

Maritime Arbitration Under SMA Rules



Robert Shaw
Molly McCafferty

SMA Arbitration

- SMA was formed in New York in 1963 to provide the industry with a group of experienced, commercial peers to resolve disputes in response to the introduction of the NYPE Charter Party.
- The SMA officers, governors and members are committed to providing maritime arbitration and dispute resolution services which exceed industry expectations
- Rules are simple transparent and practical (Updated March 2018) and available online (smany.org)

Who We Are

- Over 70 members with a diverse mix of extensive commercial shipping experience including financial professionals, brokers, deck officers, engineers, operators, insurance and risk professionals, surveyors, legal professionals, and naval architects.
- Provide ongoing education to Members and the Industry with an annual two day seminar on maritime arbitration under SMA rules and host monthly luncheons with topical speakers.
- Publish *The Arbitrator*, a periodical newsletter with industry updates and scholarly articles.
- Over 20 Members with formal mediation training and/or maritime mediation experience.
- Friends and Supporters Program established to enable SMA consumers to participate in marketing efforts and education programs

Who We Are

- SMA Website: www.smany.org includes
 - SMA Arbitration Rules and Code of Ethics
 - Shortened Arbitration Rules
 - Membership Roster with short bio
 - Model Arbitration Clauses,
 - Model Mediation Clauses,
 - Salvage Rules (SMASALV) and Salvage Agreement Form (Marsalv): Both available in Spanish on the website

Who We Are

- Mediation program with proposed model mediation clause and Code of Ethics for Mediators
- SMA Rules for Mediation (whether by contract or agreement) available on SMA website
- Over twenty Members are trained mediators and/or have maritime mediation experience

What Types of Disputes

- Types of Disputes
 - All forms of charter party and Bills of lading
 - S&P agreements for commodities and vessels
 - Shipbuilding, conversion and repair contracts
 - Government supply contracts
 - Agency agreements/Service contracts
 - Liner and cruise ship management contracts
 - Salvage disputes
 - Yachts
 - Insurance contracts
 - Pool contracts
 - Leasing agreements and other financial/commercial disputes

How: SMA Rule Highlights

- Arbitration initiated under SMA Rules with written notice to other party of its demand for arbitration and naming its chosen arbitrator
- Contractually based alternative dispute resolution process
- NO APPOINTMENT FEES
- Opposing party has twenty days to appoint its chosen arbitrator (unless otherwise provided in arbitration agreement)
- If arbitration agreement provides for three arbitrators, the two so chosen will appoint the third (unless otherwise provided by agreement)
- Parties can agree to a sole arbitrator
- No requirement under SMA Rules that a Party be represented by an Attorney
- SMA arbitration is informal and flexible. Arbitrators are not bound by strict rules of evidence found in court proceedings.
- Can be conducted with hearings or on documentary exchange alone. Increased availability and use of “Documents” only arbitration

When and Where

- Majority of Awards are issued within 60 days of closing submissions
- Absent extenuating circumstances all Awards are issued within 120 days
- Over 4300 published awards
 - Available on WestLaw, Lexis/Nexis
 - Hard Copy Subscription Available
 - Digest
- While most hearings are in New York City, panels are open to facilitation of hearings outside New York.
- Emergency and expedited hearings available
- Open to members from outside New York

Why SMA Rules

- SMA Rules are simple, transparent and practical.
- No appointment fee
- No need for two tier legal team (barrister/solicitor)
- Disputes decided by industry peers with extensive commercial experience
- Shortened arbitration procedure reduces time and expense
- Publication of awards allows for transparency (though parties can opt out of publication of award)
- Over 4300 published awards available on Westlaw, Lexis/Nexis. Hard copy subscription available. Digest available.
- Rules allow for Pre-Judgment Security
- Consolidation permitted
- Fees and Costs routinely awarded to prevailing party.
- Discovery subpoenas can be issued under SMA Rules
- SMA arbitrators can provide a decision on an expedited basis if needed.
- Awards are final as the grounds for vacating an award are limited
- Awards are enforceable

Initiatives

- Creation of Friends and Supporters
- Liaison Committee with the US Maritime Law Association
- Increased membership with diverse commercial experience
- Educational Programs for Members and the industry at large.
- Transparency on fees and appointments
- Outreach to Insurance and yacht industries
- Looking beyond traditional charter party disputes to include other commercial agreements including pool contracts, commodity sales agreements, leasing/finance agreements
- Mediation program with proposed model mediation clause and Code of Ethics for Mediators.