

Arbitration Award Sets Precedential Value on How Property Sale Proceeds Are Distributed for Same-Sex Marriages in NY

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Becker Business Litigation Shareholder **James J. Mahon**, with Associate **Samantha A. Lesser**, represented client, Jose Fernando Cabrera Salinas, in his quest to gain possession of the proceeds from the sale of his and his spouse's New York City apartment after a divorce decree in Spain was issued. On October 28 and 29, 2019, the parties participated in a two-day arbitration to determine which law would govern the distribution of the proceeds from the sale. Since the property left outstanding was located in New York, the law of the situs governed the sale of the property. The New York Courts have recognized that property acquired before marriage is considered to be separate property, however, this law was not well-settled in the realm of same-sex marriages, until now.

In 1994, the couple purchased a New York apartment before same-sex marriage was legalized in the United States or Spain. The couple married in Spain in 2006 once same-sex marriage was legalized. Under New York law, the parties should be compensated based upon their contribution to the property. Most of the purchase price was laid out by Mr. Salinas and therefore, he sought to recoup his down payment and all the expenses he incurred on his own in maintaining the apartment.

On January 6, 2020, the arbitrator awarded Mr. Salinas a total of \$480,759.14 while only awarding Mr. Salina's ex-husband a total of \$180,840.27. The Court confirmed the arbitration award on February 10, 2020. Significantly, this provides new precedential value that same-sex marriages will be treated the same way as heterosexual marriage when determining how to distribute proceeds from the sale of a New York property.

