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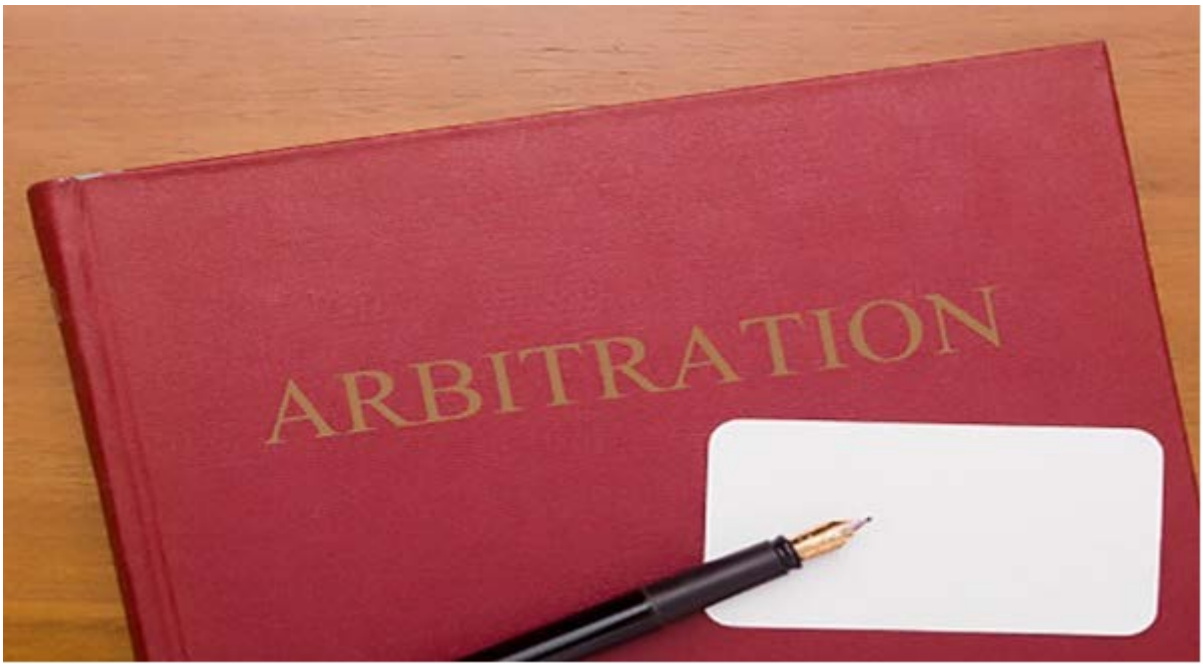

Gastwirth & Garay: The benefits of arbitration are many; shouldn't be dismissed

By: LIBN Staff June 24, 2016

By Loretta Gastwirth and Erica B. Garay

Ronald Rosenberg's recent "anti-arbitration" commentary in LIBN unfortunately repeats many myths about arbitration, all of which have been dispelled in recent years. As experienced arbitrators and litigators, we want to set the record straight.

In arbitration, a neutral arbitrator hears evidence and receives testimony, much like a judge, and makes a decision that is binding on the parties.

Parties usually have agreed in advance (in a business contract, for example) to submit their disputes to arbitration. They have chosen arbitration because its benefits are many: the parties have control over the process and who decides their case. It takes less time and with less cost than a traditionally court-litigated case. Parties decide what types of discovery will be allowed and the timetable. This makes arbitration a very favorable forum for dispute resolution.

Importantly, rather than a randomly assigned judge, the parties choose their arbitrator who is familiar with their type of case or the industry involved. For example, the parties can choose an architect or engineer to decide a construction case, an accountant or appraiser to determine a valuation, or a lawyer

familiar with labor or employment issues to hear a case involving employment discrimination. This familiarity results in reduced cost and a quicker determination.

Arbitration runs circles around the delays found at the courthouse. Your case is not one of hundreds of cases assigned to a judge. The arbitrator can focus on your case, hear the issues on a faster track, and devote the necessary time and attention that your case deserves.

Most arbitrations are determined in less than a year – not years, as in litigation. Decisions are rendered 30 days after the hearing is closed. Arbitration helps the parties get to the finish line faster with reduced legal fees and costs. This results in less distraction, which benefits the bottom line. Executives can focus on running a business, rather than on litigation. To a business, when time is money, these benefits out-weigh the payment of filing and arbitrator fees. The parties can further reduce their costs by agreeing that only one arbitrator will decide the matter, limiting discovery, or choosing a low cost forum such as the Nassau County Bar Association.

Another important advantage is privacy. Businesses that fight their battles in a courthouse risk revealing sensitive information that they would not want their competitors (or customers) to see. Court filings are public. Arbitration, however, is not.

The myth that arbitrators do not follow the law or that they "split the baby," has been de-bunked time and again. Arbitrators swear an oath to make decisions fairly and on the evidence presented. That there are limited grounds to overturn an award is a testament to arbitration's efficiency and the parties' decision to delegate decision-making authority to the arbitrator. Arbitrators can "do justice," contrary to the author's assertion. As to appeals, appellate arbitration panels are available for parties who agree to such.

Today, arbitration is an important alternative to court litigation and may be the appropriate forum for parties to use to resolve disputes efficiently and effectively at less cost. To dismiss arbitration is a disservice to clients.

Loretta Gastwirth, Esq., and Erica B. Garay, Esq., are co-chairs of the Nassau County Bar Association's Alternative Dispute Resolution Committee and members of the NCBA Mediation and Arbitration Panels Advisory Council, which oversees NCBA's arbitration and mediation services.