



CA Court of Appeal Issues Rare Reversal of Arbitration Award Based on Arbitrator Bias

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One of the many benefits or drawbacks of arbitration awards is that they are “nearly immune” from challenge on appeal; but, the Court of Appeal recently determined that arbitrator bias due to a non-native English speaker party’s use of a translator provides a basis to overturn an award. On October 17, 2023, the California Court of Appeal published its decision in *FCM Investments, LLC v. Grove Pham, LLC*, which featured a rare reversal of an arbitration award for \$10 million following the failed sale of a nursing home business. The Court of Appeal ruled that the arbitrator demonstrated impermissible bias towards a respondent, an immigrant, by making adverse credibility determinations solely because the respondent testified through an interpreter.

Background

In the underlying claim, plaintiff FCM alleged that defendant Grove breached certain contractual obligations and terminated the deal to sell a nursing home before escrow closed. FCM filed suit and the parties participated in a two-day arbitration in June 2021.

The arbitrator ruled in FCM’s favor, awarding approximately \$10 million in damages. The arbitrator found that although the transaction was “rather complicated,” her decision was “made easier” because she believed Grove’s owners suffered “rampant and obvious” credibility issues. With respect to Phuong Pham, the arbitrator wrote:

“Mrs. Pham’s use of an interpreter appeared to the Arbitrator to be a ploy to appear less sophisticated than she really is.”

The Appeal

As expected, the trial court entered judgment on the arbitration award. But the Court of Appeal reversed, vacating the award. Though “arbitration awards are ‘nearly immune’ from attack,” the Court of Appeal found the arbitrator’s adverse credibility determinations were the product of racial bias and rose to the level of “misconduct.”

The Takeaway

The FCM Investments, LLC, decision discusses a range of legal issues pertaining to arbitration, bias, and appellate procedure, making the decision a must read for lawyers practicing in these areas. But the heart of the case is the Court of Appeal's focus on racial bias. Rule 8.4.1 of the California Rules of Professional Conduct prohibits discrimination in the legal profession. Lawyers must familiarize themselves with this rule, and the potential for bar discipline for violating it. Attorneys should also appreciate that if they make impermissible arguments based on a party's or witness' membership in a protected category, their clients may pay a heavy price, including an appellate reversal of a favorable award and the burden of starting over at square one.



About the Author:

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