



AMERICAN ACADEMY *of* ACTUARIES

July 1, 2009

Dear Past Presidents of the American Academy of Actuaries,

I am writing on behalf of myself and the two immediate Past Presidents of the American Academy of Actuaries. We are writing to you regarding the petition being circulated by David Hartman, seeking to suspend Bruce Schobel as Academy President-Elect. We think this effort is fundamentally unfair, both to the Academy and to Bruce. We would like to give you our perspective on this issue, and based on that perspective, we ask you not to support these efforts.

As you may know, David has circulated a document labeled an Award of Arbitration. That document is from an employment dispute between Sarah Sanford, the former Executive Director of the Society of Actuaries, and the SOA. Bruce was also named in that proceeding; he was the President of the SOA at the time. Rather than the conclusions some have drawn from the Arbitration Award, we draw our conclusions both from what we know the Award is *not*, and from what we know Bruce to *be*. There are many others, beyond just the three of us, who believe that in the circumstances that led to the arbitration, Bruce acted courageously, against entrenched interests, to lead the SOA during this past period of turmoil. Many see him as a protector of whistleblowers who restored the SOA to a position of integrity and strength in its internal leadership. Bruce, in our experience, is a passionate, strong, and outspoken questioner of the status quo and is unafraid where his intellectual curiosity will take him or others.

There are several important facts about the materials that have been circulated to you that we want to share with you-- from which we draw much different conclusions than those suggested to you previously.

1. Arbitration Awards have no standing as judicial opinions, decisions, or precedents. They are used when the parties to an agreement (such as in, in this case, an employment contract) agree to be bound to resolve a dispute arising under it through "binding arbitration". Awards that result from this process are binding **only** on the parties that agreed to be bound by them. Those parties **are** bound, regardless of whether the decision/award: (1) follows any judicial precedent or applicable law, or (2) makes *its own version of the facts or law*. Arbitration panels:

- Are not bound by the rules of evidence or procedure that pertain to court proceedings in state or federal venues.
- Are not bound to decide according to the principles of law applicable in a court of justice. {See generally *4 Am Jur 2d Alternative Dispute Resolution § 184, American Jurisprudence, Second Ed., 2008 West Group.*}
- Have no binding or generally available references for arbitration precedents.
- Decisions are not appealable except in the rarest of circumstances. The Federal Arbitration Act (found at 9 USC § 1 et seq), enacted in 1925, provides for contractually-based compulsory and binding arbitration, resulting in an "arbitration award" entered by

an arbitrator or arbitration panel as opposed to a "judgment" entered by a court of law. In an arbitration the parties give up the right to an appeal on substantive grounds to a court. Under the FAA, grounds for judicial intervention in an arbitration award are limited to where the award was procured by "corruption," "fraud" or "undue means" and where the arbitrators were "guilty of misconduct" or "exceeded their powers." It is extremely rare for an arbitration award to be appealed and even rarer for one to be reversed or returned by a court. Courts simply do not exercise routine jurisdiction over arbitral decisions or processes.

In essence, Bruce (and the SOA) are prohibited, by the nature of binding arbitration, from arguing in a legal setting as to why the arbitration panel's conclusions of fact, law, or reasoning are flawed.

2. Arbitration eliminates the ability to rebut decisions. Arbitration is a "private" dispute resolution system, for which the parties pay, in order to avoid litigation in state or federal courts. An arbitration award *cannot be used to conclude that facts or law (if any) relied on in the decision were true and correct*, as one is entitled to do with a state or federal court decision. (See generally *4 Am Jur 2d Alternative Dispute Resolution § 192, American Jurisprudence, Second Ed., 2008 West Group.*) Given the essential nature of arbitration awards and proceedings, we think it is grossly misleading to characterize this Arbitration Award as a "finding of fact or law" that should be given any deference by anyone other than the parties to the arbitration itself. It is not fair to suggest that a lack of appeal of that decision indicates that the parties "agreed" it was correct. That is not a valid inference or conclusion.

3. Arbitration Awards are not generally publicly available documents. Contractual arbitrations are generally considered to be private, but absent an agreement for confidentiality, either in the contract or mutually agreed later, parties are under no obligation to keep the proceedings private. (See generally, *4 Am Jur 2nd Alternative Dispute Resolution § 44, Jurisprudence, Second Ed., 2008 West Group.*) However, absent circulation by a party, decisions are not generally publicly available, and it would be difficult for a member of the public to obtain copies of such awards. For example, the American Arbitration Association advised that it does post decisions, other than employment decisions, on Lexis/Nexis, but *they do so only after redacting identifying information*. We assume, but we do not know for a fact, that this Arbitration Award being circulated was filed with the Circuit Court of Cook County where Ms. Sanford sued the SOA and Bruce. We believe it was probably filed in that court docket in order to demonstrate resolution of the case initiated there. However, the Academy has done some research to see if this award is generally publicly available, such as in Westlaw, a Google search, and in the on-line Cook County court docket system or from the American Arbitration Association itself, and *it was not available*. Unless a member of the public were exceptionally well versed and prepped with very specific information about the case information, and physically went to the Cook County courthouse to try to obtain a copy of this decision, it is extremely unlikely a member of the public could get it. We believe the current effort is trying to create a crisis in Academy leadership, by arguing that this decision is not only binding legal authority but that it is also generally publicly available. *Neither of these arguments is true*. It is *the* wide circulation as part of this recall effort that is the only source which we can verify as the cause of any "public" knowledge of this award.

