

Rules and Procedures



BETH DIN *of* AMERICA

בית דין דאמריקא



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Contents

| | | |
|---------|---|----|
| SEC. 1 | Designation of <i>Av Beth Din</i> ; Designation of Arbitrators (<i>Dayanim</i>) | 1 |
| SEC. 2 | Jurisdiction of the Beth Din to Arbitrate | 2 |
| SEC. 3 | Choice of Law | 4 |
| SEC. 4 | Initiation Under Submission | 5 |
| SEC. 5 | Number and Selection of Arbitrators (<i>Dayanim</i>) | 6 |
| SEC. 6 | Disclosure and Challenge Procedure | 6 |
| SEC. 7 | Vacancies | 7 |
| SEC. 8 | Pre-Hearing Conference | 7 |
| SEC. 9 | Time and Place | 7 |
| SEC. 10 | Record | 8 |
| SEC. 11 | Interpreter and Other Cases of Need | 8 |
| SEC. 12 | Representation by Counsel | 8 |
| SEC. 13 | Attendance at Proceedings | 9 |
| SEC. 14 | Recess | 9 |
| SEC. 15 | Oaths | 9 |
| SEC. 16 | Order of Proceedings | 9 |
| SEC. 17 | Arbitration in the Absence of a Party | 10 |
| SEC. 18 | Evidence | 10 |
| SEC. 19 | Evidence by Affidavit and Filing of Documents | 10 |
| SEC. 20 | Inspection or Investigation | 11 |
| SEC. 21 | Conservation of Property | 11 |
| SEC. 22 | Closing of Proceedings | 11 |
| SEC. 23 | Reopening of Proceedings | 12 |
| SEC. 24 | Waiver of Oral Hearings | 12 |
| SEC. 25 | Communication with the Beth Din; Service of Process | 12 |
| SEC. 26 | Decision and Time of Award | 12 |
| SEC. 27 | Form of Award | 13 |
| SEC. 28 | Scope of Award | 13 |
| SEC. 29 | Award upon Settlement | 13 |
| SEC. 30 | Delivery of Award to Parties | 13 |
| SEC. 31 | Modification of Award (Appeal) | 13 |
| SEC. 32 | Release of Documents for Judicial Proceedings .. | 14 |
| SEC. 33 | Application to Court | 14 |
| SEC. 34 | Fees | 15 |
| SEC. 35 | Expenses | 16 |
| SEC. 36 | Deposits | 16 |
| SEC. 37 | Waiver of Rules | 16 |
| SEC. 38 | Extension of Time | 16 |
| SEC. 39 | Interpretation and Application of Rules | 16 |

Rules and Procedures



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The Beth Din of America provides a forum where adherents of Jewish law can seek to have their disputes resolved in a manner consistent with the rules of Jewish law (*halacha*) and with the recognition that many individuals conduct commercial transactions in accordance with the commercial standards of the secular society.

These Rules and Procedures are designed to provide for a process of dispute resolution in a Beth Din which is in consonance with the demands of Jewish law that one diligently pursue justice, while also recognizing the values of peace and compromise. The Beth Din of America adjudicates disputes in a manner consistent with secular law requirements for binding arbitration so that the resolution will be enforceable in the civil courts of the United States of America, and the various states therein.

Rules and Procedures

SEC. 1

Designation of *Av Beth Din*; Designation of Arbitrators (*Dayanim*)

