Filed 9/14/11 First Amer. Title Ins. v. Ordin CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

FIRST AMERICAN TITLE INSURANCE COMPANY, Plaintiff and Appellant, v. DAVID ORDIN et al., Defendants and Respondents.	B226671 (Los Angeles County Super. Ct. No. BS125009)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kenji Machida and Elizabeth Allen White, Judges. Affirmed.

Garrett & Tully, Ryan C. Squire and Zi C. Lin for Plaintiffs and Appellants.

Buchalter Nemer, John L. Hosack and Robert M. Dato, for Defendants and Respondents.

I. INTRODUCTION

Plaintiff, American Title Insurance Company, appeals from a judgment confirming two arbitration awards in favor of defendants, David and Batya Ordin. Plaintiff contends the arbitration awards should be vacated because it was substantially prejudiced by the arbitrator's refusal to hear relevant evidence before issuing an award in excess of $600,000. Plaintiff also argues the trial court compounded the error by declining to determine prejudice had resulted by the arbitrator's conduct. We affirm the judgment confirming the two arbitration awards.

II. BACKGROUND

A. Title Insurance Policy

On May 1, 2002, plaintiff issued a title insurance policy to defendants in connection with their purchase of property on Hortense Street in Studio City. The policy's coverage statement provides: "This Policy insures You against actual loss, including any cost, attorneys' fees and expenses provided under this Policy, resulting from the Covered Risks set forth below. . . . [¶] The Covered Risks are: [¶] 1. Someone else owns an interest in Your Title. . . . [¶] 4. Someone else has an easement on the Land. [¶] 5. Someone else has right to limit Your use of the Land. [¶] 6. Your title is defective. . . . [¶] 9. Someone else has an encumbrance on Your Title. . . . [¶] 19. Someone else has a legal right to, and does, refuse to perform a contract to purchase the Land, lease it or make a Mortgage loan on it because Your neighbor's existing structures encroach onto the Land. . . . [¶] 26. Your Title is unmarketable, which allows someone else to refuse to perform a contract to purchase the Land, lease it or make a Mortgage loan on it."

Under the policy's Conditions, "You/Your" is defined as "the Insured named in Schedule A and also those identified in paragraph 2.b of these Conditions." Pursuant to

Schedule A of the policy, defendants are the named insureds. Paragraph 2 of the policy conditions provides for continuation of coverage: "a. This Policy insures You forever, even after You no longer have Your Title. You cannot assign this Policy to anyone else. [¶] b. The Policy also Insures: . . . [¶] (3) the trustee or successor trustee of a Trust to whom You transfer Your Title after the Policy Date . . . ."

B. The Defendants' Transfer Of Title To Other Entities

On May 1, 2002, defendants purchased the Studio City property. They executed a trust deed to Washington Mutual Bank. Nine days later, on May 10, 2002, defendants transferred title in the property to Claremont Investments, Inc., a corporation of which they were the sole shareholders. On April 6, 2004, Claremont Investments, Inc. conveyed title to defendants as trustees of the family trust. On December 16, 2004, defendants, as trustees of their family trust, executed another trust deed to California National Bank. On August 4, 2005, defendants recorded a parcel map that showed the property had been divided into two parcels. On August 25, 2005, defendants, as trustees of their family trust, transferred title in both parcels to Ranchito Development, LLC, a limited liability company of which they were the sole members.

C. Discovery Of Encroachment On Property and Dispute Over Amount Of Loss

On June 9, 2006, Claremont Investments, Inc., through Mr. Ordin, entered into an agreement to sell the property to Allison and Christopher Simmons for $1.475 million. In June 2006, defendants discovered a neighbor's house encroached onto their property. The Simmons refused to complete the purchase because the neighboring house encroached onto defendants' property. On June 26, 2006, defendants notified plaintiff of their claim under the title insurance policy. Plaintiff denied the claim on June 29, 2006, as being "premature." On September 14, 2006, plaintiff appointed an appraiser who

determined the diminution in value to the property caused by the encroachments was $5,000. Plaintiff tendered $5,000 to defendants.

