

Case No. B220639

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 1**

CHRISTENSEN, GLASER, FINK,
JACOBS, WEIL & SHAPIRO, LLP,
Plaintiff and Respondent,

-vs-

GEORGE GOFF and ESTHER GOFF,
Defendants and Appellants.

Los Angeles Superior Court, Case No. BC 379576
Honorable John A. Kronstadt
Department 30

APPELLANTS' REPLY BRIEF

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INTRODUCTION

The primary issue in this case is whether, pursuant to CCP § 1286.2(a)(4), the arbitration panel exceeded its powers in ruling that the arbitration award was binding, as a result of which the award should be vacated as binding and declared to be nonbinding.

This is an important case because it appears to be a case of first impression with regard to application of the Los Angeles County Bar Association Dispute Resolution Services, Inc. (“DRS”) mandatory attorney fee dispute arbitration rules as they pertain to a determination by an arbitrator as to whether or not the clients and attorneys agreed to binding arbitration under the applicable statutes and rules. The Court may take judicial notice that Los Angeles County is the most populous county in California. Thus, a determination of this issue on appeal will potentially affect the conceivably large volume of mandatory fee dispute arbitrations that flow through DRS, whenever the issue of whether the parties have agreed to binding arbitration arises.

With regard to the primary issue, the Goffs respectfully contend that the panel exceeded its powers in deciding that the award was binding, not because the panel did not have the authority to make a ruling on the issue, but because its decision that a nonbinding arbitration was binding was legally erroneous, being in violation of the applicable section of the mandatory attorney fee dispute arbitration statute (Bus. & Prof. Code § 6204(a)), the applicable arbitration rule (DRS Rule 39) and, concomitantly, the offer and acceptance rules of contract law. An arbitrator’s decision on the issue of whether the parties have agreed to binding arbitration is not a ruling on the merits of the arbitration, with reference to which the decision cannot be judicially reviewed for errors of fact or law (*Moncharsh v. Heily & Blase* (1992) 3 C.4th 1, 10-12), but is a ruling on a structural aspect of the arbitration, with reference to which the decision is subject to independent judicial review (*Trabuco Highlands Community Association v. Head* (2002) 96 C.A.4th 1183, 1190). Moreover, because the parties to a mandatory attorney fee dispute

arbitration have a statutory right to nonbinding arbitration unless the parties have agreed in writing to binding arbitration (Bus. & Prof. Code § 6204(a)), independent judicial review is required because granting finality to the arbitrator's decision on this issue would be inconsistent with the protection of a party's statutory rights. *Pearson Dental Supplies, Inc. v. Superior Court (Turcios)*(2010) 48 C.4th 665, 676-680.

When an arbitrator's decision that is subject to independent judicial review is determined on such review to be erroneous, such decision is *ipso facto* deemed to be in excess of the arbitrator's powers pursuant to CCP § 1286.2(a)(4). *Trabuco* at 1189 fn 8, 1190; *Pearson Dental Supplies, Inc. v. Superior Court (Turcios)* (2010) 48 C.4th 665, 680.

The decision by the arbitration panel in the instant case that the arbitration was binding was erroneous because, pursuant to the rules of contract law pertaining to offer, rejection of offer, and purported later acceptance, the parties did not agree in writing to binding arbitration; thus, the award was in excess of the panel's powers, requiring it to be vacated as a binding award, and declared to be nonbinding. See Appellant's Opening Brief, Arguments II and III.

The award did not become binding by operation of law pursuant to Bus. & Prof. Code § 6203(b) and DRS Rule 40 by reason of the Goffs' not filing a request for a trial de novo within 30 days after being served with the award, because: 1) the Goffs properly followed the printed DRS instructions served on them concurrently with the award, by seeking to have the award vacated pursuant to CCP § 1286.2(a)(4), rather than filing a request for trial de novo; and 2) even if they had filed a request for a trial de novo, they nonetheless would be required to seek an order vacating the award under § 1286.2(a)(4). They would not have been entitled to a new trial unless they prevailed under § 1286.2(a)(4); thus, the filing of a request for trial de novo would have been an idle act, and the law does not require useless acts from litigants as prerequisites to seeking relief from the courts. Civil Code § 3532; *Van Gammeren v. City of Fresno* (1942) 15

CA.2d 235, 239.

Finally, the trial court abused its discretion in excluding from evidence the exhibits to the Second Supplemental Declaration of George Goff on the ground that they were not properly authenticated, because pursuant to the applicable rules of evidence, they were properly authenticated; and a legally erroneous decision is *ipso facto* an abuse of discretion. Whether the Goffs have been prejudiced by the trial court's evidentiary ruling is addressed under Argument V, below.

I. WITH REGARD TO THE PRIMARY ISSUE AS TO WHETHER THE ARBITRATION PANEL EXCEEDED ITS POWERS, THE GOFFS DO NOT CONTEND THAT THE PANEL DID NOT HAVE THE AUTHORITY TO MAKE A RULING ON THE ISSUE OF WHETHER THE ARBITRATION WAS BINDING; BUT RATHER, THAT SUCH A RULING IS SUBJECT TO INDEPENDENT JUDICIAL REVIEW, AND MOREOVER, AN ARBITRATOR'S DECISION THAT A NONBINDING ARBITRATION IS BINDING IS *IPSO FACTO* IN EXCESS OF ITS POWERS.

The Firm's Contentions¹

The Firm contends that the Goffs waived the right to judicial review as to whether the arbitration panel had the power to determine the issue of binding vs. nonbinding arbitration, because, during the arbitration proceeding, they did not object to the panel's deciding that issue. Respondents Brief, Argument A. Concomitantly, the Firm contends that the Goffs failed to properly raise that issue before the trial court, and before this Court, because they do not claim that the panel did not have the power to decide that issue, but merely that the panel's decision on

¹ The Goffs in good faith intend to present the tenor of the Firm's contentions as accurately and fairly as possible, according to their reasonable understanding of those contentions. They apologize to the Firm in advance if their presentation is inadvertently inaccurate or incomplete in any material respect.

the issue was erroneous. Respondents Brief, Argument B.²

In its discussion of the *Moncharsh* line of cases, the Firm appears to contend that the arbitration panel's decision on the issue of whether the arbitration was binding is not judicially reviewable for errors of fact or law; and therefore, even if the panel's decision were factually or legally erroneous, the arbitration award must nonetheless be confirmed. Respondent's Brief, Arguments A, B and C.

