

IS AN ADJUDICATOR'S DETERMINATION FINAL AND BINDING?

Frequently after an Adjudicator has made a Determination in a dispute, the defaulting party simply rejects the Determination of the Adjudicator and proceeds to Arbitration, without acting upon the Adjudicator's Determination.

Note that in most Adjudication procedures and Adjudication Rules, the Determination of the Adjudicator is binding, but may not necessarily be final.

If both parties accept the Adjudicator's Determination, then it is Final and Binding, failing which, should one party reject the Adjudicator's Determination within the predetermined time period, then the Adjudicator's Determination is binding, but not yet final.

In this regard, I refer to case law and in particular Case **20088/2013; STEFANUTTI STOCKS (PTY) LTD v S8 PROPERTY (PTY) LTD.** In terms of this case law, it has been found that where an Adjudicator Awards for example that A must pay B amount X, then A must pay B amount X immediately, even if the Adjudicator's Determination is rejected and the dispute is referred to Arbitration.

The Arbitrator may ultimately uphold the Determination of the Adjudicator, or alternatively, may overturn the Adjudicator's Determination and make his own Independent Award, which may result in B having to refund amount X back to A.

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