

SUPREME COURT, CIVIL BRANCH, NEW YORK COUNTY COMMERCIAL DIVISION

THE BENEFITS OF MEDIATION ILLUSTRATED – SETTLEMENT OF WORLD TRADE CENTER LAWSUIT

Recently, the press reported that a lawsuit commenced by Daniel Libeskind, the internationally known architect, against the lessee of the World Trade Center site, Silverstein Properties, Inc., seeking fees for architectural services performed in connection with the design of the site's new Freedom Tower, had been resolved. This resolution illustrates the benefits that can come to litigants from mediation.

This case was commenced in the Commercial Division of the Supreme Court, Civil Branch, New York County, on July 13, 2004 and was assigned to Justice Karla Moskowitz of the Division. On July 21, 2004, Justice Moskowitz referred the case to mandatory mediation in the Alternative Dispute Resolution Program of the Commercial Division. The resolution of this case was announced on October 7, 2004.

In the ADR Program, cases referred by Division Justices are submitted to mediation. The Division has a roster of about 250 mediators, who volunteer their time to provide mediation services to assist litigants in the Division. The mediation in this case was assigned to and conducted by Simeon H. Baum, Esq., a neutral who has impressive credentials in mediation practice. Mr. Baum has taught courses in mediation and ADR at New York University and the Cardozo Law School and elsewhere, is a frequent lecturer on mediation, and has been active in Bar groups concerned with ADR. Mr. Baum has served as a neutral with the Commercial Division program since its inception at the beginning of 1996; is a member of the ADR Advisory Group of the Division; has served on a statewide advisory group on ADR to the Unified Court System; and has conducted the training course for new neutrals presented by the Commercial Division. Mr. Baum has mediated hundreds of disputes in the Division and at the National Association of Securities Dealers, the United States District Courts for the Southern and Eastern Districts of New York, New Jersey's Superior Courts, Civil Branch, Statewide, the EEOC, and the United States Postal Service, among other places.

The successful resolution achieved in this case through mediation occurred with what is, by the standards of normal litigation, and, indeed, by any standards, remarkable efficiency and speed. The mediation was concluded and the case settled in only slightly over two months from the date the matter was referred to the ADR Program and under three months from the inception of the case. Complex litigation, by contrast, can often take several years to come to a conclusion.

The litigation process is protracted by the complexities associated with information exchange among the parties (discovery), especially the production of documents and depositions, and motion practice. Appeals add a further layer of complication. The procedures of litigation not only take time, but they also impose costs on the parties. Discovery and motion practice are often expensive, especially in commercial cases. There are administrative costs involved in the discovery process, as well as attorney's fees, which can often amount to substantial sums. The trial of a case is a particularly costly undertaking. Mediation offers the potential to reduce or even avoid the delay and expense that litigation so often entails.

Mediation also can provide another benefit that is more difficult to obtain in litigation: mediation allows parties an opportunity to work through their differences in a productive manner, looking toward the future. The mediation process is informal. It encourages parties to communicate about the issues that separate them and the relationships that bind them together. Because the setting of mediation permits an exchange between the parties in an atmosphere that is often less bitter and acrimonious than that which develops over time in many litigations, it may be possible for parties to a dispute to preserve and restructure relationships that can continue on into the

future in a way that will be beneficial for all. Litigation, on the other hand, can sunder relationships permanently. The statement released by the parties to this dispute indicates that they were able to achieve a resolution that preserved their relationship and allows them to concentrate on the future and the development of the World Trade Center site.

In mediation, parties participate directly in the process. They often find it less difficult to understand than the formal workings of the legal machinery. Surveys thus show that there is high level of satisfaction on the part of parties who participate in mediation. Even if a mediation does not produce a settlement, it can contribute to a positive atmosphere and a fuller understanding of the positions of the parties that may produce benefits – perhaps even a settlement – later on.

The Commercial Division cannot, of course, guarantee a successful outcome in each court-ordered mediation conducted in its Program. But the extremely quick and successful resolution of the mediation in this case suggests what may be possible in many other instances as well.

In addition to matters referred by the court, the Program will accept referrals directed by the court on stipulation of the parties. For more information on the Commercial Division Program, please contact the Commercial Division Support Office (212-748-5303).

Dated: October 15, 2004

HON. JACQUELINE W. SILBERMANN
Administrative Judge