

TENNANT & EWER, P.C.
ATTORNEYS AT LAW

RAYMOND S. EWER
ARBITRATOR

THE CHATHAM CENTER
29 CRAFTS STREET, SUITE 500
NEWTON, MASSACHUSETTS 02460
TELEPHONE: (617) 964-1300
(617) 965-3900
FACSIMILE: (617) 964-1307
E-MAIL: MAIL@TENNANT-EWER.COM
WEBSITE: WWW.TENNANT-EWER.COM

ARBITRATION RULES AND PROCEDURES

A. HEARINGS

1. REPRESENTATION

Any party may be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other party and the Arbitrator of the name, address, and telephone number of such representative at least three (3) days prior to the date set for the hearing at which the representative is first to appear. When an arbitration is initiated by counsel or when an attorney replies for the other party, such notice is deemed to have been given.

2. TIME AND PLACE

The Arbitrator shall fix the time and place for each hearing, upon consideration of the schedules of the representatives for the parties, or the parties if not represented. The Arbitrator shall mail to each party notice thereof at least twenty (20) calendar days in advance, unless the parties by mutual agreement waive such notice or modify the terms thereof.

3. DISCOVERY

The parties may engage in such discovery as they may jointly agree. In the event of any discovery dispute or objection to discovery request, the party seeking discovery or protection therefrom may request same in writing to the Arbitrator who shall issue such orders as the Arbitrator shall deem necessary.

4. STENOGRAPHIC RECORD

Any party wishing a stenographic record shall make arrangements directly with a stenographer and shall notify the other party and the Arbitrator of such arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record. If such transcript is agreed by the parties to be, or determined by the Arbitrator

to be, the official record of the proceeding, it must be made available to the Arbitrator and to the other party for inspection, at a time and place determined by the Arbitrator.

5. INTERPRETERS

Any party desiring an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of such service.

6. ATTENDANCE AT HEARINGS

The Arbitrator shall maintain the privacy of the hearings unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. The Arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the Arbitrator to determine the propriety of the attendance of any other person.

7. POSTPONEMENTS

The Arbitrator may, for good cause, postpone the hearing upon the request of a party or upon the Arbitrator's own initiative, and shall grant such postponement when all of the parties agree thereto.

8. OATHS

Each witness shall testify under oath administered by the Arbitrator.

9. ARBITRATION IN THE ABSENCE OF A PARTY OR COUNSEL

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or counsel who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The Arbitrator shall require the party who is present to submit such evidence as is deemed necessary for the making of an award.

10. ORDER OF PROCEEDINGS

(a) A hearing shall be opened by the recording of the place, time and date of the hearing and the presence of the Arbitrator, the parties, and counsel, if any; and by the receipt by the Arbitrator of the statement of the claim and answer, if any. The Arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved.

(b) The claimant shall then present its claims, proofs, and witnesses, who shall submit to questions or other examination.

(c) The respondent shall then present its defenses, proofs, and witnesses, who shall submit to questions or other examination. The Arbitrator has discretion to vary this procedure, but shall afford full and equal opportunity to the parties for the presentation of any material or relevant proofs.

(d) Exhibits, when offered by either party, may be received in evidence by the Arbitrator. The names and addresses of all witnesses and exhibits in the order received shall be made a part of the record.

(e) The parties may, by written agreement, provide for the waiver of oral hearings. If the parties are unable to agree as to the procedure, the Arbitrator shall specify a fair and equitable procedure.

11. EVIDENCE

(a) The parties may offer such evidence as is relevant and material to the dispute and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the dispute.

(b) An Arbitrator authorized by law to subpoena witnesses or documents may do so upon request of any party or independently.

(c) In receiving evidence, the Arbitrator shall be guided by Massachusetts rules of evidence, but shall not be precluded from receiving evidence which he/she considers to be relevant and trustworthy and which is not privileged. The Arbitrator shall be the judge of the relevance and materiality of evidence offered.

(d) All evidence shall be taken in the presence of all the arbitrators and all of the parties, except where any of the parties is absent in default or waives the right to be present.

(e) Any party intending to offer any medical report or record at the hearing must provide the other party with a copy at least twenty (20) days in advance thereof.

12. EVIDENCE BY AFFIDAVIT

The Arbitrator may receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the Arbitrator deems it entitled to after consideration of any objection made to its admission.

13. CLOSING OF HEARING

The Arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, or if satisfied that the record is complete, the Arbitrator shall declare the hearing closed and

the minute thereof shall be recorded. If briefs or any posthearing documents are to be filed, the hearing shall be declared closed as of the final date set by the Arbitrator for the receipt of such briefs or documents. The time limit within which the Arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearing.