- a The *Av Beth Din* of the Beth Din of America (Beth Din) shall serve as the supervisor of the Beth Din and all of its functions. When parties initiate arbitration or any other dispute resolution related activities, including mediation or negotiation, in the Beth Din, the parties thereby appoint the *Av Beth Din* or his designee as the administrator in any Beth Din proceeding or hearing.
- b The obligations of the *Av Beth Din* or his designee shall be as prescribed in these Rules. Every obligation of the *Av Beth Din* may be delegated to a designee at the discretion of the *Av Beth Din*. In the absence of the *Av Beth Din* or at his direction, the *Segan* (Assistant) *Av Beth Din* shall function as the *Av Beth Din*. In the absence of the *Segan Av Beth Din*, the *Menahel* (Director) of the Beth Din shall function as the *Av Beth Din*.
- c The *Av Beth Din*, with the assistance of any rabbis he shall designate, shall prepare a list of authorized arbitrators (*dayanim*) eligible to hear cases. Such a list shall be divided into two categories: Those arbitrators (*dayanim*) eligible to serve as arbitrators (*dayanim*) alone (in a panel of one arbitrator), all of whom shall be rabbis, and those who shall be eligible to serve only on panels of three arbitrators (*dayanim*), all of whom need not be rabbis, but rather may include religiously observant individuals involved in the various professions. In every matter heard by a panel of three arbitrators (*dayanim*), one panel member must be a rabbi.
- d These Rules and any amendment thereof shall apply to every matter presented to the Beth Din for resolution and shall be provided to the parties by the Beth Din at the time the arbitration is initiated. A copy of these Rules, or an internet link thereto, shall be furnished to each of the parties seven days before any hearings are initiated.
- e When a matter is brought to the Beth Din for resolution, the arbitrator (*dayan*) or arbitrators (*dayanim*) shall be selected by the *Av Beth Din* or his designee and shall be neutral. Any person serving as an arbitrator (*dayan*) shall be subject to disqualification for the reasons specified in Section 6. The *Av Beth Din* may solicit advice from the parties concerning the selection of arbitrators (*dayanim*), as he feels proper.

SEC. 2

Jurisdiction of the Beth Din to Arbitrate

- a The parties shall be deemed to have made these Rules a part of their agreement to seek arbitration (as defined below) whenever they submit their dispute for resolution by the Beth Din.
- b In the absence of an agreement to arbitrate which is signed by both parties, the Beth Din shall send at the request of the claimant (unless prohibited by the law of the jurisdiction in which the Beth Din is sitting) an invitation (*hazmana*) to participate in the proceedings of the Beth Din to any person, if, in the judgment of the *Av Beth Din*, that person is one who should participate in such a proceeding. Should a person receiving an invitation (*hazmana*) not wish to participate in these proceedings, and wishes to avoid the issuance of a *shtar servuv* (see paragraph [i]) one of three responses must be forthcoming from that party:
 - 1 That party wishes to proceed to arbitration in an alternative bet din recognized by the *Av Beth Din* and this case is not one in which the Beth Din of America was the pre-agreed forum for dispute resolution by the parties;
 - 2 That party wishes to resolve the dispute through the procedure by which each side chooses an arbitrator, and the two chosen arbitrators agree on a third party (referred to as *zebla* in Jewish law), and this case is not one in which the Beth Din of America was the pre-agreed forum for dispute resolution by the parties; or
 - 3 That party otherwise falls outside the jurisdictional mandate of the Beth Din.
- c If the litigant who is sent an invitation (*hazmana*) responds by choosing option one, and a bet din is chosen that is suitable to both sides, the Beth Din will withdraw from this matter.
- d If the litigant who is sent an invitation (*hazmana*) responds by choosing option one, and a bet din is chosen that is unsuitable to the claimant, the Beth Din will note that fact in a letter to defendant, and convert the proceeding to a case in which both parties have chosen option 2.
- e If the litigant who is sent an invitation (*hazmana*) chooses option 2, and they have chosen as their representative a person who – in the opinion of the *Av Beth Din* – is authorized by Jewish law to

serve as their arbitrator, the Beth Din will withdraw from this matter. The Beth Din may permit and encourage any one of its arbitrators (*dayanim*) to accept this case under the *zebla* arrangement, although the arbitrator (*dayan*) in such circumstances will not be functioning as a member of the Beth Din.

