

NY CLS CPLR R 3034

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New York

Consolidated Laws Service >
Civil Practice Law And Rules (Arts. 1 — 100) >
Article 30 Remedies and Pleading (§§ 3001 — 3045)

R 3034. Motion procedure to settle statement terms

1. A party aggrieved by the failure of another to perform under a contract to submit a controversy, upon filing a statement, signed and acknowledged by the party, specifying the claim and the relief requested, may move for an order directing settlement of the terms of the statement, if necessary, and the determination of the controversy pursuant to the New York Simplified Procedure for Court Determination of Disputes.
2. Eight days notice of the motion, or such other notice as the court shall deem appropriate, shall be served upon the party alleged to be in default, in such manner as the court shall direct.
3. If there is no substantial question as to the making of the contract or submission, or the failure to comply therewith, the court shall proceed with the determination of the controversy pursuant to the simplified procedure and these rules. If the court shall find that a substantial issue of fact has been raised as to the making of the contract or submission, or the failure to comply therewith, and the motion shall not have been denied as a matter of law, the court shall proceed expeditiously with the trial thereof without a jury, unless either party upon argument of the motion shall have demanded in writing a trial by jury of the issue of the making of the contract or submission, in which event the court shall proceed as promptly as may be practicable with such trial before a jury.

History

Add, L 1962, ch 308, eff Sept 1, 1963.

Annotations

Notes

Prior Law:

Earlier rules: RCP 305.

Notes to Decisions

1. In general

A proceeding involving a dispute as to stand-by pay pursuant to a collective bargaining agreement between respondent town and petitioner policeman's union to compel the town to stipulate to a simplified procedure for court determination of disputes under CPLR §§ 3031 et seq., would be dismissed, since mandamus would not lie where there was no duty imposed on the town by law, and since CPLR § 3034 provides for a motion procedure to settle a proceeding for resort to the simplified procedure for court determination of disputes when the parties cannot agree. *Perritano v Mamaroneck*, 102 A.D.2d 854, 476 N.Y.S.2d 624, 1984 N.Y. App. Div. LEXIS 19048 (N.Y. App. Div. 2d Dep't 1984).

CPLR 3034 provision that a party to a simplified procedure who is aggrieved by the failure of another to perform under such a contract may move for a settlement of the terms of the statement seems to require total compliance with the terms of such section as a prerequisite to a motion for judgment. *Time Writers, Inc. v Coleman*, 67 Misc. 2d 258, 323 N.Y.S.2d 862, 1971 N.Y. Misc. LEXIS 1522 (N.Y. Sup. Ct. 1971).

Research References & Practice Aids

Cross References:

This rule referred to in § 3036.

Jurisprudences:

92 NY Jur 2d References § 2. .

Law Reviews:

Legislation: pre-trial motion practice. 29 Brook. L. Rev. 300.

Motion practice under the CPLR. 9 NY L Forum 317.

Treatises

Matthew Bender's New York Civil Practice:

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 3034, Motion Procedure to Settle Statement Terms.

Matthew Bender's New York CPLR Manual:

CPLR Manual § 21.14. Action on submitted facts.

CPLR Manual § 31.01. Arbitration in general.

CPLR Manual § 31.16. An alternative to arbitration: simplified procedure for judicial determination of disputes.

Forms:

Bender's Forms for the Civil Practice Form No. CPLR 3036:1 et seq.

LexisNexis Forms FORM 75-CPLR 3033:1.— Provision in Contract for Submission of Future Controversy for Determination Pursuant to Simplified Procedure.

LexisNexis Forms FORM 75-CPLR 3033:2.— Order to Show Cause for Settlement of Statement Under Simplified Procedure.

LexisNexis Forms FORM 75-CPLR 3033:3.— Affirmation in Support of Motion for Settlement of Statement Under Simplified Procedure.

LexisNexis Forms FORM 75-CPLR 3033:4.— Affidavit in Opposition to Motion for Settlement of Statement Under Simplified Procedure.

LexisNexis Forms FORM 75-CPLR 3033:5.— Demand for Jury Trial.

LexisNexis Forms FORM 75-CPLR 3033:6.— Order Settling Statement Under Simplified Procedure.

LexisNexis Forms FORM 1434-19156.— CPLR 410, 4102, 22 NYCRR 202.21(c): Demand for Jury Trial.

1 Medina's Bostwick Practice Manual (Matthew Bender), Forms 14:101 et seq .(remedies and pleadings).

Hierarchy Notes:

NY CLS CPLR, Art. 30

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