The Goffs' Reply³

The Goffs respectfully contend that the panel exceeded its powers in deciding that the award was binding, not because the panel did not have the authority to make a ruling on the

² In Respondent's Brief, there is an innuendo that the Goffs are precluded from making their primary contention on appeal, that the arbitration award should be vacated because the arbitration panel exceeded its powers, on the ground that in the trial court, the Goffs failed to make reference to the statutory authority for vacating an arbitration award on that ground, i.e., CCP 1286.2(a)(4). The Goffs clearly raised the issue below in their Opposition to Motion for Order Confirming Arbitration Award, as noted in Argument I of their Memorandum of Points and Authorities in support of that Opposition: "In Ruling That the Matter Was Subject to Binding Arbitration, the Arbitration Panel Exceeded its Power Because it Violated the Applicable Rules of Arbitration and Contract Law, and Should Have Correctly Ruled That the Arbitration Was Nonbinding." 1 AA 132. The Goffs' failure to cite the statutory authority for that contention does not vitiate the fact that they clearly raised the issue for the trial court's determination. Furthermore, the trial court orally recognized that CCP § 1286.2(a)(4) was the statutory basis for the Goffs' claim that the arbitration panel exceeded its powers. RT (10-2-09) 4:28-5:4. Therefore, the Goffs are entitled to raise the issue on appeal.

³ In addition to the above contentions, the Firm mentions that the Goffs and the Firm signed a retainer agreement which provided that any dispute between them would be resolved by a binding arbitration award before JAMS. Respondent's Brief, p. 8. However, the Firm does not develop this fact into a contention. Respectfully, the Firm's conduct below demonstrates that it intentionally breached that contractual provision because rather than proceeding to have the fee dispute determined by arbitration before JAMS, it filed the instant civil action, and the Goffs diverted the action to fee dispute arbitration before DRS. Respondent's Brief, p. 10. If the Firm had filed an arbitration before JAMS, the Goffs could nonetheless have diverted it to fee dispute arbitration before DRS. However, at the conclusion of the nonbinding DRS arbitration, the case would have been subject to resolution in arbitration before JAMS, had the Firm not waived its right to such arbitration by initially commencing this civil action.

issue, but because: 1) its decision is subject to independent judicial review, and 2) an arbitrator's decision that a nonbinding arbitration is binding is legally erroneous and *ipso facto* in excess of his powers. *Trabuco Highlands Community Association v. Head* (2002) 96 CA.4th 1183, 1189 fn 8, 1190; see *Pearson Dental Supplies, Inc. v. Superior Court (Turcios)* (2010) 48 C.4th 665, 680.

An arbitrator's decision on issues pertaining to the merits of an arbitrated controversy cannot be judicially reviewed for errors of fact or law. *Moncharsh v. Heily & Blase* (1992) 3 C.4th 1, 10-12,⁴ in which the Court held:

“[I]t is the general rule that parties to a private arbitration impliedly agree that the arbitrator's decision will be both binding and final. Indeed, ‘The very essence of the term ‘arbitration’ [in this context] connotes a binding award.’ [at 9] . . .

“Ensuring arbitral finality thus requires that judicial intervention in the arbitration process be minimized. . . . Thus, an arbitration decision is final and conclusive *because the parties have agreed that it be so*. [Emphasis in original.] By ensuring that an arbitrator's decision is final and binding, courts simply assure that the parties receive the benefit of their bargain. . . . Thus, both because it vindicates the intentions of the parties that the award be final, and because an arbitrator is not ordinarily constrained to decide according to the rule of law, it is the general rule that *‘The merits of the controversy between the parties are not subject to judicial review.’* . . . More specifically, courts will not review the validity of the arbitrator's reasoning. . . . Further, a court may not review the sufficiency of the evidence supporting an arbitrator's award.”

⁴ Because the Firm substantially relied on the authority of the *Moncharsh* line of cases in Respondent's Brief, the Goffs feel constrained to comment on the nonapplicability of that authority to the instant case.

“Thus, it is the general rule that, with narrow exceptions, an arbitrator’s decision cannot be reviewed for errors of fact or law.” [at 10-11]. (Emphasis added).

In contradistinction, an arbitrator’s ruling on the issue of whether an arbitration is binding is a decision on a structural aspect of the arbitration (rather than on the merits of the arbitration), with reference to which the decision is subject to independent judicial review. *Trabuco Highlands Community Association v. Head* (2002) 96 C.A.4th 1183.

Trabuco is on point case authority that supports the Goffs’ contentions that an arbitrator’s decision on the issue of whether an arbitration is binding is subject to independent judicial review; and that an arbitrator’s ruling that a nonbinding arbitration is binding is *ipso facto* in excess of his powers. *Trabuco* is the sole California case that addresses these issues. The Firm contends that the Goffs have mischaracterized *Trabuco*. Respondent’s Brief, p. 35.

Respectfully, that contention is invalid. For these reasons, *Trabuco* is worthy of extended discussion.

In *Trabuco*, plaintiff homeowners association brought an action against one of the property owners in the association for assessments owed and various other violations of the CC&Rs. The parties agreed in written correspondence to submit to nonbinding arbitration of those disputes. The arbitrator issued a Binding Arbitration Award Decision. When the association petitioned to confirm the award, the homeowners requested that the court vacate the award on the grounds of fraud and that the arbitrator exceeded his powers by purporting to render a binding award. The homeowners filed declarations to the effect that although there was a conversation during the arbitration about the homeowners’ desire to end the whole dispute and leave it behind them, they never orally agreed to change from nonbinding to binding arbitration. The attorney for the association filed a declaration asserting that at the arbitration hearing, the homeowners had orally agreed to make the arbitration binding.

The arbitrator signed a letter that was lodged with the trial court in which he stated that the arbitration was binding. *Significantly, the decision did not mention that there was any arbitration rule in that case that required an agreement to proceed with binding arbitration to be in writing.* The trial court received no oral testimony. Solely relying on the letter of the arbitrator, and not upon an assessment of the credibility of the competing declarations filed by the parties, the trial court confirmed the binding award.

The appellate court reversed, stating that the trial court might properly have found the arbitration was binding by determining to which of the competing declarations to give credit, but that the court had reached its result by improperly relying solely on the statement of the arbitrator, holding that the case must be reversed and remanded to properly determine whether the homeowners had agreed to binding arbitration.⁵ In so holding, *Trabuco* twice stated that an arbitrator *ipso facto* exceeds his powers if he deems a nonbinding arbitration to be binding.

“The arbitrator certainly exceeded his powers if he deemed a nonbinding arbitration to be binding” [1189, fn 8].

“[T]he trial court abdicated its function to determine whether the arbitrator exceeded his powers in a most fundamental way: by issuing a binding award after the parties agreed only to nonbinding arbitration.” [at 1190].