- f If a litigant is sent an invitation (*hazmana*) and chooses option 2 and chooses a representative who – in the opinion of the *Av Beth Din* or his designee – is unsuitable to function as an arbitrator (*dayan*) according to Jewish law, the Beth Din shall treat this situation as analogous to one in which no proper response is forthcoming.
- g If the party to whom an invitation (*hazmana*) is sent responds by demonstrating facts that show that this case is outside the jurisdiction of the Beth Din, the *Av Beth Din* shall withdraw the invitation, and so note that fact in the record. In such cases, the proper jurisdiction of the Beth Din of America is determined by Jewish law as well as the discretionary judgment of the *Av Beth Din*.
- h If the party to whom an invitation is sent responds by claiming that this case is outside the jurisdiction of the Beth Din and the *Av Beth Din* determines that such a claim is incorrect, the Beth Din shall treat this matter as one in which no proper response is forthcoming, unless this party chooses options(c) or (e) above, or accepts the jurisdiction of the Beth Din.
- i If no proper response is forthcoming to an invitation (*hazmana*) after proper notification and the passing of 30 calendar days, it is within the discretion of the *Av Beth Din* to authorize the Beth Din to issue a *shtar seruv* (a document noting that this person refuses to participate in the proceedings of the Beth Din, and permitting, according to Jewish law, the claimant to seek relief in secular court), and publicize that fact in any manner the Beth Din sees fit.
- j When there is an agreement to arbitrate which is signed by both parties, the provisions found in this section, in clauses (b) through (i) shall not be applicable, and the Beth Din shall hear the matter. If, after reasonable notice, one party refuses to attend the proceedings of the Beth Din in a case in which there is an agreement to arbitrate in the Beth Din, the matter shall proceed without the participation of that party. (See Section 17.)

SEC. 3 Choice of Law

- a In the absence of an agreement by the parties, arbitration by the Beth Din shall take the form of compromise or settlement related to Jewish law (*p'shara krova l'din*), in each case as determined by a majority of the panel designated by the Beth Din, unless the parties in writing select an alternative Jewish law process of resolution.
- b The Beth Din will strive to encourage the parties to resolve disputes according to the compromise or settlement related to Jewish law principles (*p'shara krova l'din*); however, the Beth Din will hear cases either according to Jewish law as it is understood by the arbitrators or compromise (*p'shara*) alone, if that is the mandate of the parties.*

*Compromise or settlement related to Jewish law principles (*p'shara krova l'din*) is a process in which the relative equities of the parties' claims are considered in determining the award. For example, in Jewish law (*din*), the party that proves the "truthfulness" of its case "more likely than not," as well as proving the Jewish law basis for its entitlement, is qualified to recover 100% of the amount sought, whereas in compromise or settlement related to Jewish law principles (*p'shara krova l'din*) such a party would not necessarily recover 100% of the amount sought, depending on that party's conduct throughout the matter under dispute. So too, in a case where neither party proves the "truthfulness" of its case "more likely than not," or does not prove the Jewish law basis for its entitlement, Jewish law (*din*) would not provide for an award, whereas compromise or settlement related to Jewish law principles (*p'shara krova l'din*) could provide for an award in that case.

Remedies also might be different. In a case governed by the principles of compromise or settlement related to Jewish law principles (*p'shara krova l'din*) an award could require a public apology, or other remedies not required in Jewish law (*din*). Even in a case decided under the compromise or settlement related to Jewish law principles (*p'shara krova l'din*), it is quite possible that one litigant will triumph completely and be fully vindicated.

Among the factors **not** considered in compromise or settlement related to Jewish law principles (*p'shara krova l'din*) in a financial dispute are: levels of religiosity, relative wealth of the parties, or gender.

It is the policy of the Beth Din of America to encourage the parties to adjudicate matters in accordance with compromise or settlement related to Jewish law principles (*p'shara krova l'din*).

In those cases in which Jewish law mandates that compromise (*p'shara*) alone provide the basis for the resolution of the dispute, no explicit acceptance of such shall be required.