On December 22, 2006, defendants sold the property for $1.255 million. Defendants claimed an "actual loss" of $244,291 plus "carrying costs" of $50,707, relying on a report prepared by another appraiser in May 2007. That appraiser concluded the "diminution in value" of the property caused by the encroachments and decline in the local housing market between June and December 2006, was $220,000 plus "carrying costs" of $87,330.

D. Arbitration Proceedings

The parties agreed to arbitration and selected Retired Presiding Justice Robert Feinerman as the arbitrator. The arbitration was conducted under the Commercial Arbitration Rules of the American Arbitration Association. American Arbitration Association rule R-30(a) discusses the procedure for the arbitration proceedings: "The claimant shall present evidence to support its claims. The respondent shall then present evidence to support its defense. Witnesses for each party shall also submit to questions from the arbitrator and the adverse party. The arbitrator has the discretion to vary this procedure, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case."

The parties submitted several briefs during the hearing which was conducted on October 19 and 20, 2009. In early November, the parties submitted post-arbitration briefs. Plaintiff argued that defendants' August 25, 2005 transfer of title to Ranchito Development precluded coverage of the loss caused by the encroachments because only they were covered by the policy. Defendants argued in their post-arbitration brief that plaintiff's policy covered them even after they transferred title and as trustors on a May 1, 2002 trust deed payable to Washington Mutual Bank.

On November 10 and 11, 2009, there was an exchange of letters addressed to the arbitrator. The discussion in plaintiff's letter is cryptic and to clarify the exchange as best

can be done, we set forth the relevant contents of the November 10 and 11, 2009 letters. Plaintiff's November 10, 2009 letter states in part: "[Plaintiff] writes to address an inaccuracy in [defendants'] final closing brief on an issue not previously raised by [them]. [¶] [Defendants] state, '[They] at all times were the trustors on a Deed of Trust in the amount of $432,000.00 payable to Washington Mutual Bank, which was recorded May 1, 2002 [as instrument no. 02-1009395] as a portion of their purchase price. [Citation.] There was no evidence introduced by anyone at the Arbitration that [defendants] were not the trustors on the Deed of Trust in June of 2006 when they discovered the Higgs' encroachment.' ([Defendants'] Closing Brief, p. 3:6-10, emphasis omitted.) [¶] The Washington Mutual deed of trust instrument no. 02-1009395, was reconveyed in January 2005. (Exhibit 'A' hereto.) [Plaintiff] requests that the Arbitrator take judicial notice of this recorded reconveyance." No Exhibit A was attached to plaintiff's November 10, 2009 letter. No copy of the omitted document was provided to the trial court.

Defendants responded to the foregoing letter on November 11, 2009, in part as follows: "The Washington Mutual Deed of Trust was reconveyed by a Deed of Reconveyance recorded on January 21, 2005, as noted in [plaintiff's counsel's] letter . . . dated November 10, 2009. However, that reconveyance does *not* change the analysis in the [defendants'] Brief, that when they submitted their claim in June of 2006, they had an insurable interest in the Property. *The important fact*, of which [plaintiff] had *actual knowledge*, but which [plaintiff's counsel's] letter *failed to disclose* to Your Honor, is that on *December 16, 2004*, a *replacement* Deed of Trust, in favor of California National Bank, executed by [defendants], as Trustees of the Ordin Living Trust, and was recorded against the Property. A true and correct copy of the replacement Deed of Trust is attached hereto marked as Exhibit 'A.' The replacement Deed of Trust was *not* reconveyed until *December 18, 2007*. A copy of the said deed of Full Reconveyance of the replacement Deed of Trust is attached hereto marked as Exhibit 'B.' Accordingly [defendants] request that you take judicial notice of the replacement Deed of Trust in favor of California National Bank and the deed of Full Reconveyance of the replacement

Deed of Trust. [¶] The Policy expressly provides that [defendants], as trustees of their Family Trust, are insureds [under the] Policy of Title Insurance. See, Policy of Title Insurance, Exhibit '2' Conditions, para. 2b(3). Therefore, the Washington Mutual Bank Deed of Trust and the attached California National Bank Deed of Trust and deed of Full Reconveyance prove that, at all relevant times, [defendants], whether under the individual names or as trustees of their Family Trust, were the trustors on Deeds of Trust which encumbered the subject Property, they had an insurable interest in the Property and they were insureds of [plaintiff]."

