

ARBITRATION IS NOT ALWAYS FINAL!

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Most of the time the articles that we publish are about cases that come across our desk in what are called the “advance sheets” from a newspaper or publication that is dedicated to lawyers. In this case, we recently appeared before the Court of Appeal in a matter that resulted in an unpublished case, which means that our case cannot be used as authority in another case, but which was based upon legal precedents set by prior cases before the Court. At issue in the case was whether an arbitrator could properly determine that an entity did not require a contractor’s license and award that entity money under a contract, where the contention that was being made was that a license was required.

Without giving away any names, at issue was a company that would assemble and install, including anchoring to a floor, large trampolines for a sports facility. These trampolines were the size of a warehouse. They were assembled and bolted to the floor. The company also assembled some ramps and other miscellaneous work. When the owner of the facility decided that they were unhappy with the work, they filed suit not only for breach of contract, but for disgorgement, seeking all money paid to the unlicensed entity.

The entity filed a Petition in the Court to Compel Binding Arbitration. This was objected to on the licensure issue. The Superior Court had held that the matter could go to Arbitration but then the Court would have the ability to review any ultimate award. The matter went to Arbitration and a retired Judge found that the supplier and installer was selling finished work, and therefore exempt from the license law.

It was vigorously argued that the item did not qualify as a finished work. Indeed, just the labor to install the equipment was valued at more than \$30,000, and the labor was not incidental and supplemental to the installation of other types of finished goods such as a refrigerator, washer and dryer, or even a prefabricated all-in-one kitchen unit when it’s simply hooked up to water and a drain.

After the Award was issued, our office filed a Petition to Vacate (set aside the Award). We argued that the case law in California, including three prominent decisions, holds that an Arbitrator does not have the power to determine an issue of public policy. More specifically, an Arbitrator cannot enforce a contract that is illegal because it was with an unlicensed person. There technically is also a fourth case, which held the unlicensed person cannot rely on the other cases to set aside an Award when it loses.

Of the four cases, three concerned the contractors’ license law. In each one, for various reasons, unlicensed persons were initially allowed to enforce an Agreement through Arbitration. However, awards in favor of the unlicensed persons were reversed in each case. In the fourth case, taking a different slant, an unlicensed contractor lost in arbitration tried to argue that the fact that the unlicensed contracting was at issue should prevent the award against it from enforcement. The Court of Appeal held that the unlicensed person could not avoid the illegality of their contract and therefore an Award against an unlicensed person would be enforced but an Award in favor of an unlicensed person allowing that person to collect would not. It was universally held that only a Court can determine whether a license is required or whether an exemption applies, and not an Arbitrator.

The impact of this case is that if you are in arbitration or litigation with a person that you deem to be unlicensed, you may actually be able to argue the matter twice. If it goes to Arbitration, a court has the power to review the determination in a new Evidentiary Hearing to determine whether the Arbitrator was wrong in awarding money to an unlicensed person. Obviously, if the Court agrees that licensure was not required, then the unlicensed person may be able to collect. But if a license is required, they cannot enforce their improper contract either through the Courts or arbitration.



Bruce Rudman has been practicing construction law for 22 years. He has garnered a great reputation in the construction field not only as a litigator, but on licensing issues with the CSLB, particularly disciplinary proceedings. 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. Bruce Rudman can be reached at Abdulaziz, Grossbart & Rudman: (818) 760-2000 or by E-Mail at bdr@agrlaw.com, or at www.agrlaw.com

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