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INSURANCE PROFESSIONALS, ACCOUNTANTS AND STOCK BROKERS



[Benjamin, Weill & Mazer v. Kors: Arbitrator Must Disclose Business Relationships Which Create an Impression of Possible Bias](#)

Thursday, October 14th, 2010

This [published opinion](#) dated October 12, 2010 addressed the issue of the scope of disclosures required to be made by an arbitrator handling a binding attorney-client fee disputed under the California Arbitration Act. The parties' fee agreement specified that any fee dispute between the parties was to be submitted to binding fee arbitration pursuant to local bar association rules. This provision was given effect after the client waived her right to non-binding fee arbitration under the Mandatory Fee Arbitration Act.

After hearing the evidence, the arbitrator issued an award in favor of the law firm. The client then discovered information about the arbitrator's business relationships and law practice. As it turned out, the arbitrator's law practice focused on the representation of attorneys and law firms engaged in fee disputes and other litigation with former clients. Also, while the arbitration was pending, the arbitrator was representing a large law firm in a case before the California Supreme Court involving an attorney fee dispute. (*Schatz v. Allen Matkins Leck Gamble & Mallory LLP* (2009) 45 Cal.4th 557.)

Because this information had not been disclosed, the client sought to have the award vacated, contending that these facts were "matters that could cause a person aware of the facts to reasonably entertain a doubt that [the] arbitrator would be able to be impartial" within the meaning of Code of Civil Procedure section 1281.9(a). While the Court of Appeal noted that ordinary and insubstantial business dealings arising from participation in the business or legal community do not necessarily require disclosure, it stressed that "to the extent these relationships are substantial and involve financial considerations creating an impression of possible bias, they must be disclosed." Finding that this arbitrator's relationships should have been disclosed, the court vacated the arbitration award.

The decision is *Benjamin, Weill & Mazer v. Kors* (2010) 189 Cal.App.4th 126.