

The California Supreme Court (and Court of Appeal) - October 16 - October 20, 2023

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The California Court of Appeal, Fourth District, Division One, issued the following decision on October 17, 2023:

FCM Investments, LLC v. Grove Pham, LLC, et al., Case No. D080801: Though an agreement to privately arbitrate is an agreement to limited judicial review, California Code of Civil Procedure section 1286.2, subdivision (a)(3) nevertheless enables courts to vacate arbitration awards for arbitrator misconduct. In *FCM*, the Court of Appeal directed the trial court to vacate an arbitration award turning on an adverse credibility finding based on a key witness's use of an English translator, giving rise to a reasonable impression of arbitrator bias.

FCM signed an agreement to purchase real property from Grove with a provision requiring the parties to mediate, and then arbitrate disputes. After FCM filed a complaint alleging Grove engaged in dilatory tactics to prevent the sale, the parties went to mediation. The parties signed a joint addendum addressing the disputed issues, but tensions rose and FCM pulled out of the deal. The parties stipulated to arbitration before a retired superior court judge. The arbitrator concluded that Grove breached the joint addendum, justifying FCM's cancellation of escrow. The arbitrator based the award mainly on an adverse credibility finding against Grove's owner, reasoning that the owner had "been in the country for decades" and "engaged in sophisticated business transactions," and thus used an interpreter as a ploy to appear less sophisticated. The arbitrator awarded FCM the return of its deposit, \$9.1 million in loss-of-bargain damages, interest, fees, and costs. Grove moved to vacate the award on grounds of linguistic and/or national origin bias. The trial court denied the motion and confirmed the arbitration award, which Grove appealed.

The Court of Appeal reversed. The court recognized that arbitrator decisions are not generally reviewable for errors of fact or law, but noted that one of the narrow grounds for vacating an arbitration award is when a neutral arbitrator's misconduct substantially prejudices a party's rights. Cal. Code Civ. Proc. § 1286.2, subd. (a)(3). This includes

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arbitrator conduct that creates a reasonable impression of possible bias based on an objective and fact-specific test. Here, the arbitrator's finding that Grove breached the joint addendum "rose and fell" on the adverse credibility finding against its owner, which "relied on uninformed misconceptions about English proficiency and language acquisition." This "amply met" the "impression of possible bias" standard. Further, because California recognizes a limited statutory right to an interpreter in all civil proceedings, to allow adverse credibility inferences to be drawn from exercising that right would be against public policy.

Read the [full opinion](#).