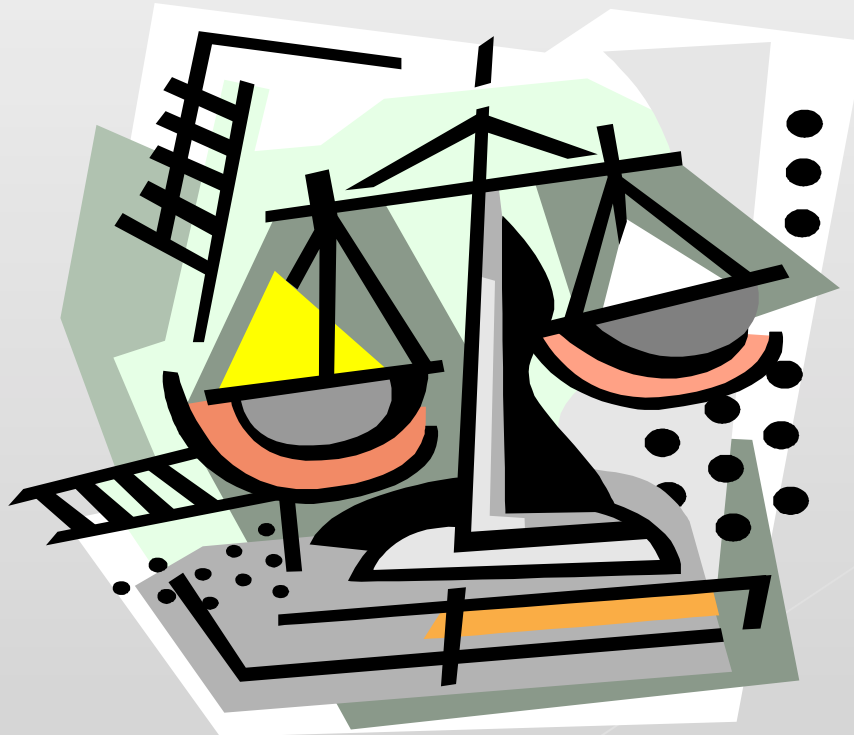


Green Coffee Association, Inc. November 14, 2015 Dispute Resolution Process

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Atlantic USA, ECOM*





The GCA Arbitration Process

Who
What
When

Where
Why
How

Concepts of...

- ▶ I. The Contract
- ▶ II. The Arbitration
- ▶ III. The Award
- ▶ IV. Strategies

Contract Formation: a promise the law will uphold

- ▶ A contract is a list of mutually agreed promises, made through offer and acceptance.
- ▶ Contract terms may appear in the contract, in other exchanges, or oral. Is it complete and clear? If not, how do you prove what the promise is to an arbitration panel?



Quality Arbitration Examples

- ▶ I bought Prime quality, and the arrival has too many defects.
- ▶ I bought Prime quality, and the arrival has too many off cups.
- ▶ I bought against the sample you showed me and when the coffee came it, it was different.
- ▶ Don't complain about the quality, you bought cheap, remember?

Technical Arbitration Examples

- ▶ It's November, my October delivery is late so I don't want it anymore.
- ▶ It's November, and I don't need it, give it to me next month.
- ▶ The exporter won't ship so we are going to be late.
- ▶ The west coast ports are on strike, so the coffee is stuck on the pier for awhile.
- ▶ I don't need the delivery or we can't get the coffee and we did not price it, so the contract is cancelled.

Procedure

- ▶ The arbitration process is by design meant to be used. It is a non-technical process and what you say is more important than the details of procedure.
- ▶ Documents are sent by courier.
- ▶ Pleadings do not need to be notarized after the initial filing.



Form "A" 1 - Technical

**STATEMENT FOR
ARBITRATION OTHER THAN
GRADE OR QUALITY**

Petitioner

Respondent

To MESSRS. _____ of _____

We hereby demand that you arbitrate pursuant to the By-Laws and Rules of the Green Coffee Association, Inc., a controversy or misunderstanding that has arisen between us, under the contract of (date) _____ which concisely stated is as follows:

(Briefly state the precise issue which it is desired to arbitrate)

1. A statement of our case is as follows:

(Fully state the case which it is desired to arbitrate)

We agree that the arbitrators, whether in the original arbitration or in the arbitration on appeal, if an appeal is taken shall be selected according to said By-Laws and Rules. We waive any and all provisions of the New York Laws which are at variance to or inconsistent with the said By-Laws and Rules and agree to stand to, abide by and perform the final decision, award, order and judgment which may be made.

We do further agree that a judgment of the Supreme Court of the State of New York may be entered in any County of the State of New York thereon, and waive any and all appeal or review of said judgment.

We enclose dollars _____ (\$ _____) the arbitration fee required by the Rules and By-Laws of the Association.
Dated, New York, _____ Month/ Day/ Year

(L.S.) (or corporate seal as the case may be)



Form "B" 1 Technical Answer

Petitioner

Respondent

Arbitration No.

To MESSRS. _____

Our answer to your Statement for arbitration is as follows:

1. Statement of the case in answer: (Fully state your case in answer.)

**ARBITRATION ANSWER
OTHER THAN GRADE OR
QUALITY**

**ARBITRATION ANSWER
OTHER THAN GRADE OR
QUALITY**

We agree to observe faithfully the terms of this document and the By-Laws and Rules of Arbitration of the Green Coffee Association of New York City, Inc. and further agree that the arbitrators, whether in the original arbitration or in the arbitration on appeal, if an appeal is taken, shall be selected according to said By-Laws and Rules.

