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Chap. 278

AN ACT to amend chapter two hundred and fifty-one of the laws of eighteen hundred and sixty-one, and to provide for the arbitration of mercantile disputes in the port of New York.

Passed April 29, 1874; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Powers of chamber of commerce.

Section 1. From and after the passage of this act, the legal powers conferred upon the “chamber of commerce of the State of New York” by chapter two hundred and fifty-one of the laws of eighteen hundred sixty-one, shall be exercised in the manner in this act provided.

Summons for settlement of dispute.

§ 2. Any party or parties having a controversy, dispute or matter of difference upon any mercantile or commercial subject, may summon the opposite party or parties to appear before the chamber of commerce of the State of New York for the settlement of such controversy, dispute or matter of difference, on a day and hour named in such summons, which shall not be less than two or more than five days after the personal service of such summons upon such opposite party or one of two or more parties jointly interested in the subject-matter of the controversy; provided, all the parties are regularly-elected members of said chamber of commerce, and parties (whether members of such chamber or not) to any controversy, dispute or
matter of difference arising or within the port of New York, or relating to a subject-matter situate or coming within said port, as the collection district of said port is established and limited by the act of Congress of the United States of America, approved March second, seventeen hundred and ninety-nine, may voluntarily appear before and submit the same to the chamber of commerce, and such chamber shall thereupon entertain jurisdiction of such controversy, dispute or matter of difference, and of the parties thereto.

§ 3. At the time mentioned in such summons, the Party or parties shall file such summons, with proof of service, with the arbitration clerk hereinafter provided for, and either party may file with him a written declaration, duly acknowledged, objecting to the jurisdiction of the chamber of commerce of the State of New York in the matter mentioned in such summons; and upon the filing of such written objection, such matter shall be dismissed and no further proceedings shall be had therein under the provisions of this act; and if at the time mentioned in such summons, the party or parties named therein, or either of them, do not file such written objection, they and each and every one of them shall be deemed and held to have fully submitted to the jurisdiction of said chamber in such matter, and to the arbitration hereinafter provided, and the further proceedings therein shall be in accordance with the provisions of this act; and it shall be competent for any member of a firm to file such objection on behalf of himself and his copartners, and for any agent
or attorney, in fact, or other representative, to do so on behalf of his principal. A copy of this section of this act shall be served with, and in the same manner, as the summons.

**Proceedings when jurisdiction is obtained.** § 4. Upon the chamber of commerce of the State of New York, acquiring jurisdiction, as aforesaid, of any matter pursuant to the provisions of this act, such matter shall be proceeded upon with dispatch to a settlement by the arbitrator or board of arbitration provided for by this act;

**Person to sit with arbitrator.** the respective parties to such matter shall each be entitled, at the time of submitting to such jurisdiction as herein provided, to nominate and appoint in writing one person to sit with the arbitrator whose appointment by the Governor is hereinafter provided for, to hear and determine the matter; and the award made by them, or the majority of them, shall be deemed and held to be the award therein;

**Award.** and if the said parties refuse or neglect to nominate and appoint each one person, as aforesaid, then they shall be deemed and held to have waived their right to do so, and the matter shall proceed before the arbitrator whose appointment is hereinafter provided for, as sole arbitrator to hear and determine said matter.

**Waiver, effect of.** Adjournments may be had upon reasonable cause shown; but if any person named by either party shall fail to appear at the time set for the hearing of the matter, without good reason shown for such failure to the satisfaction of the arbitrator appointed by the Governor, and that the same is only of a temporary nature, his nomination and appointment shall thereupon be declared and held to be vacated,

**Adjournments.** and the same party shall forthwith nominate and appoint another person to act in his place, and upon failure to do so, the arbitrator hereinafter provided for shall appoint a disinterested person, not of kin to either party, to act in his place;

**Failure to appear.** and upon any failure of one party to nominate a person to sit with the arbitrator when the opposing party has nominated such a person, then the arbitrator hereinafter provided for shall appoint a disinterested person, not of kin to either party, and not nominated by the opposing party, to sit as a member of the board of arbitration; and the matter shall proceed as if such party had appointed such person to act.