Attached to defendants' November 11, 2009 letter was a construction trust deed recorded on December 16, 2004, which secured a $1.387 million loan by California National Bank secured by the Studio City property. Named as the trustors under the December 16, 2004 construction trust deed were defendants in their capacity as trustees of their living trust. Also attached to defendants' November 11, 2009 letter was the full reconveyance of the California National Bank secured interest in the Studio City property. The full reconveyance was recorded on December 18, 2007 and identified defendants as trustees of their living trust and owners of the Studio City property.

On November 13, 2009, plaintiff replied in a letter brief. Plaintiff argued defendants: could not recover as trustees; this is because defendants, in their role as trustees, were never named insureds; defendants did not transfer title to their trust; rather, the trust acquired title from Claremont Investments, Inc.; defendants, as trustees, were precluded from coverage because they did not own the property at either of the times they claim to have suffered a loss, the purchase date and the day of discovery of the encroachments; and citing *Kwok v. Transnation Title Insurance Co.* (2009) 170 Cal.App.4th 1562, 1571, there is a fundamental distinction between an interest owned by individuals and by trustees.

The award was issued on the same day as plaintiff's November 13, 2009 letter brief. The arbitrator found defendants were covered under the policy: "The threshold issue presented is whether[defendants] lost their coverage under the title policy issued by [plaintiff] when they transferred record title to the property of Claremont Investments,

Inc. and Ranchito Development, LLC. [Plaintiff] contends that [defendants] lost their coverage when they transferred record title to the property. Condition 2a of the policy states, 'This Policy insures You forever, even after You no longer have Your Title, You cannot assign this Policy to anyone else.' When [defendants] purchased the property on May 1, 2002, and legal title was in their names, the Higgs structures encroached upon their property. However, they did not discover the encroachment until June 6, 2006. On that date [defendants], as trustees of their living trust dated January 20, 2000, were trustors on a deed of trust in favor of California National Bank which encumbered the Hortense Street property. This deed of trust was not reconveyed until December 18, 2007. Paragraph 2.5 of the deed of trust contains an indemnification provision that requires the trustor to defend any action or proceeding that 'might in any way and in the sole judgment of the Beneficiary affect the title to the property described herein or the rights and powers of Trustee or Beneficiary.' Condition 2.b(3) of the subject policy provides that the policy also insures 'the trustee or successor trustee of a Trust to which You Transfer Your Title after the Policy Date.' Given the totality of the evidence, the Arbitrator has concluded that [defendants] had an insurable interest in the property and were covered under the policy when they asserted their claim on June 26, 2006."

The arbitrator found defendants had suffered actual loss and plaintiff had breached the implied good faith and fair dealing covenant. The arbitrator awarded defendants $277,330 (with prejudgment interest of 10 percent per annum) in contract damages and $75,00 in tort damages, for a total of $352,330, plus interest. The arbitration award was not served until November 19, 2009. This was because of the arbitrator's policy of not releasing the arbitration award until he had been paid in full for his services.

On December 10, 2009, plaintiff wrote to the arbitrator to request leave to file a brief in response to defendants' argument that they were insured under the title policy as trustors under the trust deeds. Plaintiff explained that: defendants raised the argument they were insured in their role as trustees for the first time at the very end of the arbitration briefing process; this argument was relied on in the arbitrator's coverage determination; and plaintiff "did not have the opportunity to respond to this argument

before" the award was returned. On December 17, 2009, the arbitrator denied plaintiff's request to file a supplemental brief. On February 3, 2010, the arbitrator awarded defendants an additional $128,833 in damages for attorneys' fees and expenses pursuant to *Brandt v. Superior Court* (1985) 37 Cal.3d 813, 819. (See *Essex Ins. Co. v. Five Star Dye House, Inc.* (2006) 38 Cal.4th 1252, 1258-1259.)

