

## **Neal M. Eiseman Mediator Resume**

**Employer:** Eiseman ADR LLC, full-time arbitrator and mediator, January 1, 2020 to present.

**Work History:** Managing Partner/Partner/Associate, Goetz, Fitzpatrick LLP, 1981-2019. Partner for more than 30 years at one of the premier construction and real estate litigation law firms in the tri-state area.

**Construction Experience:** Litigated and arbitrated complex construction disputes in New York, New Jersey, Massachusetts and federal courts for numerous clients, including owners, construction managers, general contractors, subcontractors, sureties and manufacturers. Negotiated multi-million dollar contracts on behalf of private and institutional developers, owners, design professionals, construction managers, general contractors, subcontractors and material suppliers. Counsel clients on day to-day issues arising during construction projects including contract, payment and insurance matters. Extensive litigation and drafting experience in construction contracts and design services agreements and in Uniform Commercial Code as it relates to product warranties and disclaimers. Lectures on construction issues for numerous professional organizations and bar associations.

**Commercial Experience:** Litigated and arbitrated complex commercial disputes for numerous corporate clients involving breach of contract and payment disputes, conversion, fraud, tortious interference with contract, breach of fiduciary duty and shareholder disputes. Negotiated contracts and commercial leases on multi-million dollar projects on behalf of private and institutional developers, owners, retailers, landlords and tenants. Counsel corporate clients on day-to-day matters, including contract and real estate issues, real estate tax disputes, commercial and residential leases, joint ventures, shareholder and employment disputes and insurance matters.

**Alternative Dispute Resolution Experience:** Member of the AAA Large Complex Case Panel. Member of the AAA Master Mediator Panel for Construction. Member of the International Centre for Dispute Resolution's International Panel of Mediators. Served as an AAA arbitrator on construction cases since 1986. Served as Panel Chairman, Panel Member or sole arbitrator in numerous six figure, multi-million dollar and construction disputes regarding myriad issues, including payment, delay, performance and design.

Representative cases include disputes concerning a container facility and port, a sewerage authority, new building construction for colleges/universities, commercial and residential building envelopes, condo and coop renovations and high-end office interior renovations. Extensive experience representing clients in more than 100 complex arbitrations and mediations involving disputes over payment, employment agreements, shareholder disputes, asset purchase agreements, construction contracts, architectural service and surety agreements, wrongful termination, construction and design defects, insurance coverage issues, roofing systems and roofing warranties, fraud, client billing, high-end residential and commercial construction, water damage claims involving building envelopes, foundations, masonry, concrete, wall systems, roof assemblies, EIFS applications, reservoirs and floating covers, environmental issues and coverage disputes involving insurance carriers and their insureds.

**Alternative Dispute Resolution Training:** AAA Construction Conference, 2021, 2019; Faculty, Training for New AAA Arbitrators, 2021 and 2022; Faculty, AAA's ACE 18 Arbitrator Training; ICDR International Symposia in Advanced Case Management Issues, 2017; CCA 17th Annual Meeting, 2017; Faculty 2016; Faculty, AAA eDiscovery: Arbitration in a Digital World (ACE012), 2015 and 2016; Faculty, AAA Essential Mediation Skills for The New Mediator, 2015, 2014, 2013; Faculty, AAA Enough Already! Striking the Right Balance of Discovery in Arbitration, 2014; Faculty, AAA Construction Conference: Cutting Construction Arbitration Costs Without Compromise, 2012; Faculty, AAA Discovery in Construction Arbitration: When is Enough Enough?, 2011; Faculty, AAA/ICDR Neutrals Conference, 2010; Faculty, AAA Construction Conference: Maximizing ADR Advocacy for Today's Economy, 2009; Faculty, AAA Advanced Mediator Training, 2009; ABA, Mediation Advocacy: Advanced Techniques and New Developments, 2008; AAA Arbitration Awards: Safeguarding, Deciding & Writing Awards (ACE001), 2007; AAA Arbitrator Ethics & Disclosure (ACE003), 2006; ABA, ADR & Construction Committee CLE Seminar, 2005; AAA Chairing an Arbitration Panel: Managing Procedures, Process & Dynamics (ACE005), 2005; AAA Dealing With Delay Tactics in Arbitration (ACE004), 2005; Negotiation Strategy Institute, Cutting Edge Negotiation Strategy for Lawyers, 2002; AAA Arbitrator Update 2004; AAA Construction Industry Arbitrator II Training, 2001; AAA Construction Industry Arbitrator Training, 2000.

