

Declaratory Awards

SMA Arbitration Rules - Unique Features, Practical Benefits

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“Arbitration: A better resolution”

Sam Houston Hotel

Declaratory awards

Relevant law / SMA Rule

Federal Arbitration Act:

- “... issue referable to arbitration under an agreement in writing for such arbitration . . .” (sec. 3)
- “. . . proceed with the arbitration in accordance with the terms thereof.” (sec. 4)
- “. . . vacating the award [4] Where the arbitrators exceeded their powers” (sec. 10)

SMA Rules:

- “The panel . . . shall grant any remedy or relief which it deems just and equitable, including, but not limited to, specific performance” (sec. 30 “Scope”)

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Courts' thinking as to "Scope" of arbitration

- "Unlike the general rule that ambiguities in a contract must be construed against the drafter, ambiguities in an arbitration agreement must be construed in favor of arbitration."
(396 F. Supp 2d 1211,1214 (D.CO 2005))
- "A court interpreting an arbitration agreement must resolve ambiguities as to the scope of the arbitration clause in favor of arbitration."
(743 F. Supp 2d 1182,1185 (S.D.CA 2010))
- "[W]here the scope of the agreement is ambiguous, we will read the language of the agreement broadly"
(703 F. Supp. 362, 366 E.D.PA 1988)

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“... any [just and equitable] remedy or relief ... including specific performance”

Scope of non-monetary relief:

- Injunctive
- Specific performance
- Preservation of evidence
- Status Quo
- Escrow
- Restitution
- Delivery (e.g., goods)
- Restraining
- Declaratory

Enforcement:

- Voluntary compliance
- Enforced compliance
 - Arbitrators
 - Court

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“any [just and equitable] remedy or relief ... including specific performance”

Preservation of evidence/specific performance:

- Right to sample vessel’s bunker tank/s (SMA1851)
- Right to enter/remain at yard/inspect/preserve vessel under construction (SMA4237)

Specific performance

- Release clean versus dirty b/l (SMA 1930)
- (declined): discharging sequence (SMA2385)

Declaratory:

- Option to renew – properly exercised? (SMA 3393)
- Expense of cleaning bunker tanks - IMO 2020
- +Status Quo: Ownership of product in warehouse (SMA 4290)
- MOA: Warranty re fitness of Tanks for use as represented (SMA 3985 Partial Final; 4254)
- Cancellation
- Frustration