Trabuco further held:

“In *Moncharsh* . . . our Supreme Court examined the statutory limitation and the policies in favor of arbitration finality and concluded that except for narrow exceptions, an arbitrator’s decision may not be reviewed for factual or legal errors. Nevertheless, the

⁵ The court also noted that the homeowners contended that the problem with the arbitrator’s letter was that it was hearsay. However, the court held that the problem was more fundamental: “Arbitrator testimony concerning the arbitration is expressly prohibited except in circumstances not relevant here. (Evid.Code, § 703.5).” [at 1191].

courts did not abandon all scrutiny of awards. When the issue goes to the integrity of the arbitration process itself, appellate courts have mandated de novo review of an arbitrator's ruling." [at 1189].

"Independent judicial review of whether an arbitration is binding is necessary to preserve the integrity of the arbitration process and the judicial system. The notion that a party should be bound by an arbitration award and precluded from substantive judicial review is premised on the assumption that the parties have *agreed* to such finality. [Emphasis in original]. (*Moncharsh* . . . at pp. 9-11)

"The binding nature of the arbitration sought to be confirmed is a *structural aspect of the arbitration*. With regard to such aspects, the Supreme Court observed in *Moncharsh* . . . at p. 12 . . . , "A . . . reason . . . we tolerate the risk of an erroneous decision [of fact or law by the arbitrator] is because the Legislature has reduced the risk to the parties of such a decision by providing for judicial review in circumstances involving serious problems with the award itself or with the fairness of the arbitration process.

"This protection has caused courts to review carefully whether parties intended to submit to binding arbitration [Citations.]" [Emphasis added].

The distinction between *Trabuco* and the *Moncharsh* line of cases is that the issue for decision by the arbitrator in *Trabuco* was a structural aspect of the arbitration, i.e., whether the parties agreed that it would be binding. The issues for determination by the arbitrators in the *Moncharsh* line of cases, that were not subject to judicial review, were issues involving the merits of the controversy, as differentiated from the binding vs. nonbinding structural aspect of the arbitration.

Before an arbitrator proceeds to a determination of the issues on the merits of the dispute before him, if there is a controversy as to whether the parties agreed to submit their dispute to

binding arbitration, either the arbitrator or the court must make a determination of this structural issue. Although not expressly stated in the opinion, because *Trabuco* holds that an arbitrator's decision on the issue of whether the arbitration is binding is subject to independent judicial review, it implies that the arbitrator has initial authority to make that decision. Judicial review implies a prior arbitration decision.

In addition to the structural aspect/independent judicial review analysis of *Trabuco*, because the parties to a mandatory attorney fee dispute arbitration have a statutory right to nonbinding arbitration unless the parties have agreed in writing to binding arbitration (Bus. & Prof. Code § 6204(a)), independent judicial review is required, because granting finality to the arbitrator's decision on this issue would be inconsistent with the protection of a party's statutory rights. See *Pearson Dental Supplies, Inc. v. Superior Court (Turcios)* (2010) 48 C.4th 665, 676-680.

The mandatory attorney fee dispute arbitration law is set forth in Bus. & Prof. Code §§ 6200-6206. Section 6204(a) provides in material part:

“The parties may agree in writing to be bound by the award of the arbitrators appointed pursuant to this article at any time after the dispute over fees, costs, or both, as arisen. In the absence of such an agreement, either party shall be entitled to a trial after arbitration if sought within 30 days . . . [after service of notice of the award].”

In *Pearson*, a former employee brought an action against the employer for age discrimination under the California Fair Employment and Housing Act (“FEHA”), among other claims. The superior court granted the employer's petition to compel arbitration. The arbitrator made an award for the employer, granting its summary judgment on the ground that the employee's demand for arbitration was barred by the statute of limitations. The Superior Court denied the employer's motion to confirm the award, and granted the employee's motion to vacate

the award. The employer petitioned for a writ of mandate. The Court of Appeal granted the petition. The employee petitioned for review. The Supreme Court held that the arbitrator's decision on the statute of limitations issue was clearly erroneous, and that error was sufficient ground for the trial court to vacate the arbitration award. In reaching this conclusion, the Court reasoned as follows:

“[T]he court [in *Moncharsh*] made clear ‘that in the absence of some limiting clause in the arbitration agreement, the merits of the award, either on questions of fact or of law, may not be reviewed except as provided in the statute.’ . . .

“. . . ‘It is well settled that ‘arbitrators do not exceed their powers merely because they assign an erroneous reason for their decision.’ . . .

“The *Moncharsh* court recognized ‘ that there may be some limited and exceptional circumstances justifying judicial review of the arbitrator’s decision’ such as a when ‘granting finality to an arbitrator’s decision would be inconsistent with the protection of the parties statutory rights.’ . . . Because the issue did not arise in that case, the *Moncharsh* court had no occasion to develop this exception. [at 676].

“It is difficult to imagine a more paradigmatic example of when ‘ granting finality to an arbitrator’s decision would be inconsistent with the protection of a party’s statutory rights . . . than the present case, in which, as a result of allowing the procedural error to stand, through no fault of the employee or his attorney, the employee will be unable to receive a hearing on the merits of his FEHA claim *in any forum*. . . .

“We therefore hold . . . in light of the Legislature’s intent that employees be able to enforce their right to be free of unlawful discrimination under FEHA, *an arbitrator whose legal error* has barred an employee subject to a mandatory arbitration agreement from obtaining a hearing on the merits of the claim based on such right *has exceeded his*

or her powers within the meaning of Code of Civil Procedure section 1286.2, subdivision (a)(4), and the arbitrator's award may properly be vacated." (Emphasis supplied).

Pursuant to the mandatory attorney fee dispute arbitration statute, it is mandatory for an attorney to participate in an arbitration commenced under the statute by his client. Bus. & Prof. Code § 6200(d). However, unless both parties agree in writing to binding arbitration, the arbitration will be nonbinding. Bus. & Prof. Code § 6204(a); DRS Rule 39. The right to require a mandatory fee dispute arbitration to be nonbinding is a statutory right affecting a structural aspect of the arbitration proceeding. Thus, pursuant to *Pearson*, an arbitrator's decision as to whether an arbitration is binding is subject to independent judicial review, and if the decision is found to be erroneous, the arbitrator has exceeded his powers, and his award should be vacated at the behest of the injured party.

The Firm appears to contend for application of a rule that would provide, in effect, that where: 1) the rules of arbitration agreed to by the parties permit the arbitrator to determine whether an issue is within his jurisdiction; 2) the arbitrator determines that the issue of whether the arbitration is binding is within his jurisdiction; 3) the arbitrator thereupon renders a decision on that issue; 4) his decision may not be independently judicially reviewed for factual or legal errors, even if it violates a statutory right in the statute that enables the arbitration, and/or violates the arbitration rules to which the parties agreed.