**Teaching Experience:** Adjunct Professor teaching Legal Principles and Practices and Negotiation and Dispute Resolution in New York University's Master's Program, Real Estate and Construction, 1991 to 2022; Adjunct Professor teaching "Construction Law" at Cardozo School of Law, 2018 to present.

**Experience as a Mediator:** Member of the AAA Master Mediator Panel for Construction. Member of the AAA Master Mediator Panel for Construction. Member of the International Centre for Dispute Resolution's International Panel of Mediators. Mediated scores of cases involving, among other things, construction and design issues, commercial contracts, real estate, leases, condos, coops, high-end private residences, corporate and shareholder disputes and class action payment disputes. Served as the sole neutral selected by a hospital and a nursing home facility on Manhattan's Upper West Side and various community groups to work out a win-win protocol to resolve disputes involving the construction of two new hospital buildings and the effect it will have on those living in the adjacent residential neighborhoods. Served as one of two members of a Dispute Review Board selected by both the developer and builder of a new high-rise hotel in Manhattan. Currently serves as the Contract-appointed mediator in a multi-million environmental cleanup project. Pre-designated as mediator by the developer and construction manager in their general contract for the construction of a 63-story, 94-unit residential tower in midtown Manhattan. Recent successful mediations include (i) a payment/performance dispute between a City and its construction manager; (ii) a dispute between the developer of a commercial project and its general contractor over termination and performance issues; (iii) a dispute between the owner of a gut-renovated brownstone and its architect; (iv) a dispute between a condominium board and its architect; (v) a payment/scope of work dispute between the owner of a newly constructed, high-end residence and its general contractor; (vi) a prevailing wage dispute; (vii) a multi-million dollar extra work/delay damage dispute between a municipality and its prime contractor; (viii) a dispute between a commercial tenant and its general contractor over the sufficiency of the general contractor's work; (ix) a payment/extra work dispute among parties to a public works project; (x) a payment/performance dispute between the owner of a mixed-use building and its contractor involving remediation work to the building's façade; (xi) New York Labor Law and FLSA wage dispute claims between an employer and employee; (xii) various disputes

between the developer of a 283-unit hotel project and its contractor; (xiii) disputes between a school district and its contractor involving the installation of windows at several school buildings; (xiv) contract balance, extra work, design and delay disputes between the owner of a high-end shopping center and its design team; (xv) a \$24 million dispute between a European manufacturer and a United States-based company over the performance of supplied equipment and the sufficiency of the company's plant operations; (xvi) dispute between a commercial landlord and tenant over responsibility to pay for real estate taxes and mechanical improvement; (xvii) alleged errors and omissions in property surveys; (xviii) alleged accounting and legal malpractice; (xix); a multi-million dollar dispute among the public owner, its engineer and prime contractor over the performance, design and payment issues concerning the installation of sewer lines; (xx) a multi-million dollar payment and performance dispute between a non-profit entity and its contractor regarding the construction of two HPD-financed affordable living residences; and (xxi) a multi-million dollar dispute between an owner and a prime contractor over myriad issues relating to the ground up construction of new residential building in Brooklyn.

**Representative Issues Handled as a Mediator:** Construction disputes involving private and public owners, non-profit entities, contractors, subcontractors, suppliers, design professionals, sureties, colleges and universities. Disputed issues included: contract interpretation, allegedly defective work and alleged design errors, building envelope issues, submittal issues, alleged failure to pay and/or perform, change orders, retainage, substantial completion, alleged wrongful termination, the proper scope of work, responsibility for subsurface conditions, whether to enforce no damage for delay clauses, the scope and enforceability of written waivers/releases, scheduling, completion, consequential damages claims, liquidated damage claims, plus insurance coverage. Commercial and real estate disputes involving shopping centers, condos, coops, high-end residential construction, adjoining landowners, real estate taxes and partnership/shareholder issues.

