



AAA Mediation.org™

**FN-15738 MN-15738 LN-15738, Esq.**

**New York, New York**



**Current Employer-Title** Goldsmith & Fass - Founding Partner

**Professional Summary** Has 40 years experience in legal practice and 30 years' experience as an arbitrator and mediator. Both have included a wide range of areas, with current heavy emphasis on employment and construction disputes. Has been a New York Assistant Attorney General, a partner in a large New York law firm and a founding partner in his own firm.

Has experience as a regulator in the public sector and a long-time principal in the private sector. Understands the limitations, objectives and world views of both, which adds to effectiveness as a mediator and arbitrator.

Arbitrations are efficient and objective. Awards are clear and fair. Mediates with sensitivity and understanding of the parties' viewpoints. Success rate exceeds 90%.

**Profession** Attorney, Arbitrator, Mediator, Expert Witness

**Work History** Founding Partner, Goldsmith & Fass, 1998 - Present; Partner, Sonnenschein Sherman & Deutsch, 2004 - 2008; Partner, Friedman, Krauss & Zlotolow, 1993 - 2004; Partner/Associate, Phillips Nizer Benjamin Krim & Ballon, 1979 -1993; Special Deputy Attorney General, New York State Department of Law, Bureau of Securities and Public Financing, 1973 -1979; Assistant District Attorney, Queens County, 1971-1973.

**Experience** Forty years' experience as an attorney, arbitrator, mediator, regulator, advocate. Recognized as a New York Super Lawyer.

Commercial - (a) Represent sellers, purchasers, and brokers in lease and contract negotiations, contract rights and breach,, commissions, and fiduciary duty, requirements of law, including those of Department of State, (b) Corporate representation, documentation, duties of boards of directors, rights of stockholders, corporate powers and limitations, law regarding business transactions, board actions and procedures, issues with shareholders, partners, contractors, developers, lenders, promoters, sponsors, franchisees/franchisors.

Employment - Work place, gender discrimination, wrongful termination, confidentiality, non-disparagement, non-compete agreements, including description of services, geographic area and

duration, non-solicitation agreements, status as employee or independent contractor, severance agreements, arbitration agreements, compensation disputes, including bonuses, remedies for breach, such as damages and injunctive relief, union/owner disputes in commercial and residential properties and employment disputes between brokers, lenders and investment banks. Global experience with commercial issues provides context and depth to analysis and resolution of employment disputes.

Construction - (a) Represent developers, contractors and lenders regarding construction delays and delay damages, repair and replacement of building components and systems, (b) review of bids, proposals and plans for construction and repair work, (c) communications with architects, engineers and contractors regarding timing and expense of work, (d) appear before New York City and New York State agencies, including the Department of Buildings, Environmental Control Board, Landmarks Preservation, regarding administrative requirements and compliance with law

Real Estate - (a) Complex commercial, industrial, residential, office leasing work. Negotiated eight-figure lease with Chanel in midtown Manhattan for commercial space in a cooperative building owned by our client. Also litigated with the Cooperative regarding our client's right to lease the premises, (b) Contracts for sale and acquisition of real property, (c) Represent developers and owners in complex construction, promotion, and sale transactions, one of which was acquisition of six major Manhattan properties pursuant to a tax -free exchange. and conversion to cooperative ownership.

Litigation - (a) In private practice and as a Special Deputy New York Attorney General: claims of purchasers, issues regarding fraud, faulty construction, breach of warranty, non-compliance with offering statements, violations of New York and Federal Securities Laws. (b) in private practice complex business disputes, including partnership and corporate breakups. Litigated dispute between partners in a medical business with annual revenues of \$17 million. Issues included disputed terms of the partnership agreement, rights, powers, and obligations of interlocking entities and valuation of partnership assets, (c) Successfully represented a homeowners association with 200 members against the City of New York in case involving demands by the City that each member construct and pay for sewer lines from their homes connecting to City sewer lines, (d) Represent purchasers, developers, contractors, subcontractors, professionals and lenders in construction claims, including faulty construction, non-compliance with law and contract disputes.

