

PARTY WHO PARTICIPATES IN ARBITRATION CANNOT THEREAFTER BACK OUT

By Kenneth S. Grossbart
Abdulaziz, Grossbart & Rudman

The subject of Arbitration has been discussed by me in previous articles. This article again addresses the concept of Arbitration but with a twist.

Arbitration is an alternative form of resolving disputes. It is an alternative to the filing of a lawsuit and proceeding with your case through the court system. Arbitration is a very popular form of dispute resolution and oftentimes is faster and cheaper than going through the court system.

Arbitration is a consensual process which means in order for the parties to arbitrate a dispute all parties must consent to having the matter arbitrated. Oftentimes that consent comes in the form of an Arbitration Clause that is contained in the contract between the parties. In this set of facts, Company A signed an Advertising Insertion Order with Company B. The Order included an agreement to arbitrate all disputes. During the course of the relationship between Company A and Company B, Company A accumulated an unpaid balance with Company B. Company A filed a Demand for Arbitration seeking damages in the amount of the unpaid balance. Company B agreed that they signed the Order but claimed that the Order was unenforceable because Company A's products were fraudulent. Regardless of the claims of Company B, Company B voluntarily participated in the Arbitration and in fact asked the Arbitrator to issue an Order requiring one of the parties to post a Bond. Company B later rescinded its participation in the Arbitration proceedings when the Arbitrator declined to issue the Order. The Arbitrator ultimately found for Company A and the trial court confirmed the Arbitration Award. Company B challenged the Arbitrator's jurisdiction arguing that he did not consent to arbitrate the dispute.

The matter was reviewed and ruled upon by the appellate court. The appellate court confirmed the lower court's ruling finding that the parties did in fact consent to Arbitration. The appellate court found that Company B's conduct and participation in the Arbitration showed that he clearly and unmistakably consented to Arbitration. First Company B did not object to Arbitration, they willingly participated in the Arbitration proceedings, availed themselves of the Arbitrator's authority when asked to have the Arbitrator rule upon the posting of a Bond and thereafter tried to rescind his voluntarily participation after the Arbitrator denied the request. Thus the court found that Company B's actions constituted clear and unmistakable evidence that he consented to the Arbitration proceedings.

The take away from this set of facts is that if you challenge the jurisdiction of an Arbitration Tribunal, it must be done at the beginning of your case. You cannot temporarily participate in the Arbitration proceedings and then at some point in time when you don't like how the Arbitration is proceeding attempt to back out. Courts will consider your participation to constitute a clear and unmistakable evidence of your consent to arbitrate.



Kenneth Grossbart is recognized as one of the foremost authorities in California construction law. Over the past 35 years, Ken has become a respected speaker on Mechanic's Liens and other construction related issues. Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients and it does not establish an attorney-client relationship with the reader. This document is of a general nature and is not a substitute for legal advice. Since laws change frequently, contact an attorney before using this information. Ken Grossbart can be reached at Abdulaziz, Grossbart & Rudman: (818) 760-2000 or by E-Mail at ksg@agrlaw.com, or at www.agrlaw.com

June / July '18