**Small Claims - Arbitration Clause**

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| **Dave Heiss dheiss@calhouncountymi.gov**[**via**](https://support.google.com/mail/answer/1311182?hl=en)**googlegroups.com** |
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Happy Rainy Weekend y'all!

I'm pondering a construction contract case- construction contractor is suing for payment of over-budget amounts, homeowner defendants claim they weren't given detailed amounts of overages (etc. etc etc).  Looking at the contract, though, there is the following clause: "Any controversies or disputes arising out of or relating to this contract shall be resolved by bind arbitration in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association . . . . "

Neither party argued to dismiss the small claims case on this basis- but, of course, the contract that plaintiff seeks to enforce contains that clause.  I have perused MCL 691.1681 et. seq. (the Revised Uniform Arbitration Act)- which seems mostly to deal with parties challenging the clause itself.

The Question: Can the case be heard in Small Claims, or, since the contract seems to say otherwise, does it have to be kicked down the street to the arbitrators?

Thanks for your thoughts in advance.

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| **Sheldonlarky via MADCM <madcm@googlegroups.com>** |

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I am a part-time magistrate and full-time alternative dispute resolution [i.e., mediator, arbitrator, facilitator] provider. The law is clear in Michigan: Arbitration clauses are affirmative defenses. If the clause is not raised by the defendant, it is waived. If a plaintiff chooses to bring a claim to court containing an arbitration clause, then the plaintiff is consciously choosing not to invoke arbitration.

Bottom line: Proceed with the small claim lawsuit.

Shel Larky

Magistrate

52-4 District Court

In a message dated 7/30/2016 11:08:07 A.M. Eastern Daylight Time, dheiss@calhouncountymi.gov writes:

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Thank you!