



# Arbitration Awards: CONFIRM, CORRECT OR VACATE

By Adam J. Krolikowski, Esq.

Arbitration finished and the Arbitrator has issued his Award. Win or lose, you have two options after the Award is issued: (1) Challenge or (2) Confirm. You have two more options when challenging the Award: (a) Correction or (b) Vacatur. Confirming the Award is uncomplicated and challenging it is, well, challenging thanks to *Moncharsh*.

Over two decades ago the California Supreme Court held that under the California Arbitration Act (CAA), a court is generally not permitted to vacate an arbitration award based on errors of law by the arbitrator. *Moncharsh v. Heily & Blasé* (1992) 3 Cal. 4th 1.

You need statutory grounds to justify judicial review and good cause to vacate or correct the Award. Even if you believe you have met your legal

burdens, you will still need to use your best appellate advocacy skills to convince a judge to disturb an arbitration award.

The following is a basic roadmap to get you familiar with the process and pitfalls of confirming, correcting or vacating an arbitration award.

## Navigating the Legal Labyrinth

Time, in the intricate dance of legal procedure, is both ally and adversary. The California Code of Civil Procedure outlines precise windows for actions concerning arbitration awards.

### TIME TO CONFIRM: More than 10 days and Less than 4 years.

A petition to confirm an arbitration award may not be served until at

least 10 days after the petitioner has received a signed copy of the award. This window closes firmly at four years. This framework, defined under Sections 1285-1288.8, ensures a balance between due process and finality.

No petition may be served and filed under Code of Civil Procedure Sections 1285-1288.8 until at least 10 days after service of a signed copy of the award on petitioner (Code Civ. Proc. § 1288.4). A petition to confirm an award must be served and filed not later than four years after the date of service of a signed copy of the award on petitioner (Code Civ. Proc. § 1288).

### TIME TO VACATE OR CORRECT: 100 days or 10 days

Here, the urgency intensifies. If no

petition to confirm is filed, a party has 100 days after the award's service to seek correction or vacatur. However, if a petition to confirm is filed, this shrinks to a mere 10 days post-service of that petition. Missteps in this timing can lead to the severest consequence of having the petition to confirm deemed admitted. Move expediently and double check your calendaring if you intend to challenge the award.

A request for correction or vacatur is required to have been served and filed within [where no petition to confirm filed: 100 days after the award was served (Code Civ. Proc. §§1288 (petition), 1288.2 (response); [for petition to correct: *Weinberg v. Safeco Ins. Co. of Am.* (2004) 114 Cal. App. 4th 1075, 1083–1084, 8 Cal. Rptr. 3d 224] [for petition to vacate: *Rivera v. Shivers* (2020) 54 Cal. App. 5th 82, 93, 268 Cal. Rptr. 3d 392; *Santa Monica Coll. Faculty Ass'n v. Santa Monica Cmty. Coll. Dist.* (2015) 243 Cal. App. 4th 538, 544, 197 Cal. Rptr. 3d 71)].] Where petition to confirm filed: 10 days after service of the petition to confirm, even though the 100-day period set forth in Section 1288.2 of the Code of Civil Procedure has not otherwise lapsed (*Rivera v. Shivers* (2020) 54 Cal. App. 5th 82, 93, 268 Cal. Rptr. 3d 392).

Consequences for being late: where request was untimely, the allegations in the petition may be deemed to be admitted [Code Civ. Proc. § 1290; *Rivera v. Shivers* (2020) 54 Cal. App. 5th 82, 93, 268 Cal. Rptr. 3d 392].

### **BURDEN:**

The scales of justice tip favorably towards the validity of arbitration awards. It is incumbent upon the challenger to substantiate any claims of invalidity. Courts, bound by Sections 1285 and 1286, may only confirm, correct, or vacate an award. The boundaries of judicial review are strictly defined, limited to correcting clear errors without delving into the merits of the award itself.