The Goffs respectfully submit that the rule contended for by the Firm is contrary to the applicable case authority, fundamental fairness, and respectfully, common sense. Such a rule would create a paradox in that before any decision is made as to whether the parties have agreed to binding arbitration, whatever decision the arbitrator makes on that issue must itself be deemed to have binding effect, even before that decision is made. If the arbitrator's decision on that

issue, like his decision on issues involving the merits of the controversy, is not subject to judicial review for factual or legal errors, the arbitrator would be permitted to render a decision in violation of the rules of arbitration agreed to by the parties (such as DRS Rule 39 in the instant case) that cannot be overturned by the courts, such that the parties would be forced to abide by a binding arbitration award, when a decision in accordance with the enabling statute and the rules of arbitration agreed to by the parties would render a contrary result. Such a rule would be contrary to *Trabuco* and *Pearson*, and would also fly in the face of the holding in *Greenspan v. LADT, LLC* (2010) ___ Cal Rptr ___, 2010 WL 2542225 (Cal App 2 Dist) at 13-14: “Arbitrators ‘exceed [] their powers’ (§ 1286.2, subd.(a)(4) by . . . *arbitrarily remaking the contract* . . . [or] when he *acts in a manner not authorized by the contract or by law.*” (Emphasis added).

II. THE TRIAL COURT INCORRECTLY DETERMINED THAT THE GOFFS AGREED TO BINDING ARBITRATION AND COULD NOT WITHDRAW THEREFROM WITHOUT THE FIRM’S WRITTEN CONSENT.

The Firm’s Contentions

Pursuant to DRS Rule 2, the “written agreement” of the parties consisted of 1) the DRS Rules; 2) the Goffs’ petition for arbitration; and 3) the “amended response” of the Firm, thereby forming an agreement in writing between the parties to binding arbitration as required by DRS Rule 39. The arbitration panel correctly ruled that the Goffs’ petition constituted an offer for binding arbitration, the Firm’s “amended response” constituted an acceptance of that offer, and that the Goffs could not revoke their offer once it had been accepted by the Firm.

The trial court’s credibility finding to the effect that the Goffs orally advised the arbitration panel that they would not be willing to proceed with nonbinding arbitration, is in and of itself evidence of the Goffs’ consent to binding arbitration, such that a determination as to whether the Goffs’ statement to the panel constituted waiver, equitable estoppel, or judicial

estoppel is irrelevant.

The Goffs' Reply

Offer and Acceptance Analysis

The Goffs agree with the Firm that pursuant to DRS Rule 2, the "written agreement" of the parties with respect to the arbitration includes the DRS Rules, the client's petition, and the attorney's response.

The Firm's claim that it filed an "amended response" is a crafty maneuver at best, an arguably outright deception at worst. DRS provides pre-printed forms for the client's Petition and the attorney's Response, as well as a separate and distinct pre-printed form for a Stipulation for Binding Arbitration. Attorney Glaser and the Firm, as separate parties respondent, used the pre-printed Response form for filing their joint response, in which they rejected the Goffs' offer for binding arbitration. Thereafter, the Firm signed and filed a Stipulation for Binding Arbitration. The Firm has improperly referred to the Stipulation as its "amended response."⁶ A client's petition, and an attorney's response are unilateral transactions, performed by one side or the other. A stipulation is a bilateral transaction requiring the combined action of both sides. In the instant case, the arbitration panel sent the stipulation for binding arbitration to both sides, requesting that both sides sign and return the stipulation to the panel. See Reuben's letter of August 8, 2008, 1 AA 51-53.

In regard to the bilateral nature of a stipulation, prior to the arbitration panel's sending the stipulation to both sides for signature and filing, DRS advised the Goffs as well as the panel about the stipulation procedure. On July 14, 2008, DRS sent a letter to the Goffs, advising them

⁶ In Respondent's Brief, the Firm cited its initial Response at 1 AA 20, and its purported "amended response" at 1 AA 24. The document at 1 AA 24 is the Stipulation for Binding Arbitration signed and filed in the arbitration by the Firm.

that the arbitration would be nonbinding with the right to proceed with a trial after arbitration; and if at the time of the hearing, or prior to the hearing, all parties to the dispute agree in writing to be bound, the arbitration will become binding. 2 AA 234, 3 AA 355.⁷ On the same day, DRS sent a letter to the arbitration panel that contained instructions about DRS arbitration procedures. 2 AA 237, 3 AA 358.⁸ In capitalized and bold print on pages 2-3, DRS instructed the panel as follows:

PLEASE DO NOT SEND THE AWARD DIRECTLY TO THE PARTIES.

PLEASE NOTE THAT ANY STIPULATION, AGREED TO BY THE PARTIES PRIOR TO THE HEARING, REGARDING THE BINDING OR NON-BINDING NATURE OF THIS ARBITRATION, MUST BE STATED IN THE DECISION AND AWARD. PLEASE INCLUDE ANY SIGNED STIPULATIONS WITH THE DECISION AND AWARD.

Although the panel mentioned in the award that the Firm had accepted the Goffs' offer for binding arbitration, the panel did not mention that the Firm had purportedly done so by unilaterally signing a stipulation for binding arbitration, but that the Goffs had not signed a copy of the same. Moreover, the panel did not include a copy of the stipulation with the award (at least, that appears to be the case, because no copy of the stipulation was served on the Goffs with their copy of the award). In addressing the binding arbitration issue, the award states, in summary:

//

⁷ This document (which the Goffs attached as an exhibit to their filings below) was excluded by the aforesaid October 2 ruling of the Court.

⁸ This document (which the Goffs attached as an exhibit to their filings below) was excluded by the aforesaid October 2 ruling of the Court.

The Goffs agreed to binding arbitration in their initial submission to DRS; the Firm indicated nonbinding arbitration in its initial submission, but then changed its position to elect binding arbitration in agreement with the Goffs. After the Goffs saw that the Firm had also agreed to elect binding arbitration, the Goffs requested that their binding arbitration election be withdrawn. The Firm objected. A determination was made on December 11, 2008, ruling that the original election by the Goffs of binding arbitration was an offer that was accepted by the Firm, and could not be revoked once accepted. 1 AA 59-60.

In addition to the award's offer and acceptance analysis being contrary to the rules of contract law, it mischaracterizes the facts. At no time did the Goffs communicate to the panel a request that their election for binding arbitration be withdrawn. Rather, in response to their receipt of a blank stipulation for binding arbitration from the panel, on September 30, 2008, the Goffs sent an email to Reuben advising that they had decided not to enter into the stipulation. 1 AA 26.