- c The Beth Din of America accepts that Jewish law as understood by the Beth Din will provide the rules of decision and rules of procedure that govern the functioning of the Beth Din or any of its panels.
- d In situations where the parties to a dispute explicitly adopt a “choice of law” clause, either in the initial contract or in the arbitration agreement, the Beth Din will accept such a choice of law clause as providing the rules of decision governing the decision of the panel to the fullest extent permitted by Jewish Law.
- e In situations where the parties to a dispute explicitly or implicitly accept the common commercial practices of any particular trade, profession, or community – whether it be by explicit incorporation of such standards into the initial contract or arbitration agreement or through the implicit adoption of such common commercial practices in this transaction – the Beth Din will accept such common commercial practices as providing the rules of decision governing the decision of the panel to the fullest extent permitted by Jewish Law.
- f Unless otherwise indicated, all references in these Rules to “arbitration” shall refer to dispute resolution utilizing any of these principles, and the Rules set forth herein shall be applicable equally to any of these modes of resolution.

SEC. 4

Initiation Under Submission

- a Parties to any existing dispute may commence a proceeding under these Rules by filing with the Beth Din an agreement (which shall be executed by the parties) whereby the parties agree to arbitrate under these Rules (“Submission”). A suggested form of Submission is available at www.bethdin.org.
- b Such Submission shall contain a statement of the matter in dispute that is to be resolved by the Beth Din. The Beth Din shall be permitted to resolve all disputes between the litigants that in its judgment are related to the dispute contained in the submission agreement, even if particular aspects of a dispute are not explicitly mentioned in the submission agreement; disputes related to the matter submitted may only be removed from the jurisdiction of the Beth Din through the explicit agreement of the parties.
- c The parties shall concurrently submit to the Beth Din the appropriate administrative fee.

SEC. 5 **Number and Selection of Arbitrators** **(Dayanim)**

- a If the Submission or contractual provision pursuant to which arbitration is initiated does not specify the number of arbitrators (*dayanim*), the dispute shall be heard and determined by one arbitrator (*dayan*) if the amount in controversy is less than \$20,000 unless the parties, by mutual agreement, request that the dispute be heard and determined by a panel of three arbitrators (*dayanim*).
- b If the amount in dispute is equal to or more than \$20,000, the matter shall be heard by three arbitrators (*dayanim*) unless the parties, by mutual agreement request that the matter be heard by a single arbitrator (*dayan*).
- c The *Av Beth Din* may direct that any particular case submitted for resolution to the Beth Din be heard by a panel of three arbitrators (*dayanim*).
- d The Beth Din shall notify the parties upon the selection of arbitrators (*dayanim*) by the *Av Beth Din*, so as to provide the parties with a reasonable time to exercise their right to challenge the neutrality of any arbitrator (*dayan*), in accordance with Section 6 of these rules.

SEC. 6 **Disclosure and Challenge Procedure**

- a Any party may object to the appointment of any person appointed as an arbitrator (*dayan*) on the grounds that such person is biased or has a financial or personal interest in the result of the arbitration or has any past or present relationship with the parties.
- b A person appointed to be an arbitrator (*dayan*) shall disclose in writing, which shall be confidential, to the *Av Beth Din* any circumstances likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties.
- c Upon receipt of such information from such party or arbitrator (*dayan*) or other source, the *Av Beth Din* shall communicate such information to the parties, and, if the *Av Beth Din* deems it appropriate to do so, to the arbitrator (*dayan*) and others. The *Av Beth Din* shall determine whether the arbitrator (*dayan*) should be disqualified and shall inform the parties of his decision, which shall be conclusive. However, the *Av Beth Din* must disqualify any arbitrator (*dayan*) who has a financial interest in any matter.

