

## ARBITRATION (Part Two)

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This month we will be discussing in detail, the California laws for correcting, confirming or vacating an award. Last month we discussed the Federal arbitration procedures in more detail. The following are portions of the California law dealing with arbitration awards.

Code of Civil Procedure section 1285.8 states: "A petition to correct or vacate an award, or a response requesting such relief, shall set forth the grounds on which the request for such relief is based."

Code of Civil Procedure section 1286.2 states in part "...the court shall vacate the award if the court determines any of the following:

- (1) The award was procured by corruption, fraud or other undue means.
  - (2) There was corruption in any of the arbitrators.
  - (3) The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator.
  - (4) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.
  - (5) The rights of the party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefor or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title.
  - (6) An arbitrator making the award either: (A) failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware; or (B) was subject to disqualification upon grounds specified in Section 1281.91 but failed upon receipt of timely demand to disqualify himself or herself as required by that provision. However, this subdivision does not apply to arbitration proceedings conducted under a collective bargaining agreement between employers and employees or between their respective representatives.
- (b) Petitions to vacate an arbitration award pursuant to Section 1285 are subject to the provisions of Section 1287.

1286.4. The court may not vacate an award unless:

- (a) A petition or response requesting that the award be vacated has been duly served and filed; or
- (b) A petition or response requesting that the award be corrected has been duly served and filed and:
  - (1) All petitioners and respondents are before the court; or
  - (2) All petitioners and respondents have been given reasonable notice that the court will be requested at the hearing to vacate the award or that the court on its own motion has determined to vacate the award and all petitioners and respondents have been given an opportunity to show why the award should not be vacated.

1286.6. Subject to Section 1286.8, the court, unless it vacates the award pursuant to Section 1286.2, shall correct the award and confirm it as corrected if the court determines that:

- (a) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;
- (b) The arbitrators exceeded their powers but the award may be corrected without affecting the merits of the decision upon the controversy submitted; or
- (c) The award is imperfect in a matter of form, not affecting the merits of the controversy.

1286.8. The court may not correct an award unless:

- (a) A petition or response requesting that the award be corrected has been duly served and filed; or
- (b) A petition or response requesting that the award be vacated has been duly served and filed and:
  - (1) All petitioners and respondents are before the court; or
  - (2) All petitioners and respondents have been given reasonable notice that the court will be requested at the hearing to correct the award or that the court on its own motion has determined to correct the award and all petitioners and respondents have been given an opportunity to show why the award should not be corrected.

1287. If the award is vacated, the court may order a rehearing before new arbitrators. If the award is vacated on the grounds set forth in subdivision (d) or (e) of Section 1286.2, the court with the consent of the parties to the court proceeding may order a rehearing before the original arbitrators.

If the arbitration agreement requires that the award be made within a specified period of time, the rehearing may nevertheless be held and the award made within an equal period of time beginning with the date of the order for rehearing but only if the court determines that the purpose of the time limit agreed upon by the parties to the arbitration agreement will not be frustrated by the application of this provision.

1287.2. The court shall dismiss the proceeding under this chapter as to any person named as a respondent if the court determines that such person was not bound by the arbitration award and was not a party to the arbitration.

1287.4. If an award is confirmed, judgment shall be entered in conformity therewith. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action of the same jurisdictional classification; and it may be enforced like any other judgment of the court in which it is entered, in an action of the same jurisdictional classification.

1287.6. An award that has not been confirmed or vacated has the same force and effect as a contract in writing between the parties to the arbitration.

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