

10-1-1954

## Business Associations—Enforcement of Arbitration Agreement

Jules Gordon

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### Recommended Citation

Jules Gordon, *Business Associations—Enforcement of Arbitration Agreement*, 4 Buff. L. Rev. 44 (1954).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol4/iss1/16>

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## BUFFALO LAW REVIEW

arrangements to organize a competing advertising agency and solicited clients of the plaintiff to terminate their relationship with the plaintiff and to become clients of the new agency to be formed by the defendants.

Even though the clients did not terminate their connection with the plaintiff until after the defendants had left its employ, the defendants were still held liable on the grounds that the loss to the plaintiff was caused by the action of the defendants during the existence of the fiduciary relationship.<sup>32</sup>

### *Enforcement of Arbitration Agreement*

A contract between parties to arbitrate any dispute between them as to interpretation of other agreements, will be enforced under Article 84 of the Civil Practice Act only if there is a bona fide arbitrable dispute.<sup>33</sup>

*Essenson v. Upper Queens Medical Group*<sup>34</sup> dealt with the expulsion of a doctor by a medical group. The articles of co-partnership of the group provided for expulsion for acts adversely affecting the partnership and provided for procedure to be followed in such a case. The articles also contained a clause, "Should any controversy arise with respect to the interpretation of any of the terms of this agreement or with respect to the rights of any partner pursuant to this agreement, such controversy shall be submitted to arbitration."

Upon serious charges, and under the prescribed procedure, the doctor was expelled. He sought arbitration as an alternative to an Article 78 proceeding to overrule the expulsion.<sup>35</sup>

The question, if any, to be arbitrated was not whether or not the doctor should be expelled, but whether he was expelled under proper procedure.

The court held that the burden lay with the doctor to prove that improper procedure was followed. Since he did not do so, no arbitrable dispute was shown, and his petition was dismissed.

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32. See *Byrne v. Barrett*, *supra* note 30, and *Volk Co. v. Flechner*, 298 N. Y. 717, 83 N. E. 2d 15 (1948).

33. *Matter of International Assn. of Machinists, Dist. No. 15, Local No. 402, Schrank*, 271 App. Div. 917, 67 N. Y. S. 2d 317 (1947). *aff'd* 297 N. Y. 519, 74 N. E. 2d 464 (1947). *General Electric Co. v. United Electric Radio and Machine Workers of America, C. I. O.*, 300 N. Y. 262, 90 N. E. 2d 181 (1949).

34. 30 N. Y. 68, 120 N. E. 2d 209 (1954).

35. C. P. A. Art. 78 provides relief as was formerly granted by way of the writs of mandamus and proscription against such actions as wrongful expulsion.