

HOW FINAL ARE ARBITRATION AWARDS?

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The answer may surprise you.

For years, contractual arbitration awards have been subject to limited judicial review. Indeed, under State and Federal law, such awards could be challenged only on the grounds that they were procured by corruption or fraud or because the arbitrators exceeded their powers. Additionally, under Federal law, awards could be challenged on the ground that they were made in manifest disregard of the law, i.e., that the arbitrators knew and understood the law, but ignored it.

This may be changing. Not only have the number of court challenges increased, but several current cases suggest that challenges based on errors of fact or law may become available.

In *Strobel v. Morgan Stanley*, the plaintiff petitioned the U.S. District Court for the Southern District of California to vacate a securities arbitration award that granted her five thousand dollars in damages even though she lost more than a quarter of a million as a result of her brokers' malfeasance. The court reviewed the sufficiency of the evidence and held that the arbitrators manifestly disregarded the law because they failed to recognize the firmly established facts regarding the plaintiff's damages. Because the amount of damages awarded was not rationally related to the amount of damages the plaintiff suffered, the court remanded the matter to the arbitrators with instructions to increase the damages.

In *Cable Connection, Inc. v. DirecTV, Inc.*, currently before the California Supreme Court, the key issue is whether parties to a commercial contract can agree that an arbitration award can be reviewed for errors of fact or law. In this case, the parties agreed that the arbitrators would not "have the power to commit errors of law or legal reasoning." The trial court vacated the award on the ground that the arbitrators exceeded their powers by rewriting the parties' agreement. The appellate court reversed, holding that the arbitrators did not exceed their powers but rather the trial court exceeded its powers by reviewing the award for errors of law and held that the award should be confirmed because the arbitration provision purporting to expand judicial review was unenforceable.

While the California Supreme Court recently heard oral argument in *Cable Connection*, it has not yet issued its opinion. To the extent the Court overrules the appellate court, it will strengthen an apparent movement toward enhanced judicial review of contract

arbitration awards to include review of errors of fact or law. And, if such enhanced review is indeed the trend, then contractual arbitration will likely become less final (and possibly less desirable?) as an alternative to traditional litigation.