



AlvaradoSmith Contributes To California Arbitration Law With A Published Opinion In A Case Of First Impression



By: Marc D. Alexander, Esq.

Arbitration is very much in the news. The New York Times recently published a three-part Special Report highly critical of the use of arbitration to resolve disputes. The authorial point of view in the Special Report is telegraphed by its provocative titles: “Arbitration Everywhere, Stacking the Deck of Justice” (Part I), “In Arbitration, a ‘Privatization of the Justice System’” (Part II) and “In Religious Arbitration, Scripture is the Rule of Law” (Part III).

In defense of arbitration, the U.S. Chamber of Commerce retorted aggressively, describing the New York Times investigation as “little more than an opinion piece masquerading as fact. . . . incomplete, misleading, and one-sided . . . underscored by the article’s resort to innuendo about the ethics of a Supreme Court Justice”

Also in the news, on October 6 of this year, the United States Supreme Court heard arguments in *DIRECTV v. Imburgia*. That case presents as a question whether the California Court of Appeal erred by holding that a reference to state law in an arbitration agreement governed by the Federal Arbitration Act requires the application of state law, or whether the application of state law has been preempted by the Federal Arbitration Act. In oral argument, several Justices criticized the California court’s refusal to enforce the arbitration agreement, while debating whether they had authority to correct

the state court’s decision. In recent years, the Supreme Court has been very hospitable to enforcing arbitration agreements. By the time you read this post, we may well have a decision.

Meanwhile, AlvaradoSmith attorneys have contributed to California arbitration law by obtaining a published opinion and a favorable result for their client, the accounting firm SingerLewak, LLP, in *SingerLewak, LLP. v. Gantman*, 2015 WL 6383225 (July 29, 2015), 193 Cal.Rptr.3d 672 (2015).

It is well-established that arbitrators do not exceed their powers just because they assign an erroneous reason for their decision. Therefore, the vast majority of arbitrator’s awards are immune to judicial review and easily get confirmed as judgments. One exception is when the arbitrator’s award implicates an important public policy – a possible basis for a court to review the correctness of the arbitrator’s award.

In *SingerLewak, LLP v. Gantman*, the arbitrator ruled in favor of the accounting firm seeking payment from its departing partner. The partnership agreement included a provision that if a partner left the firm and competed, then a cost was imposed on the departing partner who serviced partners of the firm. The arbitrator concluded that Gantman was a partner, that the provision was not a true covenant not to compete, and that the restriction was not void for

Marc Alexander is Of Counsel in AlvaradoSmith’s Orange County Office. Marc has over 25 years of experience in bench and jury trials, binding arbitrations, judicial references, mediations, and appellate work in state and federal courts in California.

Mr. Alexander has authored articles on various legal topics in *The Civil Litigation Reporter*, *California Litigation*, *The Computer Lawyer*, and *The Orange County Lawyer*.

Marc Alexander authors the law blog *California Mediation and Arbitration* and co-contributes to the law blog *California Attorney’s Fees*.



For questions, comments or further information please contact Marc D. Alexander at:

714.852.6800
malexander@alvaradosmith.com
www.AlvaradoSmith.com
[California Mediation & Arbitration](#)

AlvaradoSmith Contributes To California Arbitration Law With A Published Opinion In A Case Of First Impression (cont.)

lack of an express geographical limitation, because there was an implied limitation – locations accessible to the firm’s client’s locations. In other words, the arbitrator “blue-penciled” a geographic limitation. Ordinarily, that would be the end of the matter, because whether the arbitrator was right or wrong could not be second-guessed by the courts.

The trial court, however, concluded judicial review of the arbitration award was required because it violated California non-compete policy, and vacated the award, leading to SingerLewak’s appeal.

The case addresses an issue of first impression. Because California Business and Professions Code, section 16602 allows for an agreement that a departing partner “not carry on a similar business within a *specified geographic area* where the partnership business has been transacted”, does an arbitrator who implies a geographic limitation run afoul of an important public policy, exposing the arbitral award to judicial review?

No, says the Court of Appeal. Unlike Business and Professions Code, section 16600, the general non-compete provision that draws a bright line in California, section 16602, applying to partnerships, applies a rule of reason. That rule of reason, which is not a bright line, allows the arbitrator to imply a geographic limit. Therefore, by implying a geographic limit, the arbitrator does not fall within the “public policy exception” that would open up the award to judicial review.

The specific outcome of this case – finding the award immune from judicial scrutiny – fits the trend to enforce arbitration agreements and uphold arbitration awards. Absent a clear expression of illegality or public policy, the public policy exception will not be applied to undo an arbitration award.

AlvaradoSmith attorneys Ted Bacon, Mike Hensley, and Matt Hansen successfully briefed this matter in the Court of Appeal and obtained the reversal. Mike Hensley argued the case for Appellant SingerLewak. Marc Alexander, author of the hard-law blog [California Mediation and Arbitration](#), requested the Court of Appeal to publish the opinion because of its contribution to our understanding of the application of the “public policy exception” to arbitral awards in California.



Los Angeles
633 W. 5th Street, Suite 1100
Los Angeles, CA 90071
Tel: (213) 229-2400



Orange County
1 MacArthur Place, Suite 200
Santa Ana, CA 92707
Tel: (714) 852-6800



San Francisco
235 Pine Street, Suite 1200
San Francisco, CA 94104 Tel:
(415) 624-8665