

## NY CLS CPLR R 3405

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>

*Civil Practice Law And Rules (Arts. 1 — 100)*

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*Article 34 Calendar Practice; Trial Preferences (§§ 3401 — 3410)*

### **R 3405. Arbitration of certain claims**

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The chief judge of the court of appeals may promulgate rules for the arbitration of claims for the recovery of a sum of money not exceeding six thousand dollars, exclusive of interest, pending in any court or courts except the civil court of the city of New York, and not exceeding ten thousand dollars, exclusive of interest, pending in the civil court of the city of New York. Such rules must permit a jury trial de novo upon demand by any party following the determination of the arbitrators and may require the demander to pay the cost of arbitration; and shall also provide for all procedures necessary to initiate, conduct and determine the arbitration. A judgment may be entered upon the arbitration award. The rules shall further provide for the recruitment and qualifications of the arbitrators and for their compensation; except that such rules may authorize use of judicial hearing officers as arbitrators. All expenses for compensation, reimbursement and administration under this rule shall be a state charge to be paid out of funds appropriated to the administrative office for the courts for that purpose.

### **History**

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Add, L 1978, ch 156, § 11; amd, L 1990, ch 30, § 2; L 1992, ch 55, § 404, eff April 10, 1992.

Annotations

### **Notes**

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**Editor's Notes:**

**Laws 1978, ch 156, § 13**, provides as follows:

§ 13. All rules heretofore adopted and promulgated by any court or agency of the unified court system by authority delegated by the legislature pursuant to section thirty of article six of the constitution regulating practice and procedure in the courts are continued in effect until amended, repealed or superseded in the manner authorized by law.

**Notes to Decisions**

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The framework for the disposition of civil suits by arbitration in CPLR § 3405 is constitutional, even though there is a provision for a trial de novo after the completion of arbitration, since the new trial provision does not render the arbitration decision an advisory opinion by the court, in that the arbitration proceedings relate to a real dispute, the arbitration decision has the effect of a formal judgment if the de novo trial option is not exercised, and the decision rendered in arbitration is rendered by a panel of lawyers, not by the court, and since if the compulsory arbitration system had been enacted without the provision for a trial de novo it would have been an unconstitutional elimination of a litigant's right to a jury trial. *Nuro Transp. v Judges of Civil Court*, 95 A.D.2d 779, 463 N.Y.S.2d 264, 1983 N.Y. App. Div. LEXIS 18693 (N.Y. App. Div. 2d Dep't 1983).

Pursuant to the administrative rules of the City of New York, civil actions in which the recovery sought is \$6,000 or less must be submitted to compulsory arbitration subject to a court jury trial de novo on demand, and the 30-day period for demanding a trial de novo provided by the rules would not be extended as a matter of judicial discretion under CPLR § 2004, since there is no inherent power to extend the time to appeal, and the goals of speeding the disposition of civil causes and reducing court congestion and costs would be retarded if the finality accorded

judgments in general were not applicable to compulsory arbitrations. *Chase v Scalici*, 97 A.D.2d 25, 468 N.Y.S.2d 365, 1983 N.Y. App. Div. LEXIS 20325 (N.Y. App. Div. 2d Dep't 1983).

In an action to recover attorney's fees, which was referred to arbitration pursuant to CPLR § 3405, vacation of the arbitrator's award in favor of plaintiff was error since the rules promulgated under CPLR § 3405 provide that an award may be vacated only on the ground that the rights of the moving party were prejudiced by corruption, fraud, or misconduct in procuring the award; by the panel making the award exceeding its power or so imperfectly executing it that a final and definite award was not made; or by a substantial failure to follow the procedures set forth in the rules established for the conduct of such arbitrations, none of which was established by defendant. *Landa, Picard & Weinstein v Ruesch*, 102 A.D.2d 813, 476 N.Y.S.2d 383, 1984 N.Y. App. Div. LEXIS 18981 (N.Y. App. Div. 2d Dep't), dismissed, 63 N.Y.2d 944, 1984 N.Y. LEXIS 6206 (N.Y. 1984).

Defendants were entitled to trial de novo under CLS Stds & Adm Policies § 28.12 where they demanded trial de novo within 30 days of issuance of amended arbitration award, although they had allegedly stipulated to settlement contained in original award, since issue was thereafter resubmitted to arbitrators, and demand for trial de novo was made with respect to amended award, to which parties had not stipulated. Defendants were not precluded from demanding trial de novo following arbitrators' determination on ground that court erred in first instance by transferring case to arbitration under CLS CPLR § 3405 because plaintiffs' claim exceeded statutory limit of \$6,000. *Penney v Elmira Professional Communications, Inc.*, 131 A.D.2d 938, 516 N.Y.S.2d 533, 1987 N.Y. App. Div. LEXIS 48359 (N.Y. App. Div. 3d Dep't 1987).

