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APPELLATE COURT REVERSES ARBITRATION AWARD BECAUSE ARBITRATOR FAILED TO ALLOW INTRODUCTION OF "MATERIAL EVIDENCE"

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Arbitration has become increasingly common because it is perceived to be a cheaper, less formal and faster method to resolve business disputes. Yet litigants and their lawyers have found ways to introduce into arbitrations many of the same complexities and delays that led to the disillusionment with the courts in the first place. A recent decision of the California Court of Appeal illustrates this trend. In *Burlage v. Superior Court*, the appellate court reversed an arbitrator's award on the ground that the arbitrator had failed to allow one side to introduce evidence that the court considered to be "material" to the case.

Burlage involved the sale of a home adjoining a country club. After the sale closed, the buyers learned that part of the property they thought they had bought actually belonged to the country club. They filed for arbitration pursuant to the purchase agreement, claiming that the seller knew of the problem all along, but fraudulently failed to disclose it. The buyers claimed that if the true facts had been known, the property would have been worth considerably less than they paid. The arbitrator agreed. After hearing twelve days of testimony, the arbitrator awarded the buyers more than \$550,000 in compensatory damages, \$250,000 in punitive damages, and more than \$730,000 in attorneys' fees.

In most circumstances, the arbitrator's decision would have been the final word. As the *Burlage* court acknowledged, an arbitrator's decision normally is not appealable, "even though an error of law appears on the face of an arbitration award and causes substantial injustice." However, the seller argued that the general rule should not apply because the arbitrator had failed to consider "material evidence," namely the fact that a title company had acquired the disputed section of the property on the buyers' behalf before the start of the arbitration. The seller claimed that this entitled her to vacate the arbitrator's award pursuant to Code of Civil Procedure section 1286.2(a)(5), which provides relief from an arbitrator's award if the arbitrator has refused to hear "evidence material to the controversy."

As the dissent in *Burlage* noted, however, the arbitrator had considered and rejected the seller's argument that the title company's acquisition of the property for the buyers should reduce or eliminate the damages the buyers could recover. The arbitrator concluded that such evidence was irrelevant, and therefore inadmissible, because he believed that – as a matter of law – the buyer's damages were fixed at the time of the sale. In other words, he did not believe that the evidence was "material to the controversy." In rejecting the dissent, the majority held that courts may sometimes substitute their own legal conclusions for those of the arbitrator. As a result of the decision, a new arbitration will be required, during which the arbitrator will be required to introduce the evidence that the Court of Appeal has determined to be material.

Conclusion. It remains to be seen whether *Burlage* signals a broad departure from the extremely limited review that California courts have traditionally given to arbitrator's awards. At a minimum, the decision serves as a reminder that arbitration may not provide the advantages that parties to commercial agreements had hoped to obtain.