Every presumption is in favor of the validity of an arbitration award. The party claiming invalidity has the burden

of supporting that claim with evidence (*United Bhd. of Carpenters Etc., v. De Mello* (1973) 22 Cal. App. 3d 838, 840, 100 Cal. Rptr. 564; *Walter v. Nat'l Indem. Co.* (1970) 3 Cal. App. 3d 630, 633, 83 Cal. Rptr. 803).

A court upon petition by a party to an arbitration may only confirm, correct or vacate an award. Code Civ. Proc. §§1285, 1286; *Jones v. Kvistad* (1971) 19 Cal.App.3d 836, 840 (“[The superior court] may confirm the award as made or correct the award and confirm it as corrected, or it may vacate the award”). The Court may review binding arbitration awards in accordance with the statutory grounds for vacating or correcting. (*Moshonov v. Walsh* (2001) 22 Cal.4th 771, 775.) However, a court may not vacate or correct an award because of the arbitrator's legal or factual error if such is within the scope of the controversy submitted to the arbitrator. *Id.* After an arbitrator has issued an award, the role of the trial court is limited to confirming, correcting, or vacating the award. *Byerly v. Sale* (1988) 204 Cal.App.3d 1312, 1315-1316. Absent some limiting clause in the arbitration agreement, the merits of the award, either on questions of fact or law, may not be judicially reviewed except as provided in the arbitration statutes. *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 25.

### **VACATUR OF AWARD:**

The grounds to vacate an award are stringent. They encompass fraud, corruption, arbitrator misconduct, and exceeding arbitrator powers. Each claim demands substantial evidence linking the alleged misconduct to prejudice against the party.

Code Civ Proc § 1286.2 states: (a) Subject to Section 1286.4, the court shall vacate the award if the court determines any of the following:

- (1) The award was procured by corruption, fraud or other undue means.
- (2) There was corruption in any of the arbitrators.

Where an appraiser or arbitrator fails to disclose matters required to be disclosed by section 1281.9, subdivision (e), and a party later discovers disclosure should have been made, that failure to disclose constitutes one form of “corruption” for purposes of section 1286.2, subdivision (b) and thus provides a ground for vacating an award. *Michael v. Aetna Life & Cas. Ins. Co.*, 88 Cal. App. 4th 925, 937

- (3) The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator.

If a party learns the arbitrator failed to disclose information relevant to disqualification, the party must object “at the earliest practicable opportunity after discovery of the facts constituting the ground for disqualification.”(Code of Civ. Proc. § 170.3, subd. (c)(1).) “While failure to disclose properly a ground for disqualification generally mandates vacation of the award, this rule only applies if the party moving to vacate ‘had no reason to know of the existence of a nondisclosed matter.’ [Citation.] If a party is ‘aware that a disclosure is incomplete or otherwise fails to meet the statutory disclosure requirements,’ the party ‘cannot passively reserve the issue for consideration after the arbitration has concluded.’” (*Cox v. Bonni* (2018) 30 Cal.App.5th 287, 306 [241 Cal. Rptr. 3d 359].) See, *Alper v. Rotella*, 63 Cal. App. 5th 1142, 1152-1153

- (4) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.

An award that “violates a party's unwaivable statutory rights or . . . contravenes an explicit legislative expression of public policy” may exceed an arbitrator's power. (*Richey v. AutoNation, Inc.* (2015) 60 Cal.4th 909, 916, 182 Cal. Rptr. 3d 644, 341 P.3d 438.) “Vacating an arbitration award based on public policy or a statutory right requires an explicit legislative expression of a public policy violated by the award or a conflict with a statutory scheme.” (*Ling v. P.F. Chang's China Bistro, Inc.*



(2016) 245 Cal.App.4th 1242, 1252, 200 Cal. Rptr. 3d 230.) A public policy is violated, for example when an arbitration award would enforce an illegal contract (Sheppard, Mullin, Richter & Hampton, LLP v. J-M Manufacturing Co., Inc. (2018) 6 Cal.5th 59, 68, 80, 87, 237 Cal. Rptr. 3d 424, 425 P.3d 1), or when an arbitration award contravenes an existing judicial injunction. (City of Palo Alto v. Service Employees Internat. Union (1999) 77 Cal. App.4th 327, 91 Cal. Rptr. 2d 500). The threshold question is whether according to the arbitration award finality would be inconsistent with protecting [respondent's] statutory rights." (SingerLewak LLP v. Gantman (2015) 241 Cal.App.4th 610, 622, 193 Cal. Rptr. 3d 672.)

