

ARBITRATION PRESENTATION QUESTIONS

1. TO COMPEL OR NOT TO COMPEL ARBITRATION

The plaintiff church filed a complaint alleging claims for breach of contract arising from the purchase of a prefabricated steel building from the defendant. The defendant moved to compel arbitration. The plaintiff denied the existence of an agreement to arbitrate. The defendant submitted a purchase order signed by agents of the plaintiff that included a notation that the agreement was “subject to the terms and conditions on the face and reverse hereof.” The back of the purchase order contained a clause with an arbitration agreement. The defendant also tendered an affidavit indicating that the front and back of the purchase order were faxed to the plaintiff’s representative. The plaintiff offered affidavits indicating that its agents had never been provided with a copy of the back page of the purchase order. Should you allow a motion to compel arbitration?

COMPEL ARBITRATION _____ DENY MOTION TO COMPEL _____

2. ANOTHER TO COMPEL OR NOT TO COMPEL ARBITRATION CASE

The plaintiffs, who were prospective home purchasers, contacted the defendant and asked him to inspect a home they had agreed to purchase. The defendant agreed to inspect the home for a specified fee. After performing the inspection, the defendant met with one of the plaintiffs and delivered the inspection report and presented a home inspection contract to the plaintiffs for signature. All the parties signed the contract. The contract contained an arbitration clause. Do you allow a motion to compel arbitration on the defendant’s request?

COMPEL ARBITRATION _____ DENY MOTION TO COMPEL _____

3. COMPETING MOTIONS FOR SUMMARY JUDGMENT AND TO COMPEL ARBITRATION

The plaintiff insurance company filed a declaratory judgment action concerning UM/UIM coverage in insurance policies issued to the defendant. The plaintiff insurance company filed a motion for summary judgment contending that there was no coverage for the defendant’s claim. The defendant insured moved to compel arbitration of the coverage dispute based on the arbitration provision in the insurance policy. Both motions come on for hearing before you. Do you rule on the summary judgment motion or compel arbitration?

DECIDE SUMM. J. MOTION _____ COMPEL ARBITRATION _____

4. FRAUD AND UNFAIR AND DECEPTIVE TRADE PRACTICES CLAIMS

The plaintiff church filed an action against a termite inspection company alleging claims for breach of contract, fraud, and unfair and deceptive trade practices based on attempts

by the termite company to waive statutorily mandated minimum standards for pest control contractors. The defendant termite contractor moved to compel arbitration. The plaintiff objected to the request to arbitrate the fraud and unfair and deceptive trade practice claims. Should you order arbitration of the fraud and unfair and deceptive trade practices claims?

YES _____

NO _____

5. FRAUD IN THE INDUCEMENT CLAIM

The defendant filed a motion in a breach of contract case to compel arbitration. The plaintiff opposed that motion and contended that there was no valid agreement to arbitrate the dispute because the plaintiff was induced to enter into the contract containing the arbitration agreement by fraud. The defendant contends that the arbitrator must decide that question and the plaintiff contends the trial court judge should decide that question before the case is ordered into arbitration. Who decides the question whether the agreement was induced by fraud?

ARBITRATOR _____

TRIAL JUDGE _____

6. BARE BONES AGREEMENT FOR ARBITRATION

The arbitration provision of the parties' agreement provided that:

All claims, disputes, and other matters in question arising out of or relating to this Agreement of Sale, or breach hereof, shall be submitted to binding arbitration.

The defendant moved to compel arbitration and the plaintiff objected contending that the parties' agreement was insufficient in that it failed to identify the arbitrator or other necessary terms. The plaintiff effectively contends that the provision is too indefinite and failed to constitute a meeting on the minds on the necessary provisions. Should you enter an order compelling arbitration based on this agreement?

YES _____

NO _____

7. ORDER SUBMITTED BY PREVAILING PARTY

After a contentious hearing, you rule that the defendant's motion to compel arbitration should be denied. The plaintiff submits the following order:

This matter came on for hearing before the undersigned Superior Court Judge at the June 11, 2012 Civil Session in Mecklenburg County on defendant's Motion to Dismiss, or, in the alternative, to Stay Proceedings and Compel Arbitration. Having considered defendant's motion, the affidavits submitted by the plaintiff and defendants, the arguments of counsel for both plaintiff and defendants, the applicable law, the pleadings and all other matters of record, this Court is of the

opinion that under the facts presented in this case, plaintiff should not be compelled to arbitrate its dispute with the defendants and, accordingly, defendants' motion should be denied.

Should you sign this proposed order?

YES _____

NO _____

8. INJUNCTIVE RELIEF

The plaintiff insurance company sued another insurance company over a reinsurance contract. The insurance companies' agreement required the defendant insurer to retain sufficient assets in a trust in order to permit the plaintiff company to satisfy statutorily imposed financial reserve requirements. The defendant moved to compel arbitration. The plaintiff agreed with the request for arbitration. However, the plaintiff also sought injunctive relief to require the defendant to retain sufficient assets in trust to satisfy plaintiff's reserve requirements. Did the trial court have the authority to order injunctive relief before arbitration?

YES _____

NO _____

9. DEFAULT JUDGMENT

The plaintiff filed a complaint against a car dealership for failing to disclose prior to the sale that the car that the plaintiff purchased had been involved in a collision resulting in damages in excess of 25% of the value of the vehicle. The complaint included claims for fraud and unfair and deceptive trade practices. The defendant failed to answer in a timely fashion. The Clerk entered a default and the trial court entered a default judgment. The defendant then appeared and moved to set aside the entry of default and the default judgment contending that the trial court lacked jurisdiction since the parties were subject to a mandatory arbitration clause in the parties' agreement. Does the trial court lack jurisdiction to enter the default judgment?