E. Trial Court Proceedings

On February 23, 2010, plaintiff filed a petition to vacate the arbitration awards on arbitrator misconduct grounds, arguing the arbitrator unfairly refused to hear material evidence. On April 6, 2010, defendants filed a petition to confirm the arbitration awards. On July 8, 2010, the trial court granted defendants' petition to confirm and denied plaintiff's petition to vacate the awards.

The trial court found the arbitrator did not receive plaintiff's November 13, 2009 letter before issuing the first award on the same date. However, the trial court stated, "[I]it doesn't look like there's anything different argued in the letter, or set forth in the letter, that's not already in a post [arbitration] brief." The trial court also stated, "[T]he record would seem to indicate that [plaintiff] did respond, did have an opportunity to respond and that all the arbitrator was doing is saying I don't want yet another post [arbitration] brief on the matter." The trial court further explained: "You know, Justice [Feinerman] sitting as an arbitrator is no different than a judge. [¶] And you get something like a request for an opportunity to be further heard or further briefed, an issue that comes as an alleged surprise to the other side, and the decision is made either in justice, in fairness, they should be given an opportunity to hear further evidence; or that judge, or the arbitrator, in his own mind, says to himself, you know, even if these grounds or this issue were removed from the case, my decision is still the same. [¶] . . . As far as I'm concerned, you know, [the arbitrator] is in a far better position to judge whether or not this is something that would have been meaningful. I will not take a look -- I do not take a look at it and say this is obviously a failure of due process or fairness." Judgment

was entered against plaintiff on July 8, 2010. Plaintiff timely appealed on August 4, 2010.

III. Standard of Review

We do not review the validity of the arbitrator's reasoning or the sufficiency of the evidence supporting the award. (*Haworth v. Superior Court* (2010) 50 Cal.4th 372, 380; *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 11.) Thus, courts may not vacate or correct an arbitration award based on an arbitrator's legal or factual error, even when it appears on the face of the award. (*Moshonov v. Walsh* (2000) 22 Cal.4th 771, 775; *Moncharsh v. Heily & Blase*, *supra*, 3 Cal.4th at 11.) Generally vacatur review is limited to the statutory grounds for vacating or correcting an award pursuant to Code of Civil Procedure[1] section 1286.2, subdivisions (a)(3) and (a)(5) which state: "(a) Subject to Section 1286.4, the court shall vacate the award if the court determines any of the following: [¶] . . . (3) The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator. [¶] . . . (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."

In order to vacate the two awards pursuant to section 1286.2, subdivision (a)(3) and (a)(5), plaintiff had a duty to show prejudice. In *Hall v. Superior Court* (1993) 18 Cal.App.4th 427, 439, then Court of Appeal Associate Justice Ming W. Chin explained: "To vacate an award, section 1286.2, subdivision (e), requires that the trial court find that a party has been '*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.' (Italics added.) Where, as here, a party complains of

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

excluded material evidence, the reviewing court should generally focus first on prejudice, not materiality. To find substantial prejudice the court must accept, for purposes of analysis, the arbitrator's legal theory and conclude that the arbitrator might well have made a different award had the evidence been allowed." Circuit Courts of Appeal decisions applying the vacatur provisions of the Federal Arbitration Act, title 9 United States Code section 10(a)(3), have reached similar conclusion concerning the necessity of a prejudice showing. (*United States Life Ins. Co. v. Superior Nat. Ins. Co.* (9th Cir. 2010) 591 F.3d 1167, 1171-1172, 1174; *Mutual Fire, Marine & Inland Ins. Co. v. Norad Reinsurance Co.* (3rd Cir. 1989) 868 F.2d 52, 56.) Our colleague, Presiding Justice Arthur Gilbert citing *Hall* explained in connection with section 1286.2, subdivision (a)(5): "This section has been interpreted as 'a safety valve in private arbitration that permits a court to intercede when an arbitrator has prevented a party from fairly presenting its case.' [Citation.]" (*Burlage v. Superior Court* (2009) 178 Cal.App.4th 524, 529.)