(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 the arbitration context, substantial prejudice may be shown where the arbitrator's conduct denied a party a fair hearing. (Hoso Foods, Inc. v. Columbus Club, Inc. (2010) 190 Cal.App.4th 881, 888-889, 118 Cal. Rptr. 3d 594.) "Because the rules of evidence and judicial procedure do not apply to arbitration proceedings absent the parties' agreement, [a]rbitration procedures violate the common law right to a fair hearing 'only in the clearest of cases, i.e., when the applicable procedures essentially preclude the possibility of a fair hearing.'" (Ibid.)

(6) An arbitrator making the award either: (A) failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware; or (B) was subject to disqualification upon grounds specified in Section 1281.91 but failed upon receipt of timely demand to disqualify himself or herself as required

by that provision. However, this subdivision does not apply to arbitration proceedings conducted under a collective bargaining agreement between employers and employees or between their respective representatives.

By consenting to proceed with arbitration of a claim against a health care provider despite being aware of deficiencies in the arbitrator's CCP § 1281.9 disclosure, patient waived her right to disqualify the arbitrator under CCP § 1281.91(c) and could not vacate the award under CCP § 1286.2 on the ground of inadequate disclosure. Dornbirer v. Kaiser Foundation Health Plan, Inc. (Cal. App. 4th Dist. 2008), 166 Cal. App. 4th 831, 83 Cal. Rptr. 3d 116,

(b) Petitions to vacate an arbitration award pursuant to Section 1285 are subject to the provisions of Section 128.7.

Make sure you have good cause to request vacating the award else you could face a motion for sanctions or OSC by the Court. Consider getting written informed consent from your client before filing the Petition.

### **CORRECTION OF AWARD:**

Errors subject to correction are narrowly defined as evident miscalculations or mistakes that do not affect the core decision. Such corrections must be clear and readily apparent, without needing extensive proof.

Subject to Section 1286.8, the court, unless it vacates the award pursuant to Section 1286.2, shall correct the award and confirm it as corrected if the court determines that:

(a) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

There must be a miscalculation; and, the miscalculation must be

evident." (Severtson v. Williams Construction Co. (1985) 173 Cal. App.3d 86, 93.) "The miscalculation, to be evident, must appear on the face of the award ... or be so readily apparent from the documentation in the case that explanation by proofs is not necessary". (Id. at 94.) Merely questioning the sufficiency or insufficiency of the evidence to support the damages, is not the kind of error that can be raised and reviewed under the "evident miscalculation" standard. "[W]e think our legislature had reference only to mathematical errors committed by arbitrators which would be patently clear to a reviewing court". (Severtson, at 93, 94 (citations omitted); see also Heimlich v. Shivji (2019) 7 Cal.5th 350, 366-367.)

(b) The arbitrators exceeded their powers but the award may be corrected without affecting the merits of the decision upon the controversy submitted; or

in Jones v. Humanscale Corp., supra, 130 Cal.App.4th 401, the Court of Appeal determined that an arbitrator properly upheld a covenant not to compete entered into between a former employer and employee, but erred in ordering the arbitrator's administrative fees and compensation to be split equally between the employer and employee. Because the correction of the award's division of arbitration fees and expenses would "not affect the arbitrator's findings on the merits of the substantive issues," the trial court "had authority to correct the arbitration award and should have exercised its power to do so rather than vacating the entire award because of the erroneous division of the arbitration fees and expenses." See also, Sargon Enterprises, Inc. v. Browne George Ross LLP, 15 Cal. App. 5th 749, 771

(c) The award is imperfect in a matter of form, not affecting the merits of the controversy

Correctable defects in "form" involve "nonsubstantive matters." (Century City Medical Plaza v. Sperling, Isaacs

