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No Right Of Review: Court of Appeal Rules That Arbitration Contract
Requiring Arbitrator To Adhere To California Law Does Not Provide
Basis For Judicial Review For Errors In Arbitrator's Award

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A significant question involving the California Arbitration Act, see, California Code of Civil Procedure section 1280, et seq., has been whether a phrase in an arbitration contract requiring that the arbitrator render an award in "accordance" with California substantive law is sufficient to require judicial review of the arbitrator's award for errors in applying California law. That question was answered in the recent California Court of Appeal opinion in Gravillis v. Coldwell Banker Residential Broker Co. (2010) 182 Cal.App.4th 503 ("Gravillis Case").

In order to understand the Court's ruling in the Gravillis Case, some history is necessary. The current version of the California Arbitration Act was enacted in 1961 and provides that there will be no challenge to an arbitrator's award except in defined circumstances, one of which is that the arbitrator is not permitted to exceed his or her powers. See, California Code of Civil Procedure section 1286.2(a)(4). In the case of Moncharsh v. Heily & Blase (1992) 3 Cal.4th 1 ("Moncharsh Case"), the California Supreme Court embraced the rule that an arbitrator's decision may not be reviewed for errors of fact or law and that it was within the authority of the arbitrator to render a decision whether or not the decision comported with the facts or applicable law. That holding was distinguished in the case of Cable Connection, Inc. v. DIRECTV, Inc. (2008) 44 Cal. 4th 1434 ("Cable Connection Case"), wherein the California Supreme Court held that an arbitration clause which specifically provided for judicial review would permit judicial review in the event that the arbitrator's decision did not comply with California law.

A question arose, which was addressed in the Gravillis Case, as to whether a simple statement in an arbitration contract that the arbitrator's award is to be rendered in "accordance" with California law would be sufficient to provide the basis for judicial review as suggested in the Cable Connection Case. In the Gravillis Case, a homeowner had purchased a home in California pursuant to the California Association of Realtors form Purchase Agreement which provides, in pertinent part:

"Buyer and Seller agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction... shall be decided by neutral, binding arbitration... The arbitrator... shall render an award in accordance with substantive California law".

The homeowner later sued his brokers and two employees of the brokerage firm based on the brokers' alleged failure to disclose known material facts and defects dealing with termite infestation, earthquake damage and water intrusion. The brokers filed a motion to compel arbitration under the Purchase Agreement, which was denied due to an exclusion in the arbitration clause for claims dealing with bodily injury. The Court of Appeal reversed the Trial Court and the matter was then arbitrated before retired Judge Enrique Romero of ADR Services, Inc. The arbitrator awarded \$347,671.00 in damages and \$47,076.35 in arbitral costs to the homeowner. The homeowner then filed a petition to confirm the award and the brokers filed a petition to vacate the award arguing that the arbitrator had committed several errors of law and that the Purchase Agreement required judicial review of the award. The Trial Court then granted the Petition to Confirm filed by the homeowner and the brokers, once again, appealed.

On this Appeal, the California Court of Appeal, Second Appellate District, citing the Moncharsh Case held that a general statement in an arbitration clause that the arbitrator was to render a decision in accordance with California law was not sufficient to provide the basis for judicial review of the arbitrator's decision for errors of law. The Court of Appeals opinion, which was quite lengthy, explained that the strong policy favoring private arbitration, as set forth in Moncharsh Case, prohibited judicial review of the arbitrator's decision absent a specific agreement by the parties, as occurred in the Cable Connection Case, that such review would occur.

The Gravillis Case is an important decision in that it provides that an arbitration award will not be subject to judicial review for errors of law unless the arbitration agreement, in the first place, specifically states that judicial review has been preserved. The authors expect that the California Association of Realtors will likely revisit the form language for its Purchase Agreement and that other form arbitration contracts will be amended as well.

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