

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

			X
In re: Expansion of General Order M-143 to	x		
Include the Use of Early Neutral Evaluation	x	AMENDED GENERAL ORDER M-143	
and Mediation/Voluntary Arbitration			x
			x
			x

M-211

Whereas the "Alternative Dispute Resolution Act of 1998" found in 28 UCS§651 through §658 and Federal Rule of Bankruptcy Procedure (FRBP) 9019 (c) authorize this court to adopt an alternative dispute resolution program and a voluntary arbitration program and the Board of Judges having agreed that the Court Annexed Mediation Program established by Amended General Administrative Order M 143 adopted January 18, 1995 and authorized by Local Rule of Bankruptcy Procedure 9019-1

Alternative Dispute Resolution should be expanded to include the use of Early Neutral Evaluation and Mediation/Voluntary Arbitration; and

Whereas the Amended General Administrative Order established Rules 1.0 through 8.0 for mediation procedures; and

Whereas Early Neutral Evaluation procedures utilize many mediation techniques, including the choice of an Early Neutral Evaluator by the same method contained in Rule 2.0 governing the selection of a mediator; and

Whereas the court believes that a program of Mediation/Voluntary Arbitration may potentially reduce

the number of disputes needing the attention of the court, thereby allowing the court to process remaining matters more efficiently; and

Whereas the court wishes to encourage and promote, at appropriate stages in bankruptcy proceedings, the use of innovative, cost efficient, speedy methods of resolving disputes other than adjudication by a presiding judge;

THEREFORE IT IS ORDERED that the court annexed mediation program is henceforth entitled the Court Annexed Alternative Dispute Resolution Program and is amended to include Early Neutral Evaluation under the same Rules 1.0 through 8.0 established for Mediation under the Amended General Administrative Order M-143 filed January 18, 1995.

IT IS FURTHER ORDERED that the General Administrative Order M-143 is amended to include Mediation/Voluntary Arbitration under the following Rules:

9.0 Assignment of Disputes to Mediation/Voluntary Arbitration.

9.1 Stipulation of Parties. The court may refer a dispute pending before it to mediation, and, upon consent of the parties, to arbitration if and to the extent that the mediation is unsuccessful. At the conclusion of mediation, after the parties have failed to reach agreement and upon voluntary stipulation of the parties, the mediator, if qualified as an arbitrator, may hear and arbitrate the dispute.

A. Referral to Arbitration pursuant to FRBP 9019 (c). Except as provided in

subdivision (B) the court may authorize the referral of a matter to final and binding arbitration under FRBP 9019 (c) if:

- (1) The issue does not arise in an adversary proceeding; or
- (2) In an adversary proceeding, if the matter in controversy is greater than \$150,000, the issue referred to arbitration is a procedural or non-dispositive issue. [Such as discovery disputes.] In the case of such a voluntary referral to final and binding arbitration, the court will retain jurisdiction to decide, after presentation of evidence, the adversary proceeding.

B. Referral to Arbitration pursuant to 28 USC§654. The court may authorize the referral of a matter to arbitration only with the consent of the parties under 28 USC§654. if:

- (1) In an adversary proceeding, the matter in controversy has a dollar value of not more than \$150,000.
- (2) Determination De Novo of Arbitration Awards.
 - (a) Time for Filing Demand. Within 30 days after the filing of an arbitration award, with the Clerk of Court, pursuant to Rule 9.1(B) any party may file a written demand for a determination *de novo* with the court.
 - (b) Action Restored to Court Docket. Upon a demand for a determination *de novo*, the action shall be restored to

the docket of the court and treated for all purposes as if had not been referred to arbitration.

(c) Exclusion of Evidence of Arbitration. The court shall not admit at the determination *de novo* any evidence that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding, unless --

(i) The evidence would otherwise be admissible in the court under the Federal Rules of Evidence;

or

(ii) The parties have otherwise stipulated.

(3) Arbitration awards shall be entered as the judgment of the court after the time has expired for requesting a determination *de novo*. The judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the court, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

(1) Filing and Effect of Arbitration Award. The Clerk of the Court shall place under seal the contents of any arbitration award made under

Rule 9.1 (B) of this Court Annexed Alternative Dispute Resolution Program and the contents shall not be known to any judge who might be assigned to the matter until the court has entered a final judgment in the action or the action has otherwise terminated.

- C. Safeguards in Consent to Voluntary Arbitration. Matters referred to mediation where the parties do not reach agreement are allowed to proceed to voluntary arbitration by consent expressly reflected and filed with the court where –
- (1) Consent to arbitration is freely and knowingly obtained; and
 - (2) No party or attorney is prejudiced for refusing to participate in arbitration.

10.0 The Arbitrator.

10.1 Powers of Mediator/Arbitrator. A mediator/arbitrator to whom an action is referred shall have the power, after a good faith attempt to mediate, and upon consent of the parties, to –

- A. Conduct arbitration hearings consistent with section 9.1 above;
- B. Administer oaths and affirmations; and
- C. Make awards.

10.2 Standards for Certification as an Arbitrator. In addition to fulfilling the

requirements found in section 2.0 The Mediator, a person qualifying as a Mediator/Arbitrator shall be certified as an arbitrator through a qualifying mediation/arbitration program which includes an ethics component on how to retain neutrality when changing the process.

10.3 Immunity. All individuals serving as Mediator/Arbitrator in the Court Annexed Alternative Dispute Resolution Program are performing quasi-judicial functions and are entitled to the immunities and protections that the law accords to persons serving in such capacity.

10.4 Subpoenas. The Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure apply to subpoenas for the attendance of witnesses and the production of documents at a Voluntary Arbitration hearing.

11.0 Arbitration Award and Judgment.

11.1 An arbitration award made by a mediator/arbitrator, along with proof of service of such award on the other party by the prevailing party, shall be filed promptly after the arbitration hearing is concluded with the Clerk of the Court.

12.0 Compensation of Mediator/Arbitrator. The Mediator/Arbitrator's compensation shall be consistent with 4.0 Compensation of Mediator as described in the Amended General Order M-143.

12.1 Transportation Allowances. Subject to court approval, if the estate is to be charged with such expense, the Mediator/Arbitrator may be reimbursed for actual

transportation expenses necessarily incurred in the performance of duties.

13.0 Notice of Court Annexed Alternate Dispute Resolution Program. The court, at the first scheduled pre-trial conference, shall give notice of dispute resolution alternatives substantially in compliance with Form I.

Dated: October 20, 1999
New York, New York

/s/ Tina L. Brozman
Tina L. Brozman
Chief Bankruptcy Judge

