to everyday life and to keep readers informed of their rights and remedies under the law. Each volume in the series presents an explanation of a specific legal issue in simple, clearly written text, making the Almanac a concise and perfect desktop reference tool. All volumes provide state-by-state coverage. Selected state statutes are included as are important case law and legislation charts and tables for comparison. **Dispute Resolution in the Construction Industry** Nicholas Gould, 1999 The challenges facing all members of the construction industry are enormous but not unachievable. I am confident that the ACE Client Guide 2000 will help all members of the construction industry, whether consulting engineers, architects, surveyors, contractors and their clients, better understand the challenges facing us and encourage appropriate action to be taken. Jim Dawson, ACE Chairman 1999-2000. Providing an overview of the market, its structures and external influences, this invaluable guide will help members of the construction supply chain to understand their clients' business needs and equip them to invest appropriately for current and future market developments and take advantage of emerging opportunities. The ACE Client Guide 2000 has been prepared in the light of feedback on the first edition which was published in November 1998 and developments both within the construction industry.

and in the wider economy over the past 12 months the facts perceptions commentary and sources set out in the ACE Client Guide 2000 provide a basis for individual firms to examine What to do Why they do it How they do it How well they do it Where improvements could be made How such improvements could be achieved

**BNA's Alternative Dispute Resolution Report** ,1990 **Alternative Dispute Resolution** ,2005 **West's Legal Forms: Alternative dispute resolution** ,2004 For drafting forms related to business organizations divorce retirement plans bankruptcy employment estate planning commercial transactions real estate financing numerous other general practice areas specialties Where appropriate coverage includes the tax consequences to be considered when drafting specific forms

**Alternative Dispute Resolution [ADR]** ,2000 **Alternative Dispute Resolution 1990** Ontario. Legislative Assembly. Standing Committee on the Administration of Justice,1990 **Alternative Dispute Resolution in the Philippines** Jim V. Lopez,1996

**Alternative Dispute Resolution** E. Wendy Trachte-Huber,1996 **A History of Alternative Dispute Resolution** Jerome T. Barrett,Joseph Barrett,2004-08-05 A History of Alternative Dispute Resolution offers a comprehensive review of the various types of peaceful practices for resolving conflicts Written by Jerome Barrett a longtime practitioner innovator and leading historian in the field of ADR and his son Joseph Barrett this volume traces the evolution of the ADR process and offers an overview of the precursors to ADR including negotiation arbitration and mediation The authors explore the colorful beginnings of ADR using illustrative examples from prehistoric Shaman through the European Law Merchant In addition the book offers the historical context for the use of ADR in the arenas of diplomacy and business

**Alternative Dispute Resolution** Andrew Pirie,2000-12-21 Alternative dispute resolution or ADR as it is commonly called has come to have an enormous influence on disputing practices in North America and beyond This influence is bound to continue well into the new millennium It is now more than ever necessary to study and be familiar with ADR developments This book takes you on a journey into the science skills and law that make up this exciting new field Readers will have opportunities to consider the conflicting meanings attributed to ADR and to decide which ones might make most sense for them The book covers the major disputing processes

**California. Court of Appeal (2nd Appellate District). Records and Briefs** California (State)., Number of Exhibits 25 Received document entitled APPENDIX OF EXHIBITS FOR PETITION FOR WRIT

**Alternative Dispute Resolution and Risk Management** John E. Sands,1987 Prepared for distribution at the Alternative dispute resolution and risk management controlling conflict and its costs program November 6 1987 New York City P 5

**Michigan Millers Mutual Insurance Company v. Bronson Plating Company, 445 MICH 558 (1994)** ,1994 95639 *Lawyers' Arbitration Letters, 1980-1989* ,1990 California. Supreme Court. Records and Briefs California (State)., Number of Exhibits 3\_x000D\_ Court of Appeal Case s B034850

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