SEC. 7**Vacancies**

- a If any arbitrator (*dayan*) should resign, die, withdraw, refuse, be disqualified or be unable to perform his duties, the *Av Beth Din* may, on proof sufficient and satisfactory to the *Av Beth Din*, declare the office vacant. Any vacancy that occurs before the proceedings have been closed (Section 22) shall be filled in accordance with Section 1(e) of these Rules, as applicable. In the event of the appointment of a substitute arbitrator, the panel of arbitrators shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.
- b Any vacancy that occurs after the proceedings have been closed shall not be filled and the matter shall not be reheard unless, in each case, the parties otherwise agree.

SEC. 8**Pre-Hearing Conference**

- a At the request of all the parties or in the discretion of the *Av Beth Din* a pre-hearing conference of the *Av Beth Din* or his designee and the parties will be scheduled in appropriate cases to arrange for an exchange of information, a stipulation of uncontested facts, relevant documents, witnesses to be called and any other matters which shall expedite the arbitration proceedings.

SEC. 9**Time and Place**

- a The Beth Din shall fix the time and place for each hearing. The *Av Beth Din* or his designee shall notify each party thereof in accordance with Section 25(b) of these Rules at least eight days in advance, unless the parties by mutual agreement waive such notice or modify the terms thereof.
- b In the Beth Din's discretion and as circumstances may warrant, hearings may be conducted, and evidence presented, through video conferencing, internet communication, telephonic conferences and means other than an in-person presentation.
- c In appropriate cases, including where a party seeks emergency or interim relief prior to the commencement or completion of proceedings, the *Av Beth Din* may designate a single arbitrator (*dayan*) or panel of arbitrators (*dayanim*) to consider such matters on an expedited basis. The party requesting such relief shall submit a

written request setting forth the nature of the relief sought and the reasons it is needed on an emergency basis. To the extent practicable, the Beth Din shall provide the other parties with a minimum of two business days' notice and an opportunity to respond in writing or at a hearing, which may be conducted by telephone or video conference. The Beth Din may issue any temporary or interim ruling or directive it deems necessary to preserve the rights of the parties pending final resolution of the dispute.

SEC. 10

Record

- a The *Av Beth Din* shall arrange for electronic recording of every proceeding, unless all of the parties waive this right.

SEC. 11

Interpreter and Other Cases of Need

- a All proceedings of the Beth Din shall be in English, unless the *Av Beth Din* directs to the contrary, and all the parties to the proceeding consent to the use of any other language.
- b Upon the request of any party, the *Av Beth Din* shall arrange for an interpreter to be present at the proceeding for the benefit of one or more of the parties. The requesting party or parties shall bear the cost of such service.
- c In situations where one of the litigants is handicapped or in need of other assistance which facilitates the presentation to the Beth Din, the Beth Din shall make such accommodations as needed to allow that person to present their case in a reasonable manner.

SEC. 12

Representation by Counsel

- a Any party shall have the right to be represented by an attorney who must be licensed to practice law in any jurisdiction in the United States and may claim such right at any time as to any part of the arbitration that has not taken place. If a party is represented by an attorney, all papers served on such party shall be served on such attorney.
- b A party that does not attend the proceedings with an attorney shall be deemed to have waived his right to counsel for that proceeding.

SEC. 13**Attendance at Proceedings**

- a All proceedings of the Beth Din shall be private unless the law of the jurisdiction provides to the contrary. Any person having a direct interest in the arbitration shall be entitled to attend proceedings of the Beth Din and to be represented by an attorney who may attend and participate in the proceedings in any manner that the principal may participate. Unless the parties otherwise agree, the Beth Din shall decide whether any other person may attend the hearings. The Beth Din shall exclude any witness, other than a party or their representatives, during the testimony of any other witness.

SEC. 14**Recess**

- a The Beth Din may recess upon the request of any party or upon its own initiative and shall recess when all the parties agree thereto. The Beth Din shall reconvene upon the direction of the *Av Beth Din*, or when agreed to by the parties or directed by the arbitrators hearing the matter.