IV. DISCUSSION

First, plaintiff argues it was prejudiced by the arbitrator's refusal to: hear evidence material to the controversy; consider the "evidence" attached to its November 13, 2009 letter; and permit further briefing on the effect of the California National Bank construction trust deed. To begin with, we have no way to judiciously assess the issues of relevance or prejudice. Plaintiff did not have a reporter's transcript of the arbitration prepared. There is no requirement that a reporter's transcript of the arbitration be prepared although on occasion one is utilized in motions to vacate an award. And plaintiff filed no declaration detailing the state of the evidence or other pertinent matters elicited during the two-day arbitration as is permitted by sections 1290.2 and 2009.[2]

[2] Section 1290.2 states, "A petition under this title shall be heard in a summary way in the manner and upon the notice provided by law for the making and hearing of motions, except that not less than 10 days' notice of the date set for the hearing on the

(*Brookwood v. Bank of America* (1996) 45 Cal.App.4th 1667, 1670 [motion to compel]; Knight et al., Cal. Procedure Guide: Alternative Dispute Resolution (The Rutter Group 2011) ¶ 5:516, p. 5-357 (rev. # 1, 2010) [motion to vacate].) In *Hall v. Superior Court*, *supra*, 18 Cal.App.4th at page 438, then Associate Justice Chin observed: "In the typical arbitration, an arbitrator must make numerous decisions about admission of evidence and in doing so may exclude material evidence. No doubt there will often be aggrieved parties who believe they have been 'substantially prejudiced.' Decisions about materiality cannot be made without familiarity with the issues and evidence in the arbitration. If the superior court must, with or without a transcript of the arbitration, routinely review the arbitrator's decision on materiality before reaching the question of substantial prejudice, the legislative goal of arbitral finality will be unattainable. Instead of saving time and money, the arbitration will be supplemented by lengthy and costly judicial second-guessing of the arbitrator." Thus, all of plaintiff's arguments concerning prejudice and the relevance of the matters the arbitrator declined to consider are unsubstantiated.

In any event, plaintiff relies on *Burlage v. Superior Court*, *supra*, 178 Cal.App.4th at pages 529-530. In *Burlage*, the purchasers learned after the close of escrow that their swimming pool and fence encroached upon land owned by the adjoining country club. (*Id*. at p. 527.) Two years after the close of escrow but before the arbitration between the homeowners and the seller, the title insurance company paid the country club for a lot-line adjustment. As a result, the purchasers received clear title to the encroaching land. (*Id.* at 527-528.) The Court of Appeal and the trial court found the seller was prejudiced by the arbitrator's refusal to hear evidence concerning the lot-line adjustment. The lot-line adjustment resolved the encroachment problem and provided the seller with, what

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petition shall be given." Section 2009 states, "An affidavit may be used to verify a pleading or a paper in a special proceeding, to prove the service of a summons, notice, or other paper in an action or special proceeding, to obtain a provisional remedy, the examination of a witness, or a stay of proceedings, and in uncontested proceedings to establish a record of birth, or upon a motion, and in any other case expressly permitted by statute."

the Court of Appeal found was, an "[A]bsolute defense." (*Id.* at 530.) The Court of Appeal concluded, "Without this crucial evidence, the arbitration assumed the nature of a default hearing in which the [purchasers] were awarded $1.5 million in compensatory and punitive damages they may not have suffered." (*Ibid.*)

Burlage is distinguishable. In *Burlage*, the arbitrator excluded evidence of the financial effects of the lot-line adjustment on the purchasers' damages. (*Burlage v. Superior Court*, *supra*, 178 Cal.App.4th at p. 528.) Here, the arbitrator did not exclude any evidence because plaintiff's November 13, 2009 letter did not introduce any new evidence. Rather, the letter brief presented several arguments as to why defendants were not covered under the policy as trustees of their family trust, notwithstanding they were trustors on the deeds of trust. In *Burlage*, the lot-line adjustment evidence had a direct bearing on whether the purchasers suffered any damages as a result of the encroaching land, the key issue in the arbitration. In the present case, plaintiff does not dispute that defendants as trustees of their family trust conveyed a trust deed to California National Bank that encumbered the property at the time they discovered the encroachments in June 2006. Instead, plaintiff disputes the legal significance and effect of that trust deed on the policy coverage issue.