Sureties and Guarantors - (a) Represent individuals and corporate guarantors as sureties under commercial leases when tenant defaults, (b) Disputes regarding guarantees of performance in leases and other agreements, (c) Work regarding sureties in commercial transactions. Represented guarantor of payment for medical equipment with value in seven figures.

## **Mediator Experience**

Employment-Current heavy involvement in alleged illegal discrimination, including unequal pay and promotions, gender discrimination, hostile work environment, harassment and wrongful termination, drafting and interpretation of employment agreements, validity of non-disparagement and non-disclosure agreements, employee/independent contractor status, termination, severance, vacations, medical and family leaves, bonuses, internal discrimination, harassment complaint procedures, employment at will policy, disciplinary rules, performance reviews and other multiple issues generally contained in employment manuals.

Construction-Complex disputes involving owners, managers, subs, trades, materialmen in multi-unit and midsized developments, construction defects, performance guarantees, delay damages, including coops and condominiums.

Commercial- Disputes- Corporate issues, claims of principals and partners, rights and obligations of lenders promoters, purchasers, tenants, coop and condo owners, purchase and sale of goods and services, valuation disputes, equipment leasing.

Real Estate-Disputes regarding contracts, ownership, financing, commercial leasing, landlord tenant issues, attorney negligence, title, conveyance, closings, construction defects, real estate syndications disputes, including alleged construction and fraud.

Federal Securities - Disputes, often multi-party, involving investors and brokers in claims of fraud, negligence, promotion, unauthorized trading lack of supervision, misconduct and mismanagement and alleged other violations of Federal Law and Regulations.

Insurance -Alleged fraud in purchase and sale of life insurance.

## **Representative Issues Handled as a Mediator**

Employment--Alleged wrongful termination of employee of a global insurer for alleged inappropriate behavior. Issues included nature of incident, requirements of company employee manual, nature and extent of company investigation, disability, entitlement of Claimant under the Federal Family Medical Leave Act and the New York Paid Family Leave Act, salary, bonuses, vacations, promotions, alleged violation of New York Labor Law for nonpayment of wages, and alleged retaliation by the employer.

Construction--Claim by electrical contractor for nonpayment of work on a multi-million dollar new construction project. Issues involved nature and quality of the work, inexcusable delays on completion, provisions of detailed construction contract, alleged oral communications between the parties regarding scheduling of work, delay damages, change orders, failures to obtain equipment and machinery needed to complete the work, failures of government inspections, and the effect of the Covid virus on prompt completion of work.

Securities/Wire fraud--Claim by guardians of mid-six figure fund alleging negligence of a multi-national financial institution in allowing transfer of the fund to a fraudster. Issues included responsibilities of Claimant and Respondents for the transfer, effect of release forms executed by Claimant, alleged fiduciary duty of Respondent to prevent the transfer, impact of applicable law, including the New York Uniform Commercial Code and applicable cases, responsibility of Claimants as Guardians, requirements for release of performance fiduciary bond, obligations of the surety and technological issues involved in the transfer.

## **Mediator Style & Process Preferences**

Successful mediation accomplishes quick, efficient and economical resolution of disputes without need for litigation or arbitration. It is time and cost efficient. In as little as one day parties may save tens, perhaps hundreds, of thousands of dollars in attorney fees, disbursements, court costs, arbitrator/litigation fees and related expenses. Mediation also saves the parties' time and allows them opportunities to attend to their businesses and develop new business.

The key to effective mediation is global understanding by me and the parties of their respective cases and the nature of the issues in the dispute. The parties need to develop trust in each other regarding their joint objective to reach resolution.