YES _____

NO _____

10. FAILURE TO ARBITRATE IN A TIMELY FASHION

Another Superior Court judge ordered the case to be submitted to binding arbitration. Six months later, the parties haven't bothered to arbitrate the case. You are holding a civil administrative session and the case appears on the calendar. Can you remove the case from arbitration and place it on a trial calendar?

YES _____

NO _____

11. DISCOVERY IN ARBITRATION

A dispute arose over Miss North Carolina's right to continue her reign once her ex-boyfriend advised pageant officials of the existence of alleged nude photographs of Miss North Carolina. The photographs allegedly violated a contract provision in which the contestant affirmed that she had not "done any act or engaged in any activity which could be characterized as dishonest, immoral, immodest, indecent or in bad taste." The dispute was ordered into arbitration. In the arbitration process, the pageant organization requested the alleged nude photographs in discovery and Miss North Carolina refused to produce them. Due to Miss North Carolina's "contumacious conduct" in disobeying the arbitrator's directions to produce the photos, the arbitrator dismissed Miss North Carolina's claims. The pageant moved to confirm the award and Miss North Carolina moved to vacate the award. Should you:

CONFIRM AWARD _____ VACATE THE AWARD _____

12. PROPER FORM OF THE ARBITRATION AWARD

The arbitrator issued an award in a dispute over sales commissions claimed by a business broker. The arbitrator decided that the plaintiff should have and recover nothing of the defendant. The plaintiff requested a written explanation of the arbitrator's decision and the arbitrator declined to make findings of fact. The plaintiff moved to vacate the arbitrator's award based on the arbitrator's failure to make findings of fact and his failure to rule on certain issues presented by the plaintiff. Should you vacate the award?

YES _____ NO _____

13. MODIFICATION OF AN ARBITRATION AWARD

The parties arbitrated their dispute involving the failure to pay rent arising from the lease of certain commercial property. The rent was calculated based on a formula providing for an 8.5% return on investments made for capital improvements. After the arbitrators made their award, the plaintiff filed a motion to modify the award contending that the arbitrators made an evident mathematical miscalculation when they calculate the award using the wrong formula to determine the amount of rent due. Should you allow a motion to modify the award on this basis?

YES _____ NO _____

14. MOTION TO VACATE AN AWARD

The arbitrators entered an award in a construction case after an arbitration hearing. The award provided for the owner to recover \$ 30,202.00 from the contractor. The award also included attorney's fees of \$ 23,753.00. The trial court judge confirmed the damages portion of the award. Should the award of attorney's fees be confirmed?

CONFIRM _____ DO NOT CONFIRM _____

15. ANOTHER MOTION TO VACATE AN AWARD

The parties to a commercial lease dispute agreed to arbitrate their on-going controversy. The arbitration agreement recited that the parties agreed to “arbitrate the differences which have arisen between the parties with respect to claimed liquidated damages, claimed weather delays and claimed change orders under the lease.” After a hearing, the arbitrator entered an award in favor of the tenant for liquidated damages and for reimbursement for additions made by the tenant to the leased premises’ sprinkler facility. The tenant moved to confirm the award and the landlord objected to the reimbursement claim. Should you confirm the award?

CONFIRM AWARD _____ VACATE AWARD _____

16. EX PARTE CONTACTS

During the arbitration hearing, an arbitrator asked a party to furnish certain articles published by the party’s principal expert witness. The party furnished to articles prior to the next hearing. The arbitrators’ award referenced the articles. The opposing party moved to vacate an adverse award based on the provision of the articles by the other party’s expert to the arbitrators. Should you grant a motion to vacate the award based on this contact?

GRANT MOTION? _____ DENY MOTION? _____

17. ALLEGED BIAS OF ARBITRATORS

A dispute arose between a minor league baseball team and the league in which it competed. The League Affiliation Agreement provided for the arbitration of disputes between teams and the league. The pertinent section of the league bylaws provided that “any dispute or controversy between any member and the league arising out of the league agreements or the breach thereof shall be heard and decided by the league’s board of directors”. After an arbitration hearing, the league’s Board of Directors decided against the team and in favor of the league. The team objected to the league’s request to confirm the award on the ground that the arbitration did not take place before an impartial, third-party arbitrator. Should you confirm the award over that objection?

CONFIRM AWARD _____ VACATE AWARD _____

18. ALLEGED MISCONDUCT BY ARBITRATORS

After an arbitration award was entered, the losing party submitted affidavits challenging the propriety of the proceedings. In particular, the losing party’s attorney alleged that as a result of continuous comments and sarcastic remarks by the panel he felt compelled to modify his presentation including the deletion of evidence he had intended to present. The attorney also averred that witnesses who testified also asked him how they could “avoid being criticized by the arbitration panel.” A transcript of the hearing reflected that

the panel directed their impatience and unprofessionalism toward witnesses who became intimidated and even apologized for testifying. Based on this alleged misconduct, the losing party sought to vacate the award and obtain a new hearing. Should you vacate the award?

VACATE AWARD _____

CONFIRM AWARD _____

19. DEPOSING ARBITRATORS

The parties to a construction dispute selected an arbitrator who made certain disclosures concerning his contacts with the law firm representing one party. The American Arbitration Association overruled an objection to the arbitrator's participation and an award was entered against the party that objected to the arbitrator's participation. After the arbitration award was entered, the objecting party learned of certain undisclosed relationships between the arbitrator and the opposing party's law firm. The objecting party moved to take the arbitrator's deposition. Do you allow this motion?

ALLOW MOTION? _____

DENY MOTION? _____