SEC. 15**Oaths**

- a The arbitrators (*dayanim*) shall not be required to take an oath or to administer an oath to any party or witness.

SEC. 16**Order of Proceedings**

- a The Beth Din may, at the beginning of the proceeding, ask for statements clarifying the issues involved. After any such statements, the complaining party shall present its claims, witnesses and proof. Thereafter, the defending party shall present its defenses, witnesses and proof. All witnesses who appear before the Beth Din shall submit to questions or other examination by the Beth Din and by the parties (or their counsel). The Beth Din shall have discretion to vary this procedure, but shall afford full and equal opportunity to all parties for the presentation of any material or relevant proof.
- b Exhibits, when offered by either party, may be received in evidence and appropriately marked by the Beth Din.
- c The names and addresses of all witnesses and a description of exhibits in the order received shall be made a part of the record.

SEC. 17**Arbitration in the Absence of a Party**

- a Unless the law of the jurisdiction provides to the contrary, the arbitration may proceed in the absence of any party who, after due notice, fails either to be present or to obtain an adjournment. An award shall not be made solely because of a party's default. Rather, the Beth Din shall require the party who is present to submit such evidence as the Beth Din may require for the making of an award.

SEC. 18**Evidence**

- a The parties may offer such evidence as they desire and shall produce such additional evidence as the Beth Din may deem necessary to an understanding and determination of the dispute. The Beth Din, when authorized by the law of the jurisdiction to subpoena witnesses or documents, may do so upon its own initiative or upon the request of any party. The Beth Din shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of the entire Beth Din and the parties, except where any party is absent because such party is in default or has waived in writing the right to be present.
- b The Beth Din may, on its own motion, seek testimony or affidavits from any person whom it deems relevant to a matter: provided that such testimony be sought in the presence of the parties, and subject to such rebuttal as the parties deem appropriate and the Beth Din permits.
- c There shall be no ex parte communication between the arbitrators (*dayanim*) and the parties, or between the arbitrators (*dayanim*) and any witnesses unless the arbitration contract explicitly permits such activity.

SEC. 19**Evidence by Affidavit and Filing of Documents**

- a The Beth Din shall receive the evidence of witnesses contained in affidavits, but such affidavits will receive only such weight as the Beth Din deems appropriate after consideration of any objections thereto.
- b Any documents not filed with the Beth Din at the proceeding, but which the parties agree at the proceeding or subsequently should be submitted to the Beth Din, shall be filed with the *Av Beth Din* (for distribution to the entire Beth Din) and a copy

of such documents shall concurrently be delivered to each other party to the dispute. All parties shall be afforded an opportunity to examine and submit written comments with respect to such documents to the *Av Beth Din* prior to submission of such documents to the Beth Din. Such comments shall be distributed to the Beth Din together with such documents.

SEC. 20

Inspection or Investigation

- a Whenever the Beth Din deems it necessary or appropriate to make an inspection or investigation in connection with the arbitration, the Beth Din shall advise the parties of such intention. The Beth Din shall set the time and the *Av Beth Din* or his designee shall notify the parties thereof. Any party who so desires may be present at such inspection or investigation. If one or both parties are not present at the inspection or investigation, the Beth Din shall make a verbal or written report to the parties and afford them an opportunity to comment.

SEC. 21

Conservation of Property

- a Unless prohibited by the law of the jurisdiction, the Beth Din may issue such orders as it may deem necessary or appropriate to preserve and safeguard any property that is the subject matter of the arbitration without prejudice to the rights of the parties or to the final determination of the dispute.

SEC. 22

Closing of Proceedings

- a After each of the parties has completed presenting its witnesses and proof, the Beth Din shall specifically inquire of all the parties whether they have any further proof to offer or witnesses to be heard. Upon receiving negative replies, the Beth Din shall declare the proceedings closed and shall record the date of such closing.
- b If any documents or other submissions are to be filed with the Beth Din after the taking of all testimony has been completed, the proceedings shall be closed as of the final date set by the Beth Din for the filing of such documents or other submissions. Absent an agreement by the parties to the contrary, the time limit within which the Beth Din is required to make its award (Section 26) shall commence upon the closing of the proceedings.