**Another person may be appointed.** The Persons appointed by or for the respective parties shall be duly sworn before the arbitrator, honestly, truly, and fairly to hear and determine the matter thus submitted to them; and their oaths, subscribed by them respectively, shall be filed with the award in such matter;
Oath of arbitrator. and the arbitrator hereinafter provided for, shall make and subscribe an oath faithfully and truly to perform the duties of arbitrator according to the provisions of this act, which oath shall be filed in the office of the Secretary of State at Albany, and he need not be separately sworn in each matter; and he shall have full power to administer oaths and affirmations, and to take the proof and acknowledgment to all charter parties, marine protests, contracts and other written instruments, and to
Subpoenas. issue subpoenas for witnesses to appear and testify, with like effect and penalties as subpoenas issued by courts of justice.

Perjury. All willful false swearing in any proceeding under the provisions of this act shall be deemed and held to be willful perjury, and indictable and punishable as such.

Arbitrator may summon any person to testify. After the allegations and proofs of the respective parties have been heard, the arbitrator shall have power, upon notice to both parties, to summon any person to give testimony before the arbitrator or the board, if he or they shall deem such additional testimony necessary to enable them to do justice between the parties.

Award to be in writing. After the final hearing, the arbitrator or board, or a majority thereof, shall make an award in writing, under his or their hands, stating the settlement of the controversy, dispute or matter of difference heard and determined by him or them, and file the same, within five days after such final hearing, with the arbitration clerk hereinafter provided for;

Order. and if the said award shall construe any contract, or require either party or both parties to do or forbear doing a particular act or acts, or to pay a sum of money, the arbitrator hereinafter mentioned shall, at the request of either party, make an order to that effect, and otherwise to carry out the provisions of the award, which order shall, at the instance of either party, be filed by such party in the office of the clerk of the county of New York; and it shall be the duty of such county clerk, upon being paid his fees therefor, to docket such order.

Order, judgement may be entered thereon. If such order shall require the payment of a sum of money, or the delivery of any property, any party may enter up, in the manner now prescribed by law for entering judgments of the Supreme Court, a judgment against the party or parties required to pay such sum of money, or deliver any property, and in favor of the party or parties to whom it should be paid or delivered, and execution may thereupon be issued and enforced thereon as and with like effect and validity as on a judgment of the Supreme Court docketed in said office;

Judgement, effect of, and how enforced. and the said judgment shall in other respects conform to said orders, and when so entered, have the same force and effect as a judgement of the Supreme Court of similar purport, and shall be enforced in the same methods and by the same processes and officers, upon the payment of the fees now allowed by law;

How discharged. and in case any such order shall be filed and judgment entered thereon, as aforesaid, the same may be satisfied of record and discharged in the same manner as judgments of the Supreme Court are or may be satisfied and discharged.

No Appeal, except for fraud, &c. Judgments entered in conformity with these provisions shall not be subject to be removed, reversed, modified, or in any manner appealed from by the parties thereto, except for frauds, collusion or corruption of said arbitrator, or board, or either of them.

Award final. § 5. The award of the arbitrator, or board, as provided for in this act, shall be binding and conclusive upon all parties thereto, and shall be, effect and secure a final settlement of the matter submitted under the provisions of this act for his or their decision and award, and shall be upheld and sustained in all the courts of this State;

Arbitrators may order a rehearing. but the arbitrator hereinafter provided for shall have power, for good cause shown, upon notice to, and hearing, the parties, to suspend and defer making the order for carrying out the provisions of the award, and to order that the cause be heard again before the
same or other persons to be nominated and appointed as allowed by this act in the case of the first hearing.

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Stipulation. But the party applying for such rehearing shall stipulate to pay all the costs and expenses of the other party or parties incident to such rehearing, and shall give security therefor, and for the payment or performance of any award which shall be rendered against such applying party, or judgment which shall be entered thereon, in such amount and form as shall be approved by the said arbitrator.

Proceedings on rehearing. Upon such rehearing, similar proceedings shall be had as in the case of the first hearing, and all the provisions of this act applying to the first hearing, the award, the order, and the subsequent proceedings thereon, shall apply similarly in and to all cases of rehearing.

