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Recent N.J. Supreme Court Decision Highlights Pitfalls of Nonbinding Arbitration

In *Vanderslice v. Stewart*, No. 073362, 2015 N.J. LEXIS 54 (N.J. Jan. 29, 2015), the Supreme Court of New Jersey decided that a defendant could demand a trial de novo after a nonbinding arbitration award was entered against it, despite its failure to timely pay the required filing fee associated with the demand. This decision is a good reminder that "nonbinding" arbitration in the Superior Court of New Jersey may in fact become binding on a party under a variety of circumstances. Significantly, under Rule 4:21A-6, if a party fails to demand a trial de novo within 30 days of the arbitration award's entry, it becomes a final judgment against that party.

Under New Jersey's court rules, certain civil actions are submitted to mandatory, nonbinding arbitration after the end of the discovery period. If a party is dissatisfied with the arbitrator's decision, it may make a demand for a trial de novo by filing the required demand forms, accompanied by a check, within 30 days of the filing of the arbitration award. A party may opt out of nonbinding arbitration by sending a certification to the Arbitration Administrator before the scheduling of the case for arbitration or 15 days after, explaining why the matter is not fit for nonbinding arbitration. After the case has been scheduled for arbitration, a formal motion is required to remove it. If any party objects to the removal of the case from arbitration, a judge makes the final determination.

The plaintiff in *Vanderslice* sued the defendants?-- Camden County, Camden County Fire Police Department and one of the Department's sergeants?-- for personal injuries sustained in a motor vehicle accident. The case was referred to mandatory, nonbinding arbitration. The arbitration panel determined that the defendants were 100 percent liable and awarded the plaintiff $145,970 in noneconomic damages and lost wages. The next day, the defendants submitted a demand form to the Arbitration Administrator to vacate the arbitration award and proceed to trial.

However, the defendants attached a payment voucher that gave the court the right to draw on Camden County's account with the State Treasury. The Arbitration Administrator forwarded the payment voucher to the State Treasurer, which issued a check 30 days later. The Arbitration Administrator received the check two days later, 32 days after the arbitration award. Because the check was not received within 30 days of the award, as required by the court rules, the Arbitration Administrator concluded the defendants' demand was not timely filed and neither filed the demand nor deposited the check. The Arbitration Administrator did not notify the defendants, as is required by Rule 1:5-6(c)(1)(A), that their payment was nonconforming.

The defendants were alerted to their payment error only when the plaintiff moved to confirm the arbitration award and enter judgment. The trial court permitted the defendants to file their demand late, concluding they "substantially complied" with the court rules. The case proceeded to trial and the jury returned a verdict in favor of the defendants. The plaintiff appealed, arguing the trial court should not have permitted the defendants' late filing. The Appellate Division agreed and entered judgment in favor of the plaintiff, concluding that defendants failed to show "extraordinary circumstances" justifying the late filing of their demand.

The Supreme Court of New Jersey reversed the Appellate Division's decision and found the demand was timely filed. The Court relied on Rule 1:5-6(c)(1)(A), which requires the court clerk to return a document to the party seeking to file it as "Received but not Filed" if the filing fee has not been paid. The filing party then has 10 days to cure its error. The Court held that because the Arbitration Administrator failed to notify the defendants that their filing was deficient, the 10-day cure period

never commenced. The Court concluded that because the Arbitration Administrator received the check from the State Treasurer before the defendants were even notified of their deficient filing, the demand was not received out of time "[b]y any measure."

Importantly, the Court did not address whether "substantial compliance" or "extraordinary circumstances" constitutes the proper standard for a motion to relax the 30-day limit for filing a demand for a trial de novo.

Vanderslice underscores the potential finality of nonbinding arbitration, particularly for unsuspecting parties. If an arbitrator enters an award against a party, that award may become a final judgment unless the party affirmatively acts to vacate it. In *Vanderslice*, the Supreme Court of New Jersey clarified only the standard applicable to demands that are timely filed but deficient in some form. It left unresolved how courts should adjudicate a party's motion to file a demand after the 30-day limit has expired.

In addition to carefully complying with Rule 4:21A-6's requirements, parties should determine at the outset of the case whether they want to participate in nonbinding arbitration. If not, parties should take advantage of the opt-out provisions as early as practicable. Nonbinding arbitration in the Superior Court is a misnomer, and parties should be aware of its many potential traps or they risk finding themselves subject to an adverse judgment without even going to trial