SEC. 23**Reopening of Proceedings**

- a Before any award is made, the Beth Din upon its own motion or upon application of a party, may reopen the proceedings at any time for taking additional evidence or hearing additional testimony.

SEC. 24**Waiver of Oral Hearings**

- a The parties may provide, by written agreement and the consent of the Beth Din, for the waiver of oral hearings. If such hearing is waived, the parties shall agree upon an alternative procedure to be followed by the Beth Din for receiving evidence.

SEC. 25**Communication with the Beth Din; Service of Process**

- a After the proceedings have commenced, the parties and their counsel shall not communicate with the arbitrators (*dayanim*) concerning the arbitration outside of the proceedings. Any other oral or written communications from the parties to the arbitrators (*dayanim*) shall be directed to the *Av Beth Din* for transmittal to the members of the Beth Din. In a case in which the *Av Beth Din* is also an arbitrator (*dayan*), the *Segan Av Beth Din* shall assume the duties normally assigned to the *Av Beth Din* for that case.
- b Each party to an arbitration under these Rules shall be deemed to have consented that any documents, notices, awards or process necessary or appropriate to initiate or continue arbitration under these Rules and any court action in connection therewith or the entry of judgment on any award made thereunder may be served upon such party by mail or overnight delivery at the last known address, or by personal service, facsimile transmission (fax), or e-mail transmission, to the party or its representative.

SEC. 26**Decision and Time of Award**

- a The award must be made by at least a majority of the arbitrators (*dayanim*) unless the concurrence of all the arbitrators (*dayanim*) is expressly required by written agreement of the parties. The Beth Din shall make its award promptly and shall strive to issue every award not later than three months after the date on which the proceedings are closed

(Section 22). Extensions of this deadline may be made at the sole discretion of the *Av Beth Din*.

SEC. 27

Form of Award

- a The award shall be in writing and shall be signed and affirmed by the arbitrators (*dayanim*) and shall be in English. In the discretion of the arbitrators (*dayanim*), a simultaneous translation into other languages can also be issued in writing. The award shall be executed in the manner required by the law of the jurisdiction.

SEC. 28

Scope of Award

- a The Beth Din may grant any remedy or relief that it deems just and equitable, including, without limitation, specific performance of a contract and injunctive relief. The Beth Din may also award attorney's fees and expenses.
- b In addition to any final award, the arbitrators may make other decisions, including interim or partial orders and awards.

SEC. 29

Award upon Settlement

- a If the parties settle their dispute during the course of the arbitration, the Beth Din, at the written request of the parties, may set forth the terms of such settlement in an award, although such a settlement shall not be considered an "award of the Beth Din."

SEC. 30

Delivery of Award to Parties

- a The award shall be delivered to the parties in accordance with Section 25(b) of these Rules, and shall be filed in any manner which may be prescribed or permitted by the law of the jurisdiction.

SEC. 31

Modification of Award (Appeal)

- a On written application of a party to the Beth Din within twenty (20) days after delivery of the award to the applicant, the Beth Din may modify the award if (a) there was a mathematical miscalculation; or (b) there was a mistake in the description of any person, thing or property referred to in the award; or (c) the award is based upon an issue not submitted to the Beth Din and the award may be corrected without affecting the merits of the decision upon the issues

submitted; or (d) the award is imperfect in a matter of form not affecting the merits of the controversy; or (e) the Av Beth Din determines that a provision of the Award is contrary to Jewish Law.