One inference that may be drawn from the panel's failing to mention the firm's unilateral signing of the stipulation in the award is that the panel was simply negligent in not following the DRS instructions. An alternative inference would be that the panel purposefully refrained from following the instructions because it sought to avoid bringing to the attention of DRS the fact that it was proceeding to binding arbitration on the basis of a unilaterally-signed stipulation. Perhaps the panel also noticed that the stipulation as signed by the respondents' side was missing the signature of respondent Patricia Glaser, Esq. As previously noted in Appellants' Opening Brief, the panel's dropping the reference to Patricia Glaser as a party respondent in the caption of the award may be an indication that the panel indeed spotted the absence of Glaser's signature on the stipulation and decided to ignore the problem at that juncture in the proceeding.

For the purpose of the binding arbitration issue, in addition to the aforementioned Rule 2, the relevant DRS rules are Rules 11 and 39. Rule 11 provides that the arbitrator shall determine jurisdiction and shall decline to act if it determines that it lacks jurisdiction. While this may grant the arbitrator power to determine what issues involving the merits of the controversy are subject to arbitral decision, pursuant to *Trabuco* and *Pearson*, under the circumstances of the instant case, it does not give the arbitrator unfettered power to decide the issue of whether the arbitration was binding without independent judicial review.

Moreover, since Rule 39 is as much a part of the parties' written arbitration agreement as is Rule 11, in determining the binding vs. nonbinding issue, the arbitrator is required to comply with the provisions of Rule 39, which provides, in summary:

At any time prior to the actual taking of evidence at the hearing, *the parties* may **agree in writing** to be bound by the award; and once both parties have **agreed** to be bound, neither party can withdraw from the arbitration process without written consent of the other side. (1 AA 157, 170-171)

In using the words "agree" and "agreed," Rule 39 invokes the rules of the law of contracts, including those that pertain to the legal consequence of an offer, the rejection of the offer, and a purported acceptance of the offer thereafter. In its December 11, 2008 decision on the binding arbitration issue (1 AA 31), and in its award (1 AA 59), the arbitration panel referred to the offer and acceptance rules of contract law as being applicable to its determination of the issue.

Pursuant to well-established rules of contract law, once an offeree communicates rejection of an offer, the offer is legally terminated, and the offeree cannot thereafter accept the non-existent offer. *Guzman v. Visalia Community Bank* (1999) 71 C.A.4th 1370-1376.

Therefore, the Firm's purported acceptance of the offer for binding arbitration (contained in the

Goffs' petition) by virtue of the Firm's later-filed unilateral stipulation does not constitute an effective acceptance.

The provision of Rule 39 regarding "once both parties have *agreed* to be bound," never came into effect because the Firm's filing of the stipulation after its original rejection of the offer for binding arbitration was not an effective acceptance. Therefore, it did not form a written agreement (by offer and acceptance) between the parties for binding arbitration.

Credibility Issue

With regard to the credibility of Green's testimony about the Goffs' advising the arbitration panel that they did not want to proceed with nonbinding arbitration, the purported oral response to the panel's oral question at most constitutes an *oral consent* to proceeding with binding arbitration. Rule 39 requires the making of a written agreement as a prerequisite to binding arbitration. Therefore, oral consent by any party is not sufficient.

The Goffs addressed the waiver, equitable estoppel and judicial estoppel issues in their Opening Brief at length, realizing that their purported response to the panel's purported question would have no legal consequence unless the doctrines of waiver, equitable estoppel or judicial estoppel could be applied to that response. However, the Firm has taken the position that those issues are irrelevant, and Respondent's Brief offered no legal discussion of those issues whatsoever. By virtue of its failing to address those issues, and its outright proclamation that they are irrelevant, the Firm should be deemed to have conceded the merit of the Goffs' arguments regarding the same. Moreover, since the Firm has proclaimed those issues to be irrelevant, the Court can elect to spend no further time considering them.

When the Firm originally introduced in the trial court the purported question and answer session between the arbitration panel and the Goffs, the Firm took the position that the Goffs' subject statement constituted a waiver of their right to contend that the arbitration panel erred in

deciding that the arbitration was binding. 1 AA 143, 150. Later, the Firm filed a further memorandum of points and authorities in which it contended that the Goffs' oral statement to the arbitration panel constituted equitable estoppel, rather than waiver. 1 AA 331-332. In its oral statement of decision, the trial court injected the judicial estoppel contention. See RT (10-2-09) 23:13-28:3.

Ultimately, on appeal, the Firm has abandoned its own trial court contentions of waiver and equitable estoppel, and the trial court's contention of judicial estoppel. Did somebody say wild goose chase?

III. ATTORNEY GLASER'S FAILURE TO SIGN THE STIPULATION FOR BINDING ARBITRATION VITIATES ANY CONTRACTUAL EFFECT OF THE STIPULATION AS SIGNED SOLELY BY THE FIRM; AND FURTHERMORE, THE GOFFS DID NOT WAIVE THE RIGHT TO ASSERT THIS CONTENTION BY FAILING TO BRING IT TO THE ATTENTION OF THE ARBITRATION PANEL, AND THEY ARE ENTITLED TO RAISE IT ON APPEAL BECAUSE IT WAS BROUGHT TO THE ATTENTION OF AND FULLY CONSIDERED BY THE TRIAL COURT.

The Firm's Contentions

The Firm contends that the Goffs waived their right to raise the Glaser non-signing issue in court because they failed to raise it before the arbitration panel. Furthermore, even if they are entitled to raise it in court, the trial court properly ruled that Glaser's individual consent to binding arbitration is not required under DRS Rule 39 because: 1) Glaser was not a party to the attorney fee agreement between the Goffs and the Firm, which agreement was the subject of the fee dispute arbitration; and 2) the signature on the stipulation for the client, i.e., "Christensen, Glaser, et al.", constituted a signature on behalf of arbitration respondent the Firm, and by virtue of the "et al.", a signature on behalf arbitration respondent Patricia Glaser, Esq., as well.

Respondent's Brief, Arguments E and F.

The Goffs' Reply

The Goffs concede that they did not raise the issue of Glaser's not signing the stipulation during the arbitration. They further concede that they did not raise the issue in the trial court proceedings until their request for permission to late-file their supplemental memorandum of points and authorities. 2 AA 308. However, they offer the following explanation.

The fact that attorney Glaser's signature was missing from the stipulation was not obvious at first blush, especially because a careful study of the signatures on the stipulation did not appear to be necessary at that juncture, in that the Goffs felt that their declining to sign the stipulation made the document legally ineffective. This was pointed out in Mr. Goff's letter to arbitration panel chairman, Reuben, dated October 1, 2008. 1 AA 254 (by inadvertence, this was erroneously cited as AA 251, rather than AA 254, in Appellants' Opening Brief). Furthermore, in his October 1 letter, Mr. Goff requested permission to be allowed to fully brief the issue if Reuben gave credence to respondents' position that the arbitration was binding. On December 11, 2008, the panel gave notice in a letter that it had ruled that the arbitration was binding (1 AA 331), without having given the Goffs an opportunity to fully brief the issue as they requested.

