

## Myths and Facts: Arbitrating Consumer Disputes

Congress, courts, businesses, and consumers have all endorsed arbitration as an alternative to resolving disputes in court. Although opponents of arbitration rely on anecdotes and partisan rhetoric to paint a misleading picture, a close look at the actual facts about arbitration reveals it to be a fair, affordable, and easily accessible way for consumers to resolve disputes:

1. **Myth: Arbitration is so expensive that most consumers will not be able to pursue their claim against a corporation because they can not afford the costs of the arbitrator.**

**Fact:** Arbitration opponents misleadingly quote commercial arbitration fees (for business-to-business disputes) as if they apply to consumer cases. They do not. Consumer filing fees at the National Arbitration Forum, for example, start at \$19 for claims less than \$1,500 and filing fees do not climb above \$40 until the claim size exceeds \$13,000. Arbitration rules also permit fee waivers for consumers who cannot afford to pursue their claims.

2. **Myth: Arbitration is no quicker than litigation.**

**Fact:** The arbitration process is speedy. Analysis of arbitration involving consumer contracts shows a median case duration of four to six months whereas the Bureau of Justice Statistics shows that contract lawsuits last a median length of 15 to 20 months.

3. **Myth: Efforts to make arbitration “voluntary” improve arbitration.**

**Fact:** “Voluntary” arbitration is the real myth. Parties who are not permitted to agree to arbitrate up front, by way of a pre-dispute arbitration agreement, are extremely unlikely to agree to arbitrate after a dispute has occurred. After the dispute, parties naturally become polarized, and it is likely one side will see a tactical advantage in the cost and delay of court litigation. Studies show that consumers overwhelmingly favor the use of pre-dispute arbitration agreements in order to preserve access to arbitration. See, [Key Findings from a National Survey of Likely Voters](#) (2008).

4. **Myth: Consumers have no choice in mandatory arbitration.**

**Fact:** Mandatory arbitration is increasingly a misnomer. Many arbitration agreements contain opt-out clauses, which allow consumers to reject arbitration within a certain timeframe while still agreeing to the rest of the contract. Under current law, courts decide whether arbitration agreements are fair under well-established standards of fairness that apply to all types of contracts. One-sided or unconscionable arbitration agreements will simply be invalidated by the courts.

5. **Myth: Businesses have an unfair advantage in arbitration.**

**Fact:** Arbitration strives to provide parties with the same outcomes they would have received in court. Published studies and empirical data indicate that consumers prevail at the same or marginally better rate as they do in court. It is important to note that evaluating arbitration outcomes is only meaningful in comparison with court outcomes of similar cases. In court and in arbitration, a large percentage of consumer respondents in contract-based cases fail to respond or appear. In court, these consumers will very likely have a default judgment entered against them. In FORUM arbitration, the arbitrator reviews the evidence and requires the appearing party to prove their case before issuing an award against a non-appearing consumer.

6. **Myth: Arbitrators favor corporations who are “repeat users” of arbitration.**

**Fact:** Data confirms that claims of bias are simply false. Win rates for consumers and for businesses are the same in arbitration and in court. “Repeat players” in arbitration obtain no better results than repeat users in court. Outcomes research shows that consumers bringing claims against businesses win 65.5% of the time in arbitration and 61.5% of the time in court. Businesses bringing claims against consumers win 77.7% of the time in arbitration

and 76.8% of the time in court. For debt collection matters in particular, lenders prevail 93.8% of the time in arbitration and over 96% of the time in court. Further, one recent study shows that there is little evidence backing the repeat-player theory. See, [Summary of Key Findings Consumer Arbitration Before the American Arbitration Association](#) (2009).

7. **Myth: Arbitration proceedings are secretive.**

**Fact:** The parties control the confidentiality of the proceedings, and any party can choose to disclose an arbitration decision. Various mechanisms, including judicial confirmation of arbitration awards, allow for public oversight of the arbitral process. Finally, confidential proceedings avoid the “scorched earth” psychology of civil litigation and spare individuals the public disclosure of embarrassing details.

8. **Myth: Arbitrators are not bound by any laws.**

**Fact:** Arbitration rules typically require arbitrators to decide cases by applying the same laws that would apply in court, resulting in predictable standards and rational awards. National Arbitration Forum rules, for example, require arbitrators to follow the substantive law. Arbitrators are empowered to issue the same remedies as in court, and in most cases, a party can request that the arbitrator issue a detailed written explanation with the award.

9. **Myth: Parties have reduced discovery rights in arbitration.**

**Fact:** The rules of every major arbitral association ensure ample access to the traditional methods of discovery in order to allow parties to obtain the information necessary to prove their case.

10. **Myth: The constitutional right to a jury trial suffers because of arbitration.**

**Fact:** In agreeing to arbitrate disputes, parties relinquish the right to a jury trial in favor of an arbitration system that permits quick and efficient resolution of even smaller-value claims. The right to a jury trial is no consolation and of no practical help to a consumer with a claim so small that no attorney can or will agree to provide legal representation. In arbitration, simple procedures, low fees, quick resolutions, and efficient administration mean that parties can resolve even smaller-value claims and obtain the same outcomes they would have received in court.

11. **Myth: Arbitration agreements typically prohibit class action lawsuits.**

**Fact:** Arbitration provides an efficient way to resolve even smaller-value claims that cannot be resolved in an economically rational way in court litigation. Courts will refuse to enforce class action waiver provisions if the party would not be able to effectively vindicate their claim without access to class action procedures.

12. **Myth: The arbitration appeals process is limited, confusing, and extremely difficult, and only the rare appeal succeeds with high costs for consumers.**

**Fact:** The Federal Arbitration Act (FAA) requires that an arbitration award be confirmed in court before it becomes an enforceable judgment. Though courts do demonstrate respect for arbitral decisions, courts have shown they are more than willing to overturn arbitration awards where the arbitrator exceeded his/her powers, demonstrated bias, or failed to provide due process to a party. The relatively high standard of review of arbitration awards benefits consumer and business parties. An arbitration award granted in favor of a consumer is not subject to nearly the unlimited appeals that can be sought by a deep-pocketed corporate interest.

13. **Myth: While arbitration firms make the rules, they do not always follow them.**

**Fact:** Wrong. Clear rules are followed. The rules of the major arbitration organizations are based on experience arbitrating thousands of cases and subsequent legal reviews. When parties agree to arbitrate any disputes that arise between them under certain arbitration rules, those rules become incorporated into the parties’ contract. Those rules then define the scope of the powers of the arbitrator who decides the case. To the extent that the arbitrator exceeds those powers, the Federal Arbitration Act (FAA) permits a court to overturn the arbitration award.

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