14. POSTHEARING FILING OF DOCUMENTS

If the parties agree or the Arbitrator directs that documents are to be submitted to the Arbitrator after the hearing, the documents shall be filed with the Arbitrator and copies shall be served upon each other party. All parties shall be afforded an opportunity to examine the original of such documents.

15. REOPENING OF HEARING

The hearing may be reopened by the Arbitrator, or upon written request of all parties at any time before the award is made, or upon written request of any party for good cause shown provided the other parties do not object, and if the other parties do so object, the Arbitrator shall determine whether the hearing shall be reopened. If the hearing is reopened, the Arbitrator shall have thirty (30) days from the closing of the reopened hearing within which to make an award.

B. AWARDS

16. TIME OF AWARD

The Arbitrator shall render the award promptly and, unless otherwise agreed by the parties or specified by law, no later than thirty (30) days from the date of closing the hearing, or, if oral hearings have been waived, from the date of transmitting the final statements and proofs to the Arbitrator.

17. FORM OF AWARD

The award shall be in writing and shall be signed either by the sole arbitrator or by at least a majority if there is more than one arbitrator. A written opinion explaining the reasons for the decision/award shall not be required.

18. SCOPE OF AWARD

The Arbitrator may grant any remedy or relief that the Arbitrator deems just and equitable and within the scope of the agreement of the parties.

19. AWARD UPON SETTLEMENT

If the parties settle their dispute during the course of the arbitration, the Arbitrator may, upon request of the parties, set forth the terms of the agreed settlement in an award.

20. DELIVERY OF AWARD TO PARTIES

The parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail addressed to such party or its attorney of record at the last known address.

21. MAJORITY DECISION

Whenever there is more than one arbitrator, all decisions of the arbitrators must be by at least a majority. The award must also be made by at least a majority unless the concurrence of all is expressly required by the arbitration agreement or by law.

C. JUDICIAL PROCEEDINGS

22. APPLICATIONS TO COURT

(a) No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

(b) The parties to the arbitration shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(c) In any judicial proceeding relating to the matter which is the subject of arbitration, the Arbitrator is not a necessary party in such judicial proceedings.

(d) The parties agree not to call the Arbitrator as a witness or as an expert in any pending or subsequent proceeding involving the parties and relating in any way to the dispute which is the subject of the arbitration, and further agree that the Arbitrator shall not be subpoenaed in any proceeding.

23. RELEASE OF DOCUMENTS FOR JUDICIAL PROCEEDINGS

The Arbitrator shall, upon the written request of a party, furnish to such party, at its expense, certified copies of any papers in possession of the Arbitrator, other than the memoranda, work product, and case files of the Arbitrator, which may be required in judicial proceedings relating to the arbitration. The parties agree that all memoranda, work product, and case files of the Arbitrator are confidential and not subject to disclosure in any proceeding.

D. GENERAL MATTERS

24. INTERPRETATION AND APPLICATION OF RULES

The interpretation and application of these rules as they relate to all matters pertaining to the arbitration and as they relate to the Arbitrator's powers and duties shall be made by the Arbitrator. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these rules, it shall be decided by majority vote.

25. EXCLUSION OF LIABILITY

The parties agree that the arbitrators shall not be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

26. WAIVER OF RULES

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state objection thereto in writing shall be deemed to have waived the right to object.

27. COMMUNICATION WITH ARBITRATOR

There shall be no direct communication between the parties and the Arbitrator other than at oral hearings. Any other oral or written communication from the parties to an arbitrator shall be directed to his/her office for transmission to the Arbitrator.

28. EXPENSES

The expenses of witnesses and documents for either side shall be paid by the party producing such witnesses. Unless otherwise set forth in these rules, or agreed upon by the parties, or in the event the parties have agreed that the award of expenses shall be the subject of the arbitration, all other expenses of the arbitration shall be borne equally by the parties.

29. EXTENSIONS OF TIME

The parties may modify any period of time by mutual agreement.

30. SERVING OF NOTICE

With the exception of the demand for arbitration, which shall be served by US certified mail-return receipt requested, each party shall be deemed to have consented that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules; for any court action in connection therewith; or for the entry of judgment on any award made under these rules may be

served upon such party by US first class mail, postage prepaid or commercially recognized overnight delivery service, addressed to such party or its attorney at the last known address, or by facsimile transmission with proof of transmission, or by personal service.