Moreover, even when the Goffs were prompted to search for alternative grounds of sustaining their position that the arbitration was nonbinding, after the Firm introduced in the trial court the purported waiver issue, it took a modicum of time in sifting through the record before it occurred to the Goffs that Glaser's signature was missing, which is the reason they were tardy in raising the issue below.

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In Appellants' Opening Brief, they diplomatically refrained from affirmatively asserting that the absence of Glaser's signature on the stipulation was a purposeful ploy by respondents during the arbitration. They merely observed that it was either negligent or intentional. Frankly, however, they do believe that it was a craftily-camouflaged intentional maneuver on the part of respondents. In addition to the Goffs' contention regarding the lack of veracity of attorney Green's testimony before the trial court (which although it is not an issue on appeal, is still a consideration of the Goffs)⁹, in Respondent's Brief, the Firm has displayed a penchant for taking

⁹ During the summation arguments following the presentation of testimony on September 22, 2008, Mr. Green argued, amongst other things:

"This is classic who you believe. There's no motive here. I take my oath very seriously as a member of the Bar. There is no reason why I would come to this courtroom and raise my hand to tell the truth. . . . Your Honor is going to have to just make a decision. And I would submit I don't have a motive, and they do." RT (9-23-09) 60:8-62:22.

Later the Goffs' attorney argued:

"I take issue with my esteemed colleague saying you should believe him essentially because he is a member of the Bar and doesn't have any motive to lie. He's representing clients. He has a motive to win for them. To say that attorneys would never lie is a falsehood. I say that after 45 years of being a lawyer having seen a lot of attorneys lie in declarations and lie orally --" RT (9-23-09) 63:15-23.

During the trial court's recitation of its oral statement of decision, in regard to the credibility issue, the court observed:

"In argument following the presentation of evidence, essentially each side suggested or stated expressly that the other was lying here in the courtroom with respect to what had occurred at the arbitration. . . . I don't think Mr. Green was lying. I'm a little . . . as I expressed at that time, I was somewhat surprised that the argument was made that Mr. Green would commit perjury in a court in that it would present extraordinary risk to him as a practicing attorney." RT(10-2-09) 14:11-22.

The court's aversion to entertaining the thought that a practicing attorney would lie in open court under oath suggests a predisposition to assess the testimony of a practicing attorney by a different standard from the testimony of witnesses who are not practicing attorneys. In his comments during oral argument, Mr. Green was quick to exploit the possibility of this predisposition in proclaiming that he was a member of the Bar who took his oath seriously!

The Goffs repeat that because of the rules of appellate review of findings of fact by trial courts, they are not contesting the trial court's ruling as to Mr. Green's credibility. They have included the above information from the record solely to support the reasonableness of their surmise that the non-signature of Glaser on the stipulation was not a mistake, but an artful design on the part of the Firm.

improper liberties with the record, for example: 1) it improperly called the Firm's filing of the stipulation for binding arbitration an "amended response" (Respondent's Brief, pp. 1, 11); and 2) it contended that the Goffs relied solely on Advisory Opinion 08-01 to support their contention that the parties had not agreed to binding arbitration (Respondent's Brief, p. 41), when in fact the Goffs only secondarily relied on the Advisory Opinion, but primarily relied upon DRS Rule 39 and the case law regarding the rules of offer and acceptance, as well as citing Bus. & Prof. Code § 6204(a). Appellant's Opening Brief, Arguments II and III. The Firm also chose to distort the record with a partial truth when it mentioned at the outset of its factual recitation that Mr. Goff is an attorney that has practiced law both as a criminal prosecutor and in private practice, representing clients in real estate transactional matters. Respondent's Brief, p. 7. However, it significantly omitted that he commenced active practice in 1974 and concluded it in or around 1983, and that his license with the State Bar is inactive. RT (9-23-09) 40:19-42:5. All of these circumstances lead the Goffs to believe that it is more probable than not that the Glaser non-signature was by intentional design.

"No one can take advantage of his own wrong." Civil Code § 3517. If as the Goffs reasonably suspect, the Firm buried the issue of Glaser's non-signature, to bring it to light only if they lost the arbitration, it should not be allowed to take advantage of its own wrong by preventing the Goffs from addressing the issue in this appeal. In this regard, in support of their now-abandoned waiver argument, the Firm relied on the following authority against the Goffs (1 AA 143, 150): *JC Gury Co.v. Nippon Carbide Industries, Inc.* (2007) 152 C.A.4th 1300, 1306:

"It would seem . . . intolerable to permit a party to play fast and loose with the administration of justice by deliberately standing by without making an objection of which he is aware and thereby *permitting the proceedings to go to a conclusion which he may acquiesce in, if favorable, and which he may avoid, if not.*" (Emphasis added).

Although the above quote refers to withholding an objection, its tenor fairly captures the Goffs' sentiments with respect to the Firm's suspected ploy of withholding Glaser's signature from the stipulation. Under the circumstances, the Goffs respectfully request that they be excused from not bringing the Glaser issue to the attention of the arbitration panel.

Although the trial court correctly stated that Glaser was not a party to the fee agreement between the Goffs and the Firm, she was a party respondent to the arbitration proceeding with a definite stake in the outcome, because if the panel were to award a refund to the Goffs, Glaser's license to practice law was subject to being put on temporary inactive status until the refund was paid.

Glaser's position as a party respondent in the arbitration was initiated in the Goffs' petition before DRS, wherein she was specifically named as the "individual Attorney," and Christensen, Glaser, Fink, Jacobs, Weil & Shapiro was named as the "Law Firm." 1 AA 34. In the response of the attorneys in the arbitration (1 AA 20), they listed the "respondent" in the following form: "RESPONDENT: Patricia Glaser, Esq.

Christensen, Glaser, et al."

The Firm's contention that the verbiage under the client's signature line in the stipulation in the form of "Christensen, Glaser, et al." denoted a signature line for both Patricia Glaser individually as well as the Firm is refuted by the above-quoted format in which the attorneys appeared as parties respondent in their response. In that format, Glaser's name appeared twice, once with her surname as an individual attorney, with the suffix "Esq." following it, and then a second time as the second surname in the name of the Firm, with the abbreviation "et al." following "Glaser" to denote the balance of the surnames in the title of the Firm. On the stipulation (1 AA 24), the name "Patricia Glaser, Esq." is omitted; only "Christensen, Glaser, et al." is included, being the exact same form in which the Firm, as differentiated from Patricia

Glaser, was identified in the attorneys' response.