**Mediation Experience as an Advocate:** Served as counsel for corporate clients in numerous mediations, including (i) construction defect cases involving spray-on fireproofing, masonry construction and water damage inside building envelopes and interior spaces, (ii) alleged design deficiencies, (iii) single-ply and built up roofing membrane performance and enforceability

of roofing manufacturer warranties, (iv) elevator installations, (v) delay damages, (vi) change order disputes, (vii) contract termination disputes, (viii) commercial lease disputes, (ix) close-out agreements, (x) real estate tax disputes and (xi) insurance coverage disputes involving commercial general liability and errors and omissions policies.

**Mediation Philosophy:** To be effective, a mediator must facilitate a negotiation on the merits rather than encourage a contest of wills focused on what each side says it will and will not do. It is important to flush-out the interest of the parties and, whenever possible, to explore creative solutions, particularly because a failed mediation usually leads to a litigation or arbitration where a result will be imposed upon the parties. Preparations by both the parties and mediator is essential. I require the parties to submit pre-hearing submissions to enable me to learn as much as possible about the dispute prior to the formal mediation session. It is also critical that those attending the mediation are familiar with the issues and possess full settlement authority, including attendance by representatives of any insurance companies which may be involved. Although I have no objection to attorney participation in the form of an opening statement/evaluation during a joint session at the commencement of the mediation, thereafter I encourage the parties themselves to take an active role. Unless the circumstances dictate that the best result is for both parties to walk away from the mediation without an agreement, an experienced mediator does whatever he or she can to keep the parties moving closer together. Sometimes this requires the mediator to act more as a facilitator and keep the parties negotiating; other times it requires the mediator to be more pro-active by offering opinions on the strengths and weaknesses of the positions and by furnishing a cost-benefit and/or risk-reward analysis with respect to reaching a voluntary settlement as opposed to proceeding to litigation or arbitration. The best mediators understand the importance of not giving up-even when one or both of the parties appear resigned to a failed mediation.

**Mediation References:** Michael Altschuler, AIA, mjaltschuler@earthlink.net, (212) 249-0009; Joseph P. Asselta, ForchelliLaw.com, 516-248-1700; Jarrett M. Behar, Certilman Balin Adler & Hyman, LLP, jbehar@certilmanbalin.com, (631) 979-3000; Sarah Biser, Fox Rothschild LLP, sbiser@foxrothschild.com, (646) 601-7636; Bill P. Chimos, Zetlin & DeChiara LLP, bchimos@zdlaw.com, (212) 682-6800; Dennis A. Estis, Greenbaum Rowe Smith Davis LLP, destis@greenbaumlaw.com, (732)

