



Ronald L. Richman
San Francisco,
Shareholder

Direct Dial: 415.352.2722
Fax: 415.352.2701
Email Attorney

Arbitration: Good Decision or Bad, You Get What You Bargained For

By Ronald L. Richman

Why choose arbitration over litigation if there is no general right to appeal?

In a state or federal lawsuit, any party has the absolute right to appeal the decision of the judge or jury. So why would a party voluntarily agree to arbitration, giving up the absolute right to an appeal? The answer is a trade-off. By voluntarily agreeing to arbitration, the parties give up their general right to appeal in exchange for a speedy, conclusive and cost-effective method of resolving a dispute. Arbitrations are, for the most part, far less expensive than lawsuits, take far less time from beginning to end and provide finality, a binding decision that will not be stuck in the appellate court for years.

In *Gravillis v. Coldwell Banker Residential Brokerage Co.* (2010) 182 Cal.App.4th 503, the Court of Appeal once again affirmed the general rule that when parties agree to submit a dispute to binding arbitration instead of filing a lawsuit in state or federal court, they are also agreeing that the arbitrator's decision is final and not subject to appeal, even if the decision is flat-out wrong and includes an error of fact or law. Under the California Arbitration Act, Cal. C. Civ. Proc. 1286.2, there are well-defined exceptions to this rule, allowing for appeal if any of the following occurs: (a) the arbitration award was procured by corruption, fraud or other undue means; or (b) the arbitrator decides an issue that was not presented at arbitration, arbitrator arbitrarily remakes the contract in dispute, upholds an illegal contract, issues an award that violates a well-defined public policy or statute, fashions a remedy that has no rational relationship to the contract in dispute or selects a remedy not authorized by law.

Parties to an arbitration can still have their cake and eat it too.

An arbitration clause is like any other contractual provision, the parties are free to negotiate and agree to the terms. Therefore, if the parties desire to resolve all disputes in binding arbitration, the parties can draft the contract to allow for the appeal of an arbitration award in the event of an error in applying the law. However, the parties must use language in the contract that clearly expresses their intention to allow for appeal of an arbitration award otherwise, the award is final and binding.

Courts of Appeal have held the following contractual arbitration provisions are not sufficient to allow for appeal:

- The arbitrator shall apply California substantive law.
- The arbitrator shall render an award in accordance with California substantive law.

If a party wants to protect itself from an erroneous award and allow for appeal of the arbitration award, the contractual arbitration provision must include language similar to the following:

The arbitrators shall prepare in writing and provide to the parties an award including factual findings and the reasons on which their decision is based. The arbitrators shall not have the power to commit errors of law or legal reasoning. The award is subject to review for legal error, confirmation, correction or vacatur in California state court.

Arbitration is a well accepted method for use in conflict resolution.

Not all cases or disputes are best suited for arbitration. In many types of disputes, however, arbitration is the most expedient and efficient way to resolve a dispute.



If a party desires to submit its disputes in binding arbitration and yet preserve its right to appeal the arbitration award, the parties must use language very similar to the arbitration clause referenced above, which Courts of Appeal have held are sufficient to preserve the right to appeal.

Ron Richman is the Shareholder-In-Charge of the San Francisco Office of Bullivant Houser Bailey PC. Mr. Richman specializes in real estate, construction, general and commercial litigation and counseling. Please e-mail him at ron.richman@bullivant.com for more information.