With regard to the Firm's contention that the Goffs are precluded from raising the Glaser issue on appeal because they did not address it to the trial court, they respectfully contend as follows:

The Goffs incorporate by reference their above comments with respect to why they did not raise this issue before the arbitration panel. The Goffs in fact raised the issue both in writing in their supplemental brief (2 AA 308), and in oral argument at the October 2 hearing. Although the court below struck the supplemental brief as being late-filed, it stated that it had read and considered its contents, and addressed the arguments therein in the court's ruling with respect to the Glaser issue in its oral statement of decision rendered on October 2. RT (10-2-09) 20:22-26, 25:17-21. Furthermore, Respondent's Brief summarizes the court's reasoning on the issue on pages 46-47, giving the RT references. Clearly, the Glaser issue was sufficiently raised before the trial court and fully considered by the court in its oral statement of decision. Therefore, it should be permitted to be raised in this appeal.

IV. THE AWARD DID NOT BECOME BINDING BY REASON OF THE GOFFS' FAILURE TO FILE A REJECTION OF THE AWARD AND A REQUEST FOR TRIAL DE NOVO WITHIN 30 DAYS AFTER SERVICE OF THE AWARD.

The Firm's Contentions

The Goffs seem to invest talismanic effect in the arbitrator's characterization of the award as binding. If the award was nonbinding as contended by the Goffs, the designation by the arbitration panel in the award that it was binding was erroneous, and the Goffs' *remedy* was to invoke the plain language of the statute and DRS rules requiring that they request a trial within the 30 day period. The Goffs seem to have adopted both of these mutually exclusive hypotheses, treating the award as *binding for remedial purposes, but nonbinding in substance*.

The Goffs have never offered a cogent response to the Firm's argument and the trial court's judgment that the Goffs' objection to the award was lost through their failure to request a trial.

The arbitrator's recital that the award was binding, if erroneous, did not alter the substance of the award, and did not permit the Goffs to sleep on their right to request a trial in the absence of a written agreement for binding arbitration. Since the Goffs contend there was no such agreement, their *remedy* was to request a trial.

The Goffs' Reply

Assuming the award was legally nonbinding because the parties had not agreed in writing to binding arbitration, the award did not become binding by operation of law pursuant to Bus. & Prof. Code § 6203(b) and DRS Rule 40 by reason of the Goffs' not filing a request for a trial de novo within 30 days after being served with the award, because: 1) the Goffs properly followed the printed DRS instructions served on them concurrently with the award by seeking to have the award vacated pursuant to CCP § 1286.2(a)(4), rather than filing a request for trial de novo (see Appellants' Opening Brief, pp. 33-34); and 2) even if they had filed a request for a trial de novo, they nonetheless would be required to seek an order vacating the award under § 1286.2(a)(4). They would not have been entitled to a new trial unless they prevailed under § 1286.2(a)(4). Thus, the filing of a request for trial de novo would have been an idle act, and the law does not require useless acts from litigants as prerequisites to seeking relief from the courts. Civil Code § 3532; *Van Gammeren v. City of Fresno* (1942) 15 C.A.2d 235, 239.

The Firm contends that the Goffs have given "talismanic effect" to the statement in the award that the matter was subject to binding arbitration. Respectfully, the Goffs gave the effect to that designation in the award that they were instructed to do by the printed instructions attached to the award as served upon them by DRS. 1 AA 59-80. The instructions plainly stated

that to understand their rights following the award, they must first determine whether it was binding or nonbinding, and that would be stated in the award; and that if the award declared itself to be binding, there was no appeal and no new trial after a binding award, but it was nonetheless subject to being vacated, but only on the limited grounds set forth in CCP § 1286.2.

The Firm contends that notwithstanding those instructions, since the Goffs' claim that in substance the award was nonbinding, despite the alleged erroneous statement by the panel that it was binding, the Goffs' "remedy" was to file a rejection of the award and a request for a trial de novo within 30 days after being served with the award, pursuant to Rule 40 and Bus. & Prof. Code § 6204(a).

Surely the Firm jests in referring to such a filing as the Goffs' "remedy." Had the Goffs filed a timely request for trial de novo and not a timely request that the award be vacated on the ground that the arbitration panel had exceeded its powers, the Firm would no doubt have argued that the Goffs had waived their right to obtain an order vacating the award pursuant to CCP § 1286.2, because the award plainly declared itself to be binding based on a ruling by the arbitration panel, and that unless the Goffs obtained an order vacating the award, they would not be entitled to proceed with their "remedy" of a new trial pursuant to their timely-filed request therefore. Thus, it would not be unfair to state that the tenor of the Firm's argument is that to preserve the right to ultimately obtain a new trial, the Goffs were required to timely file a request for a new trial, *and also* a request that the award be vacated on the ground that the arbitration panel exceeded its powers.

If the timely filing of a request for a new trial were a true "remedy," the Goffs would not be required to also file a request to vacate the award. The truth is that their timely filing of a request for a new trial is not a remedy. As already noted, it is merely an idle act; and the law does not require a party to perform useless acts as a prerequisite to seeking judicial relief.

Although the Firm accuses the Goffs of exalting form over substance, as is often the case, the accuser, rather than the accused, is the one guilty of the infraction. There is a maxim of jurisprudence that “the law respects form less than substance.” Civil Code § 3528. The procedural substance of the instant situation is that the Goffs are only entitled to a new trial if the arbitration award, which proclaimed itself to be binding pursuant to a ruling of the arbitration panel, is vacated by order of court under CCP 1286.2(a)(4), because in so ruling, the panel exceeded its powers.

The Goffs have properly proceeded in substance to obtain such an order by pursuing the instant proceeding. The Firm’s attempt to require the Goffs to perform the useless act of timely requesting a trial de novo is nothing but an attempt to exalt form over substance, which the law does not respect.

V. THE TRIAL COURT SHOULD BE REVERSED WITH RESPECT TO ITS RULING EXCLUDING EXHIBITS ON THE GROUND THAT THEY WERE NOT PROPERLY AUTHENTICATED, BUT ONLY AS TO SUCH EXHIBITS, IF ANY, THE EXCLUSION OF WHICH THIS COURT DETERMINES WAS PREJUDICIAL TO THE GOFFS.

The Firm’s Contention

The trial court is not subject to reversal as to its order excluding from evidence the exhibits to the Second Supplemental Declaration of George Goff because the Goffs’ failed to show that the trial court abused its discretion in making the ruling and how that ruling prejudiced them. Furthermore, the Goffs’ opening brief waives any contention of prejudice because it acknowledges that “[t]he authentication issue is minor, because its determination will not affect this court’s decision as to whether the judgment should be reversed.”