We waive any and all provisions of the New York Laws which are at variance to or inconsistent with the said By-Laws and Rules and agree to stand to, abide by and perform the final decision, award, order and judgment which may be made.

We do further agree that a judgment of the Supreme Court of the State of New York may be entered in any County of the State of New York thereon, and waive any and all appeal or review of said judgment.

We enclose Dollars _____ (\$ _____), the arbitration fee required by the Rules and By-Laws of the Association.

Dated, New York, _____, 20__

(L. S.) (or corporate seal as the case may be)



Form "A" 2 Grade or Quality

STATEMENT FOR ARBITRATION SOLELY AND EXCLUSIVELY OUT OF A QUESTION OF GRADE OR QUALITY

Petitioner

Three horizontal lines for Petitioner name

Respondent

Three horizontal lines for Respondent name

To MESSRS. of

We hereby demand that You arbitrate pursuant to the By-Laws and Rules of the Green Coffee Association of New York City, Inc. a controversy or misunderstanding that has arisen between us, under the contract of 19__

I A statement of our case and a specification of the precise issue on Grade or Quality which we desire to arbitrate is as follows:

(Fully state the case which it is desired to arbitrate)

II The evidence to support our case is as follows

(Fully state the evidence which is to support the case, attaching a true copy of the contract under which the case is claimed to have arisen).

We agree to observe faithfully the terms of this document and the By-Laws and Rules of Arbitration of the Green Coffee Association of New York City, Inc. and further agree that no witnesses need be called before the arbitrators (whether in the original arbitration or on appeal) and that the arbitrators may decide upon the evidence presented to them and the statements and evidence contained in the Statement, Answer and Reply. We waive notice of any and all hearings and adjourned hearings and agree that the arbitrators, whether in the original arbitration or in the arbitration on appeal, if an appeal is taken shall be selected according to said By-Laws and Rules.

We waive any and all provisions of the New York Laws which are at variance to or inconsistent with the said By-Laws and Rules and agree to stand to, abide by and perform the final decision, award, order and judgment which may be made.

We do further agree that a judgment of the Supreme Court of the State of New York may be entered in any County of the State of New York thereon and waive any and all appeal or review of said judgment.

We enclose _____ dollars (\$)) the arbitration fee required by the Rules and By-Laws of the Association.

Dated, New York, 20__

_____(I.S.) (or corporate seal as the case may be)



Form "B" 2 Answer Grade or Quality

ARBITRATION ANSWER (GRADE OR QUALITY)

Petitioner

Three horizontal lines for Petitioner name

Respondent

Three horizontal lines for Respondent name

Arbitration No. _____

To MESSRS. _____

Our answer to your Statement for arbitration is as follows;

I. Statement of the case in answer: (Fully state your case in answer.)

We agree to observe faithfully the terms of this document and the By-Laws and Rules of Arbitration of the Green Coffee Association of New York City, Inc. and further agree that the arbitrators, whether in the original arbitration or in the arbitration on appeal, if an appeal is taken, shall be selected according to said By-Laws and Rules.

We waive any and all provisions of the New York Laws which are at variance to or inconsistent with the said By-Laws and Rules and agree to stand to, abide by and perform the final decision, award, order and judgment which may be made.

We do further agree that a judgment of the Supreme Court of the State of New York may be entered in any County of the State of New York thereon, and waive any and all appeal or review of said judgment.

We enclose Dollars _____(\$ _____), the arbitration fee required by the Rules and By-Laws of the Association.

Dated, New York, _____, 20__

_____(I.S.) (Or corporate seal as the case may be)



Procedure

- ▶ Formal rules of evidence do not apply.
- ▶ Most technical hearings and all quality hearing do not include the parties themselves.
- ▶ For many issues, legal representation is not an advantage.
- ▶ Case law does not apply, commercial custom and the contract do.

Award

- ▶ For quality issues the award is described in cents per pound. This may permit a buyer to require a replacement delivery. Or, as is the case with FOB contracts, limit damages to a monetary award.
- ▶ Technical issues generally result in a monetary award, but may require specific performance depending on the details of the arbitration.

Award

- ▶ The award will specify to whom the cost of the arbitration is assessed.
- ▶ In court, an award is usually sufficient evidence to win a motion for summary judgment. That is, an award removes the requirement to argue the merits of the case before the judge.

Strategies

- ▶ Keep it simple
- ▶ Keep it complete and clear

Strategies

- ▶ **Don't assume the knowledge** of your counterparty or the arbitrators. **Be specific**. Be clear about what award you are requesting.
- ▶ What you have **documented** at the time, is considered fact. Otherwise it is just your opinion.

Strategies: Make your pleading as effective as possible – a suggested format

Issue
Rule
Application
Conclusion

- ▶ State the issue – why you are arbitrating
- ▶ State the rule – what the contract says
- ▶ Explain what happens – a detailed chronology with documentary backup is critical
- ▶ The award you want is the objective – state what you are requesting completely and clearly

Passive vs. Active Arbitration Prevention

- ▶ Be proactive about issues that may prevent you, as a party to a contract, completing a term as specified.
- ▶ Be proactive with a counterparty if you are notified of a change outside the contract terms. Don't let inaction be interpreted as acceptance.
- ▶ Be proactive with a counterparty if you notify them of a change outside the contract terms. No reply is not acceptance.

If you don't want others, outside the contract, to decide what your intention was, be complete, clear and document everything in the contract.

FOR ADDITIONAL INFORMATION:

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