& Eisenberg (2001) 86 Cal.App.4th 865, 877, 103 Cal. Rptr. 2d 605 (Century City Medical Plaza.) Such matters include omissions of the “exact dollar amount for the award of fees and costs,” omitted “property descriptions,” and “damage amounts itemized but not totaled.” (Britz, Inc. v. Alfa-Laval Food & Dairy Co. (1995) 34 Cal.App.4th 1085, 1105-1106, 40 Cal. Rptr. 2d 700; Knight et al., Cal. Practice Guide: Alternative Dispute Resolution (The Rutter Group 2021) ¶ 5:504, p. 5-567; see also Century City Medical Plaza, supra, 86 Cal.App.4th at 877 [describing correctable defects in the form of an award as including “evident miscalculation of figures or evident mistake in a description”].)

### CONFIRM AWARD:

Confirmation remains the path of least resistance, requiring minimal burden. If the errors are minor and do not really meet the standards above, it is your best option, easiest to prove and lowest burden. Courts are generally predisposed to uphold arbitration awards unless compelling reasons for correction or vacatur are presented.

Even if you fail vacating in your attempt to correct or vacate, the Court should still confirm the award. See, *Law Offices of David S. Karton v. Segreto* (2009) 176 Cal.App.4th 1, 9, 97 Cal. Rptr. 3d 329 [if trial court denies petition to vacate arbitration award, trial court must confirm award and appeal lies from judgment entered in conformity therewith]. If the Court refuses to confirm the award, the denial is appealable. See, *Cinel v. Christopher* (2012) 203 Cal.App.4th 759, 766, 136 Cal. Rptr. 3d 763. [order denying petition to confirm award found to be dismissal and therefore appealable].

TIP: Presuming you use the California Judicial Council Form ADR-106, consider checking all the boxes on in the caption page 1 [ CONFIRM  CORRECT  VACATE] and on paragraph 10 (*check all that apply*) if you are going to challenge the Award. File separate points and authorities

in support of your arguments, along with a declaration with supporting evidence, for each position regarding vacating, correcting or confirming the award.

If an award is confirmed, judgment shall be entered in conformity therewith. The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action of the same jurisdictional classification; and it may be enforced like any other judgment of the court in which it is entered, in an action of the same jurisdictional classification. Cal Code Civ Proc § 1287.4

### WHERE DO I FILE THIS?

Petitions related to arbitration must be filed in the court with jurisdiction over the county where arbitration occurred, or as specified if held outside California. This ensures that the judicial process aligns closely with the geographic context of the arbitration.

Generally, any petition made after the commencement or completion of arbitration shall be filed in a court having jurisdiction in the county where the arbitration is being or has been held, or, if not held exclusively in any one county of California, or if held outside California, then the petition shall be filed as provided in Section 1292 (Code Civ. Proc. § 1292.2). There are some details which may apply at Code of Civil Procedure Sections 1292–1293.2

### COSTS AND FEES:

Costs, including potential attorney fees, are governed by the overarching principles in Title 9 of the Arbitration Act and relevant sections of Title 14, Part 2. The court shall award costs upon any judicial proceeding under this title (meaning Title 9 – Arbitration) as provided in Chapter 6 (commencing with Section 1021) of Title 14 of Part 2 of this code. See Cal Code Civ Proc § 1293.2. Always double check before filing your application to confirm, correct or vacate because Chapter 6 of

Title 14 of Part 2 of the code includes attorney fees for certain types of cases listed between CCP 1021 and 1039.

### CONCLUSION

Discuss these options and get written authority from your client before proceeding. Move swiftly and decisively, ensuring every action aligns with the detailed statutory requirements. Do not forget to consider and discuss settlement after issuance of the Award since confirmation of the award will be a judgment entered in conformity therewith.



**Adam J. Krolikowski, Esq.**, has over 24 years of experience in handling personal injury, employment, and workers’ compensation cases. A seasoned litigator, he is admitted to practice in California state and federal courts, the 9th Circuit Court of Appeals and the U.S. Supreme Court.



**PUBLISHED IN THE WINTER  
2025 OCTLA GAVEL MAGAZINE**