476-2510; Louis Biancone, Biancone & Wilinsky LLP, lbiancone@bianconeandwilinsky.com, (212) 661-1888; Brian T. Belowich, Belowich & Walsh LLP, bbelowich@belowichwalsh.com, (914) 367-0098; Matthew T. Worner, The Law Office of Matthew T. Worner, mtw@wornerlaw.com, (914) 949-4239; Edmund C. Grainger, III, McCullough, Goldberger & Staudt, LLP, egrainger@mgslawyers.com, (914) 949-6400; Thomas Welby, twelby@wbgllp.com, Robert Bannon, rbannon@wbgllp.com, Alexander Miuccio, amiuccio@wbgllp.com, Thomas S. Tripodianos, ttripodianos@wbgllp.com, Welby, Brady & Greenblatt, LLP, (914) 428-2100; Michael F. Kuzow, Westermann Sheehy Keenan Samaan & Aydelott, LLP, michaelkuzow@westerlaw.com, (516) 794-7500; Gregory H. Chertoff, gchertoff@pecklaw.com, Kevin J. O'Connor, koconnor@pecklaw.com, Peckar & Abramson, P.C., (212) 382-0909; Anthony Galano, III, Ellenoff, Grossman & Schole LLP, agalano@egsllp.com, (212) 370-1300; Cari Lewis, Alonso, Andalkar & Facher, PC, clewis@alonsolegal.com, (212) 598-5900; Fred Cohen, Duane Morris, LLP, fcohen@duanemorris.com, (212) 692-1030; Daniel Weinberger, Gibbons PC, dweinberger@gibbonslaw.com, (212) 613-2063; Robert J. MacPherson, Gibbons PC, rmacpherson@gibbonslaw.com, (973) 596-4811; John Janiec, Esq., jjaniec@jjjlawoffice.com, (212) 629-0027; Charles R. Pierce, Tarter Krinsky & Drogin LLP, cpierce@tarterkrinsky.com; (212) 216-1148; Andrew J. Carlowicz, Jr., Hoagland, Longo, Moran, Dunst & Doukas, LLP, acarlowicz@hoaglandlongo.com, (732) 545-4717; Kevin Russell, Kevin J. Russell, Esq., LLC, kevin@krussellesq.com, (201) 360-3776; Robert M. Jacobs, Winne, Banta, rjacobs@winnebanta.com, (201) 562-1020; Timothy J. DeHaut, Giordano Halleran & Ciesla, TDeHaut@ghclaw.com, (646) 475-8065; Randy J. Heller, Gallet Dreyer & Berkey, LLP, rjh@gdblaw.com, (212) 935-3131; Stephen E. Ray, Stein Ray LLP, sray@steinraylaw.com, (312) 641-3700; Brian G. Lustbader, Schiff Hardin LLP, blustbader@schiffhardin.com, (212) 745-9576; Charles J. Stoia, Porzio, Bromberg & Newman, P.C., CJStoia@pbnlaw.com, (973) 889-4106; Lisa M. Fontoura, JLL, lisa.fontoura@am.jll.com; (312) 228-3988; Dennis C. Cavanaugh, Robinson & Cole LLP, dcavanaugh@rc.com, (860) 275-8211; Martin A. Onorato, Robinson & Cole LLP, monorato@rc.com, (860) 275-8334; Howard Grun, Kaufman Friedman Plotnicki & Grun, LLP, hgrun@kfpgrp.com, (212) 973-3330; Mark Walfish, mwalfish@katskykorins.com, (212) 716-3350; Steven Torres, West Group Law, PLLC, storres@westgrouplaw.com, (508) 603-6323; Lee D. Apotheker, lapotheker@westgrouplaw.com, (914) 898-2400; Scott Hollander, shollander@csglaw.com, Steven S. Katz, Chiesa Shahinian & Giantomasi,

skatz@csglaw.com, (212) 973-0572; G. Christian Roux, Alston & Bird LLP, Chris.Roux@alston.com, (213) 576-1103; Mike H. Shanlever, Alston & Bird LLP, Mike.Shanlever@alston.com, (404) 881-7848; Christian H. Hendrickson, chendrickson@shermanhoward.com, (303) 299-8306; Karen Lager, Marks, O'Neill, O'Brien, Doherty & Kelly, P.C., klager@moodklaw.com, (212) 967-0080; Jonathan Koles, Koles, Burke & Bustillo, LLP, jkoles@kbblegal.com, (201) 200-0300; James P. Lisovicz, Kinney Lisovicz Reilly & Wolff, PC, jim.lisovicz@klrw.law, 973-957-2550; Erin O'Leary, Lewis Brisbois, Erin.OLeary@lewisbrisbois.com, 212-232-1408; Kenneth Roberts, Ken@krobertslawoffice.com, 212-616-3657; Mara B. Levin, MLevin@BlankRome.com, 212-885-5292; Lawrence Fechner, lawrencefechnerlaw@gmail.com, 212-752-3380; Jack Spinella, jspinella@spinellalawgroup.com, 908-947-2336; Keith Stevens, L'Abbate, Balkin et als., KStevens@lbcclaw.com, 516-837-7392; John Re, Kurzman Eisenbert et als., Re@KElaw.com, 914-286-6364; Robert Lillienstein, rlillienstein@mosessinger.com, 212-554-7807; Daniel Gildin, Kaufman Gildin & Robbins LLP, 212-705-0840; Hunter Carter, Arent Fox LLP, 212-484-3990, Rosalyn Maldonado, Rosalyn Maldonado P.C., 516-274-0613. Arthur Semetis, asemetis@semetislaw.com, 212-557-5056; Mark Kornfeld, mark.kornfeld@bipc.com, 813-222-2097; Elizabeth Marchionni, emarchionni@kdvlaw.com; 516-283-8723. Steven Torres, West Group Law PLLC, 914-898-2435, storres@westgrouplaw.com; Joshua Spitalnik, josh@spitalnicklaw.com, 516-590-0085; Jason Samuels, Polsinelli, jsamuels@polsinelli.com, 646-289-6515; Hayden Coleman, Dechert, hayden.coleman@dechert.com, 212-698-3551; Michael Davi, ConEd, DaviM@coned.com, 212-460-2741; William Groscup, Watt Tieder et als, wgroscup@watttieder.com; Ken Lazaruk, Duane Morris, kh Lazaruk@duanemorris.com, 212-692-1085. Additional references available upon request.

