"Arbitration Administrator Selection is Critical"

Most arbitration clauses identify an administrator in the event a dispute arises. But what if the administrator is no longer in business? The arbitration agreement itself may be in jeopardy. On October 16, 2018 the Missouri Supreme Court denied Defendant's motion to compel arbitration. *A-1 Premium Acceptance, Inc. v. Hunter*, 2018 WL 4998256 (Mo. Oct. 16, 2018).

The reason was that the arbitration agreement within the 2006 loan documents provided "any claim or dispute related to this agreement…shall be resolved by binding arbitration by the National Arbitration Forum [NAF], under the Code of Procedure then in effect." However, the NAF had stopped administering consumer arbitrations prior to the dispute. The court found that the language in the arbitration agreement showed the parties intended to arbitrate before the NAF and only the NAF. In contrast, other courts have used Section 5 of the Federal Arbitration Act (FAA) to appoint a replacement administrator.

Best practice is to include an alternative administrator to your standard arbitration agreement. USA&M has been in business since 1985 and maintains Arbitration Rules that can be used whether or not USA&M administers the actual arbitration. If nothing else, check your arbitration agreement and make sure the administrator is currently operating and that the applicable set of rules are correctly identified.