A defendant is required to arbitrate a civil action in which there are two separate and distinct causes of action, each for less than \$6,000, notwithstanding the fact that their sum exceeds \$6,000, where pursuant to CPLR 3405, the Chief Judge has promulgated rules (see 22 NYCRR 28.2 [b]) requiring that arbitration be mandatory for each cause of action noticed for trial in the Civil Court of the City of New York which is for \$6,000 or less, inasmuch as the policy of the State favors and encourages arbitration, which is designed to achieve a just determination of

disputes in a rapid and inexpensive manner, and it is consistent with that policy and common sense to read CPLR 3405 as authorizing compulsory arbitration of such civil actions where the recovery sought for each claim is \$6,000 or less, even though the rule of the Chief Judge uses the term “cause of action” whereas CPLR 3405 uses the word “claim”, since those terms have substantially the same meaning. *Ferber v Schultz*, 104 Misc. 2d 1009, 429 N.Y.S.2d 861, 1980 N.Y. Misc. LEXIS 2438 (N.Y. Civ. Ct. 1980).

Trial court lacks authority to waive the arbitration procedures contained in the Rules of the Chief Judge adopted pursuant to CPLR § 3405 requiring arbitration in all civil actions for a sum of money only when recovery is sought for \$6,000 or less. *National Instrument Co. v Hortigro, Inc.*, 121 Misc. 2d 1077, 469 N.Y.S.2d 566, 1983 N.Y. Misc. LEXIS 4036 (N.Y. Dist. Ct. 1983).

Although defendant failed to request jury trial within 15-day period following service of note of issue, as required by CLS CPLR § 4102(2) to avoid jury trial waiver, he was nevertheless entitled to trial de novo by jury following reference of case to arbitration by virtue of CLS CPLR § 3405 and 22 NYCRR 28.12(a). *Hoffower v Buhite*, 146 Misc. 2d 68, 549 N.Y.S.2d 361, 1989 N.Y. Misc. LEXIS 816 (N.Y. Sup. Ct. 1989).

Fee arbitration program (CLS Stds & Adm Policies §§ 136.1 et seq.) does not conflict with CLS CPLR § 3405 which, by its own terms, is limited to actions “pending in any court.” *Williams v Foubister*, 176 Misc. 2d 702, 673 N.Y.S.2d 840, 1998 N.Y. Misc. LEXIS 164 (N.Y. County Ct. 1998).

## **Research References & Practice Aids**

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### **Jurisprudences:**

5 NY Jur 2d Arbitration and Award §§ 6., 229. .

105 NY Jur 2d Trial §§ 179., 182. .

### **Treatises**

**Matthew Bender's New York Civil Practice:**

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 3405, Arbitration of Certain Claims.

**Matthew Bender's New York CPLR Manual:**

CPLR Manual § 13.03. Adjournments because of engagement of counsel in other litigation.

CPLR Manual § 23.02. Trials; general rules.

CPLR Manual § 31.01. Arbitration in general.

**Matthew Bender's New York AnswerGuides:**

LexisNexis AnswerGuide New York Civil Litigation § 8.03. Evaluating Arbitration of Certain Claims.

**Warren's Weed New York Real Property:**

Warren's Weed: New York Real Property § 8.33.

**Matthew Bender's New York Checklists:**

Checklist for Filing Note of Issue and Certificate of Readiness LexisNexis AnswerGuide New York Civil Litigation § 8.02.

Checklist for Requesting Adjournment of Trial LexisNexis AnswerGuide New York Civil Litigation § 9.30.

**Forms:**

Bender's Forms for the Civil Practice Form No. CPLR 3405:1 et seq.

LexisNexis Forms FORM 1434-22892.—Affidavit of Service of Demand for Trial De Novo.

LexisNexis Forms FORM 1434-22904.—Demand for Trial De Novo.

LexisNexis Forms FORM 1434-22961.—Demand for Trial De Novo - Suffolk County.

2 Medina's Bostwick Practice Manual (Matthew Bender), Forms 17:101 et seq .(calendar practice; trial preference).

**Texts:**

1 New York Trial Guide (Matthew Bender) § 1.10.

**Hierarchy Notes:**

NY CLS CPLR, Art. 34

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