**Accolades:** Named by *Super Lawyers* to its list of the “100 Top Lawyers” in the New York Metropolitan Area in 2016, 2017, 2018, 2021 and 2022; *Super Lawyer* for 16 consecutive years; *Super Lawyer* in ADR, 2020-22; Chambers USA Band 1 Construction Mediator, 2021-22; *Best Lawyers* “Lawyer of the Year” in New York City for Litigation: Construction Law in 2017; *Best Lawyer* in Construction Litigation for New York City for the last ten years. Fellow and Executive Board Member of the College of Commercial Arbitrators; Fellow, Chartered Institute of Arbitrators; Member, National Academy of

Distinguished Neutrals. AV Preeminent, Martindale Hubbell. New York University Schack Institute of Real Estate/Construction Advisory Board Member, 2012-2017; Member, AAA Arbitrator National Advisory Committee, 2015-2016; Award for Outstanding Service,” New York University School of Professional Studies, 2015; "One of the World's Leading Practitioners" in Construction, Who's Who Legal; Recipient in 2021 of the Albert Nelson Marquis Lifetime Achievement Award.

**Professional Licenses:** Admitted to the Bar: New Jersey, 1981; New York, 1982; U.S. District Court: Southern (1982) and Eastern (1982) Districts of New York; District of New Jersey, 1981; U.S. Court of Appeals, Second Circuit, 1984; U.S. Supreme Court, 1985. Professional Associations Member of the Mediation Panel of the U.S. District Court for the Southern District of New York; College of Commercial Arbitrators, Fellow (Board of Directors 2016-19); American Bar Association (Committee on Arbitration, Chair; Sections of Litigation and Construction); New York County Lawyers Association; Bergen County Bar Association (Construction Law Committee, Founder); New York State Bar Association; New Jersey State Bar Association.

**Education:** The George Washington University (BA, Journalism, Political Science-1978); St. John's University (JD-1981).

**Selected Publications:** “Debunking Misperceptions: The Upsides of Commercial Arbitration,” *Dispute Resolution Journal*, Volume 76, Issue 1, pp. 75-80 (2022); “What Commercial Arbitrators Need to Know: Recent Decisions and Legislation Affecting the Practice of Arbitration,” ABA’s Arbitration Institute in Chicago, June 2022; "Convincing Your Arbitrators to Authorize the Discovery You Really Need in Your Commercial Arbitration,” College of Commercial Arbitrators, May 2022; “Debunking Misperceptions: The Upsides of Commercial Arbitration,” ABA Litigation Journal, *Litigation, Summer 2021*; “Wait, What Happened? Recent Developments Affecting Commercial Arbitration You May Have Missed,” College of Commercial Arbitrators, January 2021; "Forced Waiver of Claims Proves Fatal to Arbitration Clause," ABA Litigation News, April 26, 2021; “Can a Commercial Arbitrator Demand a Virtual Hearing?”, *The National Law Journal*, May 20, 2020; “Sound Advice Podcast: Selecting the Right Commercial Arbitrator,” ABA Section of Litigation website, January 2020; College of Commercial Arbitrators GUIDE TO BEST PRACTICES IN COMMERCIAL ARBITRATION, 4th Ed., 2018, Co-Author of Chapters on “Arbitrator Fees and Expenses” and