- b Copies of such application shall be concurrently served upon all other parties to the arbitration in accordance with Section 25(b) of these Rules. Any party objecting to such modification shall submit written objections to the Beth Din, with copies to all other parties to the arbitration, within 10 days of receipt of such application. Within 10 days of receiving the objections, the applicant may file a written reply to the Beth Din addressing the points raised by the objecting party, with copies to all other parties to the arbitration. Within 10 days of receiving the reply, the objecting party may file a sur-reply to the Beth Din, with copies to all other parties to the arbitration. The Beth Din shall dispose of any application made under this section in writing. The Av Beth Din shall strive to issue such writing within 40 days after the last submission.

SEC. 32

Release of Documents for Judicial Proceedings

- a The Beth Din shall furnish to any party, at the prior written request and at the expense of such party, certified copies of any papers in the Beth Din's possession that may be required in judicial proceedings relating to the arbitration.

SEC. 33

Application to Court

- a No judicial proceedings by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate, although the Beth Din may consider such conduct in determining its award.
- b No arbitrator (*dayan*) in an arbitration proceeding under these Rules is a necessary party to a judicial proceeding relating to such arbitration.
- c Parties to these Rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any Federal or state court having jurisdiction thereof.
- d Parties to an arbitration under these rules shall be deemed to have consented that neither the Beth

Din of America nor any arbitrator shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any arbitration under these rules.

SEC. 34

Fees

- a The *Av Beth Din* shall prescribe a fee schedule to compensate the Beth Din for the cost of providing its services. The schedule in effect at the time the arbitration is initiated shall be applicable.
- b Fees for arbitration proceedings shall be advanced prorate by the parties, subject to final apportionment by the Beth Din in the award.
- c When a matter is withdrawn or settled, a refund may be made as determined by the *Av Beth Din*.
- d The Beth Din, in the event of extreme hardship on the part of any party, may defer or reduce applicable fees.
- e If, at any time, any party has failed to pay fees or expenses to the Beth Din in full, the *Av Beth Din* may order the suspension or termination of the proceedings, pending payment in full, and inform the parties in order that one of them may advance the required payment. If one party advances the payment owed by a non-paying party, the party that advances the payment may make an application to the *Av Beth Din* or his designee for reimbursement by the non-paying party. Copies of such application shall be concurrently served upon the non-paying party in accordance with Section 25(b) of these Rules, and the non-paying party may submit written objections, with copies to the party that advanced the payment, within 10 days of receipt of such application. The *Av Beth Din* or his designee may issue an award, separate from any other award ordered by the Beth Din, ordering the non-paying party to reimburse the other party for advances made on their behalf. Such award (i) may be issued without an oral hearing unless either party requests one in writing and (ii) shall be subject to the provisions of Section 33(c) of these Rules, although it shall not be subject to the provisions of Sections 26 and 27 of these Rules.

SEC. 35 Expenses

- a Each party shall bear the costs of its own counsel and witnesses (other than witnesses who appear at the direct request of the Beth Din).
- b All other expenses of the arbitration, including the expenses of any witness or the cost of any proof produced at the direct request of the Beth Din, shall be borne equally by the parties.
- c The allocation of expenses under this section may be modified by the agreement of the parties, or by the Beth Din in its award.

SEC. 36 Deposits

- a The Beth Din may require the parties to deposit in advance such sums of money as the Beth Din deems necessary to defray the expenses of the arbitration, and in such circumstances as the *Av Beth Din* considers appropriate, the Beth Din may require the posting of a performance bond. The Beth Din shall render an accounting to the parties and return any unexpended balance.

SEC. 37 Waiver of Rules

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

SEC. 38 Extension of Time

- a The parties may by mutual agreement modify the period of time for any action required to be taken hereunder. The Beth Din for good cause may extend any period of time established by these Rules, except the time for making the award. The *Av Beth Din* or his designee shall notify the parties of any such extension of time and the reason therefor.

SEC. 39 Interpretation and Application of Rules

- a The *Av Beth Din* shall interpret and apply these Rules insofar as they relate to the powers of the Beth Din or any individual arbitrators (*dayan*).



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