In advance of the mediation session, I gather as much information as possible regarding the nature and history of the dispute and ask that the parties share the information. I conduct a brief introductory conference call and request pre-mediation statements, shared by the parties, with any confidential information submitted to me separately. At the session I encourage an initial joint meeting of the parties with a brief statement of their cases followed by individual caucuses of the parties. The objective is for the parties to receive further information regarding each other's positions, including their thoughts and feelings about the case.

I respect the positions and feelings of the parties and I listen very carefully to what they have to say before I make any suggestion. People trust me. I use multiple approaches: facilitative, evaluative and transformative, with an understanding of the needs and world views of the parties. This is crucial especially in employment and other disputes where the issues may be complex, and feelings run high. My patience and superior listening skills contribute to my understanding of the viewpoints and needs of the parties. My settlement rate exceeds 90%.

## **Technology Proficiency**

Remote conferences, mediation and arbitration sessions.

## **Education**

New York University School of Law (JD, LLM); Queens College of the City of New York (BA).

## **Professional Licenses**

Admitted to the Bar: State of New York.

## **Professional Associations**

New York State Bar Association: Dispute Resolution Section; Employment Panel, Construction Panel, Commercial Panel, Consumer, Panel Real Estate Section, Committee on Cooperatives, Condominiums, Property Owners Associations

## **Recent Publications &**

Co-author, "Cooperatives, Condominiums and Homeowners Associations, "Real Estate Practice

<b>Speaking Engagements</b>	<p>Guide" Matthew Bender; Article, "Mediation and Arbitration of Cooperative and Condominium Disputes," New York Law Journal; Originating Author, McKinney's Practice Commentaries to New York Real Property Law Article 9-B ("The Condominium Act"). Originating Author, "Real Estate Financing" McKinney's Practice Commentaries to the New York Securities Law, General Business Law Article 23-A (the "Martin Act.") Author "Alternative Dispute Resolution as a Problem-Solving Device," Publication: Commercial Leasing Law and Strategy.</p> <p>Speaking Engagements: Chairman, "Cooperatives, Condominiums and Homeowners Associations--The Emerging Role of the Attorney General," New York Practicing Law Institute Program; "Real Estate Aspects of Franchising," Convention of gas station/convenience store franchisors and franchisees, Miami, Florida; "Shopping Center Leasing - Problems and Pitfalls," Convention of shopping center owners and tenants, Washington, DC.</p> <p>Adjunct Professor, Baruch College of the City University of New York. Courses: "Arbitration and Mediation of Real Estate Disputes," "Real Estate Workouts," and "Cooperatives and Condominiums,"</p> <p>Instructor for 20 years at the Annual Convention of the New York Counsel of Cooperatives and Condominiums. Membership includes real estate and corporate attorneys and clients, cooperative and condominium board members, real estate owners, brokers and managers. Subject matter of courses includes rights and responsibilities of coop and condo sponsors and boards of managers, work with clients, contractors, professionals and lenders. Our presentations at the 2013 and 2014 Conventions were "Liabilities of Individual Board Members."</p> <p>Joint Presentation with AAA, 2018 Annual Meeting of New York State Bar Association "ADR--Can We Talk?"</p>
<b>Mediation Rate</b>	\$575 Per Hour
<b>Languages</b>	English
<b>Citizenship</b>	United States of America
<b>Locale</b>	New York, NY

The AAA's Rules provide the AAA with the authority to administer a mediation including, mediator appointment, general oversight and billing. Accordingly, mediations that proceed without AAA administration are not considered AAA mediations, even when the parties select an mediator who is on the AAA's Roster.

The information contained in this resume has been supplied solely by the individual mediator and may, or may not, be a complete recitation of their experience. The AAA assumes no responsibility for the content, completeness, accuracy, or reliability of the information contained in a mediator's resume. If you have any questions about a mediator's experience or background, you are encouraged to contact your case manager.

Mediators on the AAA Roster are not employees or agents of the AAA.