Costs. On the first hearing no costs shall be allowed to either party.

Arbitrator, his appointment. § 6. The Governor shall nominate, and by and with the consent of the Senate appoint, an experienced, suitable and competent person as arbitrator, to be known as the arbitrator of the chamber of commerce of the State of New York, to have and perform the functions, duties and powers provided for in this act, in connection with his said office;

Salary. and the salary of said arbitrator shall be fixed and paid by the said chamber of commerce.

Arbitration clerk. The Governor shall appoint and commission such persons as may be elected by the chamber of commerce of the State of New York to be the arbitration clerk of the said chamber, and such person shall take and subscribe an oath faithfully to perform his duties under this act, which oath shall be filed in the office of the Secretary of State, at Albany.

His duties. The said clerk shall safely and correctly keep all the minutes, documents, records, books and other papers and effects of the arbitrator and of the board provided in this act, and relating to the arbitrations which may be had hereunder; and the sittings and business of the said arbitrator and board shall be had and conducted, and the office of the said clerk shall be in a building or room provided by the said chamber of commerce, at its own proper expense and charges,

Salary of Clerk. and the salary of said clerk shall be fixed and paid by the said chamber of commerce at its own proper expenses and he shall be subject to removal by said chamber, whereupon they shall elect his successor, who shall be commissioned as aforesaid.

Arbitrator’s seal, &c. The arbitrator shall devise and adopt a seal which shall be the seal of his office, and be used to authenticate all awards and orders made pursuant to this act, and copies and certifications thereof, and in all courts and places any instrument sealed with such seal and signed by the said arbitrator, shall be received as prima facie evidence of the existence of such award or order, and of the contents thereof, and shall have the same force and effect as the original thereof.

Construction of contracts. Upon the application of the parties interested, or their representatives, the said arbitrator shall interpret and construe any parol or written contract pertaining to any matter which might be the subject of arbitration under the provisions of this act.

Forms and rules of proceedings. § 7. The said arbitrator, appointed by the Governor, shall adopt short and simple forms and rules to be observed in proceedings under this act, and shall have power to do and order whatever may
be necessary to carry out its provisions.

Immediate hearing. In all cases where an immediate hearing is desired by both parties, or is practicable, it shall be had.

Arbitrator, his term of office. The arbitrator appointed by this act, and his successors, shall hold office during good behavior, and shall be removed by the Governor if, upon due notice and after a hearing, he shall be found guilty by the Governor of malfeasance, misfeasance, or continued nonfeasance in office;

Removal. in case of the removal or death of any arbitrator, his successor shall be nominated and appointed in the same manner as the first arbitrator.

Stealing, mutilating, &c., of books &c. The same punishment shall be inflicted upon any person convicted of stealing, mutilating or altering the books, records or papers herein directed to be filed with or kept by the clerk of arbitration, as are or may hereafter be, by law, annexed to similar acts in regard to records in the office of the clerk of New York county.

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Construction as to jurisdiction. Nothing in this act shall be construed to give any jurisdiction to the chamber of commerce of the State of New York, to the arbitrator, or board, except upon the voluntary submission and election of the parties, as provided for in this act;

Cause not to be removed to any court, except, &c. nor shall any minor, married woman, or person of unsound mind, nor any matter pertaining to a fee or life tenancy in real estate, be brought before such arbitrator or arbitrators; nor shall any cause or matter submitted to the arbitrator, or board, as provided in this act, be subject to removal by or to the jurisdiction of any of the courts of this State, except as herein provided; nor shall this act apply to any cause or matter which shall be pending in any of the courts of this State, or before any arbitration committee established by law, previous to the service of the summons, as provided in this act.

Submission need not be in writing, except, &c. The voluntary submission to arbitration of the particular cases contemplated in this act, and in the method herein provided, need not be in writing, otherwise than as herein provided. This act shall not be held to repeal the existing statutes in relation to arbitration.

Commissions, how to be issued. Commissions to take testimony allowed by the arbitrator may be issued in the same manner and with the same effect as in courts of record, and witnesses shall be entitled to the same fees as in said courts.

§ 8. This act shall take effect immediately.