4. This Award addressed an employment dispute between Ms. Sanford and the SOA. It is clear that the arbitration award addressed a very contentious employment matter at SOA. The letter we have does not refer to that part of the Arbitration Award's discussion that deals with the

propriety of Ms. Sanford's termination itself. That decision states (p. 8) "What occurred... [after Bruce raised issues questioning her performance] with respect to her employment was determined by the Board, which presumably acted in the manner that the members of the Board deemed best for the organization." The critical element of this dispute is action by the SOA Board, the basis for that action, whether termination was for cause, or not for cause, and what was said about the reasons for termination.

As many of you must have experienced, the nature of employment disputes is inherently sensitive and confidential. Information about such disputes is usually closely held by the employer and the employee, neither of which is usually benefited by airing all alleged disputes and bases for employment actions beyond a small group that has a need to know. Seeking and/or repeating second hand information and gossip about why a termination occurred can create significant legal liability for an organization or an individual, particularly where the recipients do not and did not have the authority to make the decision in the first place. This is not a risk to which the Academy should be exposed. We have no reason to question the SOA's actions or to seek information from them about this matter. It would be improper for us to do so. To rehash these issues before the Academy, either in some informal or formal presentation to **our** Board would be fundamentally unfair to all the parties. The Academy has no right to and no business in second guessing the SOA by reviewing or trying to get the bases for the SOA's decision to terminate its ED. This was and is an SOA matter, and we are confident that they have handled it in the best interests of the SOA. This should be the end of that dispute.

5. Reference to a criminal conviction from 30+ years ago. There are various reasons why we believe this isn't appropriate, fair, or relevant. Whatever did or did not happen at that time thirty years ago has been intentionally deleted, *by court order*, from criminal records in New Jersey, through a process called "expungement." As we have cautioned others as part of this process, *it is a criminal offence, a violation of the New Jersey Code of Criminal Justice (NJ Stat § 2C:52-30), to reveal the existence of an arrest, conviction or related legal proceeding with knowledge that those matters have been expunged.* Expungement is rarely available, and occurs only with good cause in the eyes of the court. It is a recognized judicial tool to provide relief. If we all choose to comply with the law, we think that is all that anyone must know.

The Roles of the SOA, Academy, and Bruce in this Matter

We believe that the matter of the employment dispute between the SOA and Sarah Sanford is an SOA matter. The SOA Board was presented with whatever evidence it needed to make a decision about whether to terminate Ms. Sanford. We respect the integrity of the SOA's decisions and processes, and we have no right or interest in investigating them. Bruce was the president of the SOA when this dispute occurred, and he remains an officer as its immediate past president and current chairman of its Board. He presides at all SOA Board meetings.

To examine the truth of the findings of the arbitration, the Academy would have to substantively relitigate the Sarah Sanford termination. This is because, as a matter of law (we are told by our Counsel), that award *does not establish actionable facts and damages as to any one but a party to the binding arbitration.* There is no proper basis for further action by the Academy without that examination. Action without such an examination would be impetuous and unfair. Given the risk to the Academy of conducting such an investigation, it seems also inappropriate and unfair to ask the Academy to do so, and none of its business.

We do not believe that the Academy has anything to fear from Bruce personally and has much to gain professionally. We believe that pursuit of the proposed actions against Bruce would

be fundamentally unfair to him. If there are issues that bear examination under the Code of Professional Conduct about the way in which he handled this situation, that is a matter that can and should be referred to the profession's Actuarial Board for Counseling and Discipline (ABCD), where due process can be afforded to him in an orderly prescribed way. And, as has made clear, the author of the petition drive has made a complaint to the ABCD on this matter.

In summary, we believe that letters and other efforts alleging facts and opinions assumed by some but not believed by many who were directly involved in the dispute, and not proven as a matter of fact and law, are being used to discredit Bruce in his future leadership position (*while we note he remains an officer and leader of the organization where the matter arose*), by circulating a generally not publicly available document (*which has no binding legal authority*) about an internal SOA employment matter (*that obviously had strong proponents in the profession on both sides of the dispute*), will only serve to damage the integrity and the reputation of the profession, the Academy, and Bruce without any reasonable or fair basis for action by the Academy.

Sincerely,



**John Parks,
President**

**William F. Bluhm
Immediate Past President**

**Steven G. Lehmann
Penultimate Past President**