

## **Winning (or Successfully Defending) the Small Claim**

**[The following is the second installment in a two-part series examining litigation of minor monetary disputes in American courts.]**

In the United States, trial courts decide cases either through the assistance of a jury or by the judge alone. Small Claims Court matters are resolved either by a judge or, in some jurisdictions, by an arbitrator. In many states, court dockets are overburdened to such an extent that cases are “continued” (delayed) for several weeks. A significant advantage in opting for arbitration is the expeditious resolution of the dispute. Arbitration is often available on the night the parties first appear.

Known as the “People’s Court” because of the informality of its proceedings, most Small Claims Courts employ relaxed rules of evidence and procedure. Anyone who has ever seen a legal drama on television or at the movies knows that hearsay (an out-of-court statement offered to prove the truth of the matter asserted) is generally not permitted in a courtroom. In Small Claims Court, however, the judge or arbitrator has broad discretion to uncover those facts which will assist in the resolution of the dispute. Such latitude may include the admission or suppression of witness statements, written estimates of repair or recorded conversations.

During the trial or arbitral hearing, the parties will generally be permitted to offer a brief summary of the matter that is similar to an attorney’s opening statement. The judge or arbitrator will then permit the examination and cross-examination of witnesses presented by each of the parties. In closing, each party may provide a summation of their case. The judge or arbitrator may issue a ruling immediately or reserve judgment. If the latter occurs, the plaintiff/claimant and defendant will be notified of the judge’s decision or arbitral award by mail.

It is important to note that a Small Claims Court decision or award is not self-executing, which is to say the court will not ensure that the losing party complies. If successful, the plaintiff/claimant must obtain the money or recover the personal property from the defendant. In some instances, the defendant will voluntarily comply with the decision or award. Unfortunately, there are numerous examples where the plaintiff/claimant must involve a third party to enforce the judgment. In many jurisdictions, a marshal or sheriff is needed to peaceably bring closure to the dispute. The service fee may be imposed upon the non-compliant defendant.

A Small Claims case is often closed through the filing of a Satisfaction of Judgment. That document is simply plaintiff’s acknowledgment that s/he has received the court-ordered relief. Pursuant to statute, Plaintiff has a specified number of days in which to file the Satisfaction of Judgment with the Small Claims Court. This process advances the public policy that a defendant should not be made to suffer the anxiety and legal stigma of an open adverse judgment for an unreasonable time. In New York, for example, a defendant may seek a fine of \$100.00 if the prevailing claimant does not file the Satisfaction of Judgment within 30 days.

The availability of a right to appeal the decision or award is an important decision for the parties to make before agreeing to the forum. Some states prohibit a disappointed plaintiff from appealing the award, *e.g.*, Rhode Island, while others allow either party to seek review, *e.g.*, Wisconsin. Certain jurisdictions proscribe appeal of an arbitral award, *e.g.*, New York.

The decisions rendered in a Small Claims Court are, in fact, binding judicial determinations. Defendants who fail to respect the forum will find unpleasant results including the issuance of default judgments which can restrain bank accounts and subject personal property to seizure by a law enforcement official, a process known as “levy.”

Even if a party believes that s/he can successfully handle a Small Claims Court matter, it is always advisable to seek legal counsel for pre-trial consultation. The expense of an hour of professional advice may enable a party to save hundreds or thousands of dollars during the ensuing case.

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