In addition, plaintiff relies on *Harvey Aluminum, Inc. v. United Steel Workers or America, AFL-CIO* (C.D. Cal. 1967) 263 F.Supp. 488, 493-495. In *Harvey Aluminum*, the district court vacated the award because the arbitrator, in a Labor Management Relations Act arbitration, refused to hear and consider the testimony of a rebuttal witness. Plaintiff contends this case is similar to the *Harvey Aluminum, Inc.* situation. Plaintiff asserts the arbitrator here did not warn plaintiff that he would issue his award without waiting for its response to defendants' November 11, 2009 letter and did not allow it to proffer rebuttal evidence. Plaintiff asserts it proffered rebuttal evidence in its November 13, 2009 letter and could not have made the argument sooner. This, plaintiff asserts, is because defendants did not introduced evidence of the California National Bank deed of trust until their November 11, 2009 letter.

Harvey Aluminum, Inc. is distinct from the present case. Here, defendants argued in their post arbitration closing brief that they were covered under the policy as trustees because they were trustors on the Washington Mutual Bank trust deed. Plaintiff then asserted the Washington Mutual Bank trust deed had been reconveyed in January 2005 in its November 10, 2009 letter. The next day, defendants produced evidence that defendants were identified as trustees on the construction trust deed in 2004, which was not reconveyed until December 18, 2007. Plaintiff's November 13, 2009 letter does not present any evidence to rebut the undisputed fact that California National Bank encumbered the property at the time defendants discovered the encroachments in June 2006. Unlike the scenario in *Harvey Aluminum, Inc.*, plaintiff did not introduce any rebuttal evidence. And, as previously explained, we have no judicious way to assess the prejudice issue as there is no showing as to what occurred during the arbitration hearing.

Second, plaintiff contends it was substantially prejudiced by the arbitrator's denial of its request to file supplemental briefs. The arbitrator denied the request for supplemental briefing after "due consideration," which means he had considered plaintiff's arguments raised in the November 13 and December 10, 2009 letters. Moreover, since plaintiff never presented any additional evidence relating to the California National Bank trust deed, the arbitrator might well have decided that he did not want any more arguments on the issue. Contrary to plaintiff's assertion, the arbitrator complied with American Arbitration Association rule R-30(a) by allowing the parties to submit several briefs and letter briefs after the arbitration hearing. There is no evidence to show the arbitrator did not follow or had varied the arbitration procedures set forth in American Arbitration Association rule R-30(a).

Finally, even if the arbitrator had accepted plaintiff's arguments and found defendants were not covered under the policy as trustees of their family trust, based on our current record, the awards would still stand. The arbitrator found defendants were covered under two separate sections of the policy given "the totality" of the evidence. Condition 2.a of the policy states: "This Policy insures You forever, even after You no longer have Your Title. You cannot assign this Policy to anyone else." Condition 2.b(3)

of the policy provides, "This Policy also insures . . . the trustee or successor trustee of a Trust to whom You transfer Your Title after the Policy Date . . . ." Plaintiff's November 13, 2009 letter addresses only the policy coverage under Condition 2.b(3). But the arbitrator found there was coverage based on Conditions 2.a and 2.b(3). Here, plaintiff did not suffer substantial prejudice so as to warrant vacation of the arbitration awards because there was an additional, separate basis to support the arbitrator's coverage finding. There is no reason to believe had the disputed matters been resolved differently, the result might well have been different. (*Burlage v. Superior Court*, *supra*, 178 Cal.App.4th at p. 531; *Hall v. Superior Court*, *supra*, 18 Cal.App.4th at p. 439.) No misconduct was committed and no prejudice occurred. Thus, the trial court committed no error.

V. DISPOSITION

The judgment is affirmed. Defendants, David and Batya Ordin, are to recover their costs on appeal from plaintiff, First American Title Insurance Company.

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TURNER, P. J.

I concur:

KRIEGLER, J.

MOSK, J., Concurring

I concur.

Plaintiff contends in its letter brief of November 13, 2009 in the arbitration that trustees are not insured. Plaintiff reiterates its distinction between trustees and individuals. Thus, the response of November 13, 2009 would not have changed the award even if not considered, as indicated by the arbitrator's later denial of plaintiff's request to file another brief on the subject. For that reason, I concur.

MOSK, J.