“Unique Issues in Construction Arbitration”; "Supreme Court Ruling Will Deter Construction Workers' Claims for Unpaid Wages," Op-Ed Piece, CRAINS NEW YORK BUSINESS, June 19, 2018; THOMSON REUTERS PRACTICAL LAW, Author of the Overview on New York Construction Law, 2016 to present; "Third-Party Funding of Lawsuits Permeates Legal Landscape," Opinion Piece/Column, NEW YORK LAW JOURNAL, April 13, 2018; Co-Author, ABA 2017 A201 DESKBOOK, Chapter on "Claims and Disputes"; "Proposed Legislation Undermines Business to Business Arbitration," NEW YORK LAW JOURNAL, February 8, 2016; "Stiffing the Arbitrators: The Problem of Nonpayment in Commercial Arbitration," HARVARD NEGOTIATION LAW REVIEW, April 2015; "Falling Through the Cracks: The Problem of the Non-Paying Party in Arbitration," NEW YORK LAW JOURNAL, October 15, 2014; "A Tale of Two Lawyers: How Arbitrators and Advocates Can Avoid the Dangerous Convergence of Arbitration and Litigation," Cardozo Law School, JOURNAL OF CONFLICT RESOLUTION, Volume 14, Number 3, Spring 2013; "When a Performance Bond Surety Offers to Takeover: Practical Considerations for the Owner-Obligee and its Lender," ABA Construction Forum, September 2010; "Mandatory Arbitration in Construction Payment Disputes," NEW YORK LAW JOURNAL, April 20, 2010.

**Selected Speaking Engagements:** “Post-Pandemic Arbitration: Old School or New Age?” April 2021, ABA’s Section on Dispute Resolution’s Spring Meeting; “Arbitrator Fundamentals and Best Practices, April 2021, ABA Section of Litigation program; AAA “Best Practices Roundtable on Virtual Hearings,” November 2020; “Non-signatories to Arbitration Agreements,” Annual Meeting, College of Commercial Arbitrators, October 2020; “How to Effectively Deal With the 300 Change Order Dispute: Who Controls the Process?’, AAA/ICDR Webinar presentation, October 2020; “What Counsel and Witnesses Do that Drive Arbitrators Nuts,” Construction SuperConference, Los Angeles, December 2019; "A Delicate Balance: Arbitrating Your Client's Complex Commercial Case Without Sacrificing Speed, Efficiency and Cost-Savings," ABA Section of Litigation Conference, NYC, May 3, 2019; "How to Save the Parties from Themselves in Construction Arbitrations," ABA Section of Dispute Resolution's Annual Conference, Minneapolis, MN, April 11, 2019; "Don't Forget the Damages–You Can't Win on Entitlement Alone," American Arbitration Association's Annual Construction Conference, Miami, FL, April 4, 2019; "Handling Multi-Claim Construction Disputes: Practical Tips," ABA Section on Dispute Resolution Spring Conference, Washington D.C., April 6,

2018; "Streamlining Your Arbitration: How to Avoid Reliving that Construction Project Brick by Brick," Construction SuperConference, December 5, 2017, Las Vegas, Nevada; "Challenges to the Authority of an Arbitrator," NYS Bar Association's Dispute Resolution Section 2017 Fall Meeting, NYC, October 26, 2017; "Navigating the Unique Aspects of Construction Arbitration," New York Law School, NYC, June 22, 2017; "The Attorney's Role in Setting the Stage for a Successful Mediation," St. John's School of Law, Queens, N.Y., February 25, 2017; "The Use of ADR in Construction Law Cases: What the Industry Forms Say about ADR," New York County Lawyers' Association, NYC, May 12, 2016; "Arbitrator Ethics," AAA Higginbotham Fellows Program, NYC, May 5, 2016; "A Litigator's Guide to Arbitration: Best Practices to Maximize the Benefits of Your Next Arbitration," ABA Section of Litigation Annual Conference, New Orleans, LA, April 17, 2015; "Construction Dispute Resolution: A Blueprint for an Effective Process," New York City School Construction Authority, April 6, 2015; "Stories Mediators Tell: The Good, The Bad, The Ideal!" AAA/ABA-DR's Mediation Week 2014, NYC, October 14, 2014; "Arbitration/Mediation Update," New Jersey Construction Litigation Conference, Edison, N.J., September 16, 2014; "Construction Law," New York University Summer Institute in Construction Project Management, NYC, June 16, 2014; "The Fundamentals of Construction Law," ABA, NYC, November 8, 2013; "Dealing with Attorneys Who Don't Play Well in the Sandbox: Identifying Tactics Intended to Derail Your Arbitration and How Best to Thwart Them," ABA Annual Litigation Conference, Chicago, Ill, April 26, 2013; "Discovery in Arbitration: When Is Enough Enough?" AAA's 2012 Construction Conference at New York University Law School, June 1, 2012; "The Effective Use of Mediation and Arbitration," presentation before New York City Bar Association, NYC, December 13, 2011.

**Compensation:** \$550/Hr.