

Maritime Law Association University of Miami 2018



Miami Maritime Arbitration Council
Michael Karcher

The Lawyer's Perspective



Maritime Arbitration 1000's of years old



MMAC

- The Miami Maritime Arbitration Council was founded in 1985 by the Marine Council of Greater Miami to provide an alternative method of dispute resolution for mariners and marine interests in Florida.

The MMAC Board & Panel

- The MMAC board was made up of maritime lawyers, surveyors, insurance agents and other maritime professionals to provide a balanced board and panel to provide maritime arbitration by professionals in the industry

Sometimes, bad things happen.



Salvage Claims



Cargo Claims



Shipyard Builders/Repair Contract Disputes



Crew Claims



Purchase & Charter Yacht Disputes

Florida Yacht Brokers Association, Inc.
PURCHASE AND SALE AGREEMENT FOR BROKERAGE VESSEL

BUYER		VESSEL INFORMATION	
Name:		Vessel Name:	
		Make:	
		Model Year:	
		Length:	
		<input type="checkbox"/> Doc or <input type="checkbox"/> Reg No.:	Flag:
DATE OF AGREEMENT:		Hull No.:	
		Engines:	
ACCEPTANCE OF AGREEMENT		Listing Broker:	
Signature Date:		Selling Broker:	
ACCEPTANCE/REJECTION OF	BUYER	PURCHASE PRICE	
Reject Date:		Purchase Price:	
CLOSING		Less Deposit:	
Date:		Less Trade Allowance (see Addendum):	
Location:		Balance:	

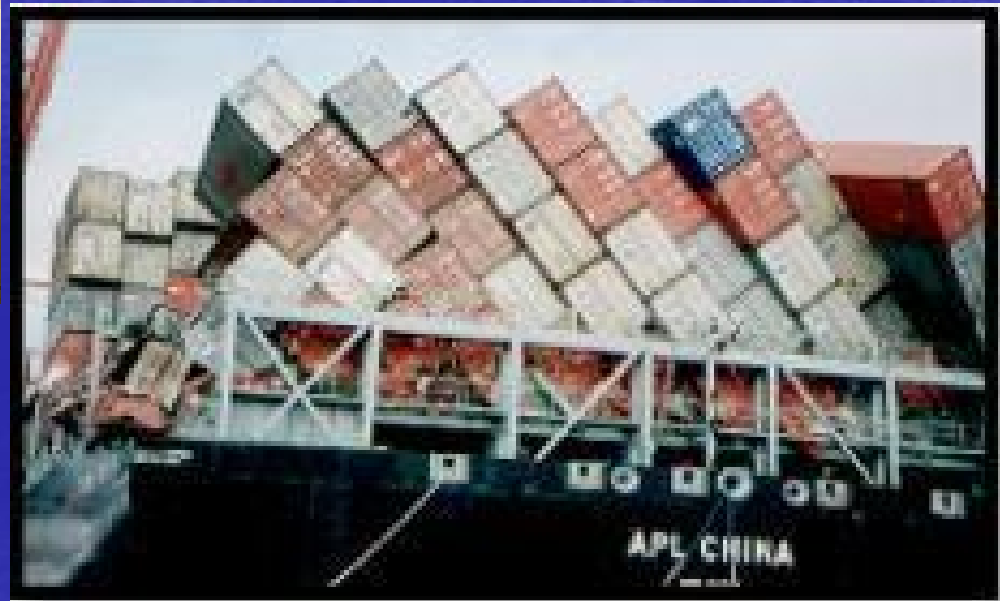
1. Buyer agrees to purchase, and Seller agrees to sell, the right, title and interest to and in the Vessel on the terms set forth in this Agreement. Capitalized words used herein shall refer to the corresponding terms in the table set forth herein. Listing Broker and Selling Broker shall be referred to herein as the "Brokers." If there is a Trademark, the conditions of the trade-in will be governed by the attached Vessel Addendum.

Deposit: If either party fails to sign this Agreement and deliver it to the other party on or before the Closing Date, this Agreement will be ineffective. Within _____ business days (or three (3) business days if the Listing Broker's execution of this Agreement, Buyer shall pay the Deposit to the Listing Broker's escrow account, as a deposit toward the Purchase Price to be held subject to the terms of this Agreement. Seller may refuse to permit the trial run, survey and other inspections of the Vessel until the Deposit is received in the Listing Broker's escrow account.