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The Goffs' Reply

When a trial court's decision rests on an error of law that decision is *ipso facto* an abuse of discretion. See, e.g., *Pfizer Inc. v. Superior Court (Galfano)* (2010) 182 C.A.4th 662, 629.

Authentication of a writing means (a) introduction of evidence that is sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is, or (b) the establishment of such facts by any other means provided by law. Evidence Code § 1400. There is no magic formula as to what evidence must be presented to establish authentication according to the above definition. The Goffs respectfully submit that the evidence they presented constituted sufficient evidence to prove that the exhibits were what the Goffs claimed they were. See Appellants' Opening Brief, pp. 34-36. There were two groups of exhibits offered. The purpose of the Exhibit 4 documents (arbitration correspondence and filings) was to assist the trial court by giving it all relevant arbitration correspondence and arbitration filings in chronological order. The purpose of the Exhibit 5 documents (correspondence between Goff and members of the Firm, plus the modification to fee agreement which was the subject of the merits of the arbitration controversy) was merely to demonstrate that the Goffs had a legitimate argument that the arbitration panel had reached an erroneous result on the merits of the arbitrated controversy, such that the trial court would not feel that allowing a trial *de novo* would engender an abuse of judicial resources.

During the colloquy between counsel and the trial court on the authentication issue, the court remarked that although it had stricken everything that was late-filed other than the declaration verbiage of Mr. Goff, it had read and addressed every word of what was stricken. RT (10-2-09)20:22-26. When the Goffs' attorney requested leave to file a supplemental declaration to shore up any problems in the language used to authenticate the exhibits, the court responded, in summary: It entertained the notion that many of the exhibits may be self-authenticating

documents. As to at least some of the documents, their authentication by Mr. Goff would have been rather seamless [meaningless?]. In the court's review of Mr. Goff's declaration, and some of the documents, he did not assume that they had been fabricated, but thought they probably were authenticatable. However, granting leave to shore up the authentication would not be fruitful because admitting the exhibits into evidence would not change the court's assessment. RT (10-2-09) 31:4-33:5.

Of the myriad excluded exhibits attached to the Second Supplemental Declaration of George Goff, only the following were referred to by the Goffs in their Opening or Reply Briefs:

Appellants' Opening Brief

Letter from DRS to Glaser, dated March 10, 2008, at p. 11.

Letter from Green to Reuben, dated September 30, 2008, at p. 12.

Letter From Goff to Reuben, dated October 1, 2008, at p. 12.

Appellants' Reply Brief

Letter from DRS to Goff, dated July 14, 2008, at p. 14.

Letter from DRS to arbitration panel, dated July 14, 2008, at p. 14.

Letter from Goff to Reuben, dated October 1, 2008, at p. 19.

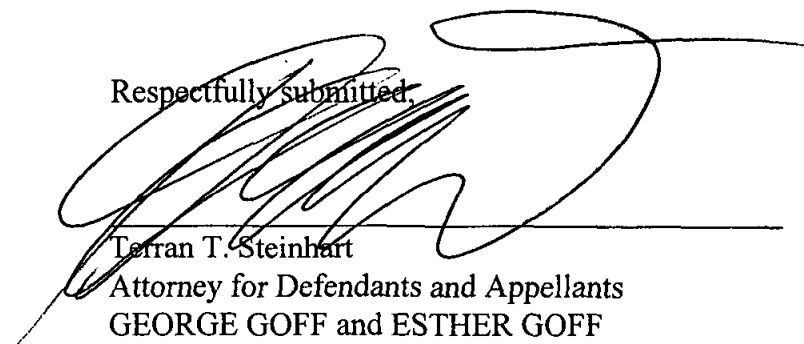
The Goffs have referred to those five exhibits in their Briefs because they felt that the information contained in them was a significant part of the factual scenario that this Court should consider in making its legal analysis. If after reviewing these documents, this Court agrees that the information in any of them is significant to the Court's legal analysis, then the Goffs respectfully submit that the exclusion of each such exhibit is prejudicial to the Goffs.

CONCLUSION

For all of the reasons set forth above, the judgment appealed from should be reversed with instructions that the Court below should enter a new judgment to the effect that the

arbitration Panel exceeded its powers in ruling that the arbitration Award was binding, that the arbitration Award was non-binding, and grant the Goffs 30 days from notice of the new judgment to file a rejection of the non-binding award and request for a trial *de novo* before the Superior Court.

Respectfully submitted,

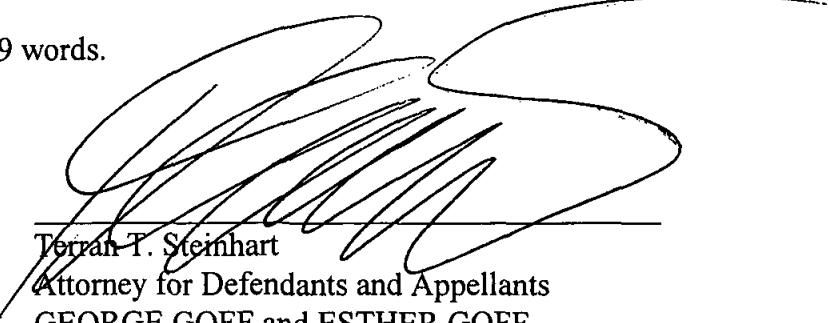


Terran T. Steinhart
Attorney for Defendants and Appellants
GEORGE GOFF and ESTHER GOFF

ATTORNEY'S CERTIFICATE OF COMPLIANCE WITH CRC 8.204(c)(1)

Counsel for defendants and appellants hereby certifies that the number of words in
APPELLANTS' REPLY BRIEF is 9,479 words.

Date: July 14, 2010



Terran T. Steinhart
Attorney for Defendants and Appellants
GEORGE GOFF and ESTHER GOFF

PROOF OF SERVICE BY MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 4311 Wilshire Boulevard, Suite 520, Los Angeles, California 90010-3717, which is located in the county where the mailing described below took place.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

On the date set forth below, at the aforesaid place of business, one copy each of the document described as **APPELLANTS' REPLY BRIEF** was placed for deposit in the United States Postal Service in a sealed envelope, with postage fully pre-paid, addressed as set forth in the attached Service List to opposing counsel and the Superior Court judge care of the court clerk, and four copies to the California Supreme Court per said Service List; and said envelopes were placed for collection and mailing on said date following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 15, 2010 at Los Angeles, California.


Thomas R. Steinhart

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926\Appellants' Reply Brief