

DailyNews

Pay in 30 Days or Arbitration Is Forfeit -- and 'Check Is in the Mail' Does Not Cut It

Tim Kowal November 15, 2023



So you have been sued and successfully compelled arbitration. Next step: do not fail to ensure your arbitration fees are **received** within 30 days. Not just paid, but

received. The employer–defendant in *Doe v. The Superior Court* (D1d3 Sep. 8, 2023) No. A167105 put the check in the mail on day 25, but it was not delivered until a week later—two days after the deadline. The trial court thought that was close enough.

But the First District Court of Appeal issued a writ of mandate. “[W]e strictly enforce the 30–day grace period in [Code of Civil Procedure] section 1281.98(a)(1) and conclude fees and costs owed for a pending proceeding must be received by the arbitrator within 30 days after the due date. We do not find that the proverbial check in the mail constitutes payment....”

The untimely payment of arbitration fees is one of the rare “escape hatches” out of arbitration. The reason for the strict rule, as the court explains, is ‘to solve a very specific problem—namely, the “procedural limbo and delay workers and consumers face when they submit to arbitration, pursuant to a mandatory arbitration agreement, but the employer fails or refuses to pay their share of the arbitration fees.’ (Assem. Floor Analysis, 3d reading analysis of Sen. Bill No. 707 (2019–2020 Reg. Sess.) as amended May 20, 2019, p. 2.)” “One of the Legislature’s main objectives was to deter employers from strategically withholding payment of arbitration fees so that they could no longer stymie the ability of employees to assert their legal rights.” After examining other cases on this point, the court concluded they were all in agreement that “the Legislature sought to establish a clear and unambiguous rule for determining a breach based on nonpayment as well as strict enforcement of the statute.”

Takeaway

The AAA fees in this case were to be paid to an address in Texas. That is probably why the payment, sent by mail, took longer than usual to arrive. The court noted that the appellant could have made the payment by credit card or electronic check. Be sure to consider this option to eliminate guesswork, given the standard is **receipt** of payment.

Of course, banks notoriously hold on to funds for much longer than it takes an electronic wire or credit card payment to be transmitted, and the court did not explain whether these forms of payment would be deemed to be “received” immediately or at such latter time as the bank sees fit to release the funds. It would seem unfair to hold this against the payor, but then again, it would not be inconsistent with the *Doe* court’s merciless rule.

This article was [originally published on the website of Kowal Law Group](#).

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