Acceptance of Vessel; Conditions of Survey: Buyer's obligation to purchase the Vessel is subject to Buyer's sole discretion, with a trial run and survey of the Vessel, if Buyer elects to inspect the Vessel. Buyer shall select the surveyor and thereupon the surveyor, and not the Brokers, will be the party responsible for the survey, notwithstanding that the Brokers may have provided information to and for the surveyor. (b) Buyer shall complete the trial run and survey as soon as practicable, (c) Seller shall provide and assume the risks associated with the trial run, and Buyer shall pay all costs of the survey, including any dock, and subcontractors' charges, (d) Buyer and its surveyor will be solely responsible for determining the trial run to assess the Vessel's conformity with Buyer's requirements, and (e) Buyer must deliver written acceptance of the Vessel to Seller or the Listing Broker on or before the Accept/Reject Date set forth above. If Buyer rejects or is deemed to have rejected the Vessel, Buyer will be deemed to have rejected the Vessel if he fails to give timely written acceptance of the Vessel. Seller will not make any use of the Vessel pending Closing except for the trial run. If Buyer rejects or is deemed to reject the Vessel, after all expenses incurred on Buyer's behalf.



Ship owners need to have a plan in place before they suffered a loss



An alternative to a lawsuit



arbitration in future disputes

- Any dispute, controversy or claim arising from or relating to this contract or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the Rules of Procedure of the Miami Maritime Arbitration Council in effect at the commencement of the arbitration. The award shall be final and shall be enforceable by any court having jurisdiction.

Local dispute resolution

- MMAC was formed to provide an alternative to Foreign Arbitration of the yachting business as a growing majority of the recreational and large yacht business is located here in South Florida.

- Our panel of arbitrators are dedicated to providing fair and relatively inexpensive method of dispute resolution. The MMAC is managed by the Marine Council of Greater Miami and provides the arbitration rules, membership roster, model arbitration clauses, and procedures for arbitration.

Selecting an Arbitration Panel



Going to Court: You could get these judges... .



Or, these judges... .



Or this one....!



Review your contracts.



Review the rules in place.



Venue Selection Clause



Agree on a location



Preserve your records/evidence to support the claim

- Have all of your bills, photos, charts, time lines, correspondence, work orders, etc.
- Put together a presentation so it is easily understood by the client and the arbitrator
- Prepare a report for the arbitration panel
- Locate your witnesses.

Now is not the time to read the
Contracts.



Speed is important.



Try and move this along as quickly as possible.



Business Benefits

- Arbitration affords a certain amount of privacy.
- It is less confrontational than a court proceeding.
- It can be one last way to try to keep the customer.

Avoid interest, lay days, down time,
lost business.




submission clause

- The undersigned hereby agree to submit to arbitration under the Rules of Procedure of the Miami Maritime Arbitration Council the following dispute: (describe dispute briefly). We agree the award shall be final and enforceable by any Court having jurisdiction.

Salvage Claims





Approved and Published by the Council on Editors

HOGRI - HOGRI

1. Name of the salvage contractor (referred to in this agreement as: "the Contractor")	2. Property to be salvaged the vessel: for cargo, freight, equipment, stores and other (if the property described and indicated that amount which is salvageable or salvagable in case (referred to in this agreement as: "the property")
3. Amount paid (if any)	4. Signature of owner of the vessel and its security (if other than above named owner)
5. Date of this agreement	6. Place of agreement
7. Is the Salvage Contract incorporated into this agreement?	Initials, date and place
8. Vessel paying for and receiving the protection	9. Captain or other person paying for and receiving the protection
Signature	Signature

8. Furthermore, these calculations, the only ones carried out by the authors, show that the total amount of the investment in the project is not sufficient to cover the costs of the project. The authors do not mention this fact, which is a serious flaw in the study.

Crew Claims - Arbitration



Crew Contracts –Arbitration

- Agreements to arbitrate are governed by the Convention of the Recognition and Enforcement of Foreign Arbitral Awards ("Convention"). codified in the Federal Arbitration Act 9 U.S.C. §§ 201-208.

Federal Courts - Arbitration

- Federal courts have the power to compel arbitration pursuant to an agreement to arbitrate, even where the arbitration is to be held outside of the United States. 9. U.S.C. § 206.

Crew Employment Contracts Arbitration Clause



Brokers and Owners need to have a plan beforehand in case something goes wrong... .



Have the Terms in Place Before the Deal is reached



Maritime Arbitration - Trends

- A growing number of crew claims
- Increased recreational boat salvage
- Charter yacht claims
- Brokers/buyers/commission disputes
- Builders/repair contracts

Otherwise you could be left
stranded... .





Thank you !

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Miami Maritime Arbitration Council