

ARBITRATION ADVISORY

2014-01

THE AMENDMENT OR SUPPLEMENTATION OF ARBITRATION AWARDS

Replaces and Supersedes Arbitration Advisories 2000-01 and 2003-02

July 25, 2014

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INTRODUCTION

This Arbitration Advisory discusses whether or not an arbitrator has the authority to either amend or supplement a previously served arbitration award under the auspices of the Attorney-Client Mandatory Fee Arbitration Program.¹ This Advisory is applicable both to the State Bar's own program and to local programs, whether or not the arbitrators in those local programs are required to deliver their arbitration awards to the program for subsequent service on the parties or are required to serve their awards directly on the parties.

The basic rule is that an arbitrator may, upon written application by a party to the arbitration, correct the award upon either of the grounds set forth in Code of Civil Procedure section 1286.6, subdivisions (a) and (c). These subdivisions authorize correcting an award where there has been a miscalculation of amounts, an evident mistake in the description of any person, property, or thing referred to in the award, or where there is a defect in the form of the award that does not affect the merits of the controversy.

A court may "correct" an arbitration award for an evident miscalculation of figures, and not to add additional remedies. On application for review, however, a court must either confirm the award, correct and confirm it, vacate the award, or dismiss the proceeding. It has no other jurisdiction with respect to the award.

¹The procedure for "correcting" awards (e.g. mathematical errors, etc.) is governed by CCP §1286.6; see page 3 of this Advisory.

DISCUSSION

The question arises as to whether or not an arbitrator may amend or supplement a previously submitted or issued award in a mandatory fee arbitration proceeding. Business and Professions Code section 6200 *et seq.* is silent on the issue of amending or supplementing an award. The Business and Professions Code does, however, incorporate the provisions of Code of Civil Procedure section 1280 *et seq.* as they pertain to judicial confirmation, correction, or vacation of an arbitration award. The Rules of Procedure for Fee Arbitrations and the Enforcement of Awards by the State Bar indicate that, except as those Rules may otherwise provide, Business and Professions Code section 6200 and Code of Civil Procedure section 1280 *et seq.* govern arbitration procedures under the Mandatory Fee Arbitration umbrella.

Under CCP § 1286, the Court of Appeal held that, once a petition to confirm, correct or vacate an award is filed, the court has only four options: (1) confirm the award; (2) correct the award and confirm as corrected; (3) vacate the award; (4) dismiss the proceedings. Here, the trial court should have confirmed the award after it had declined to correct it. (*Karton v. Segreto*, (2009) 176 Cal. App. 4th 1.) Had the court confirmed the original award, the attorney would have been precluded from seeking to amend it, since amendments are precluded after judicial confirmation. The appellate court held that the trial court was right in declining to correct the award by adding interest, since its jurisdiction was limited to correcting a mathematical error, and it could not add the interest the attorney sought. Further, neither party was entitled to attorney fees, since neither initially sought the right remedy.

A Second District Court of Appeal case, not in the fee arbitration area but relating to contractual arbitration, entitled A.M. Classic Construction, Inc. vs. Tri-Build Development Company (1999) 70 Cal.App.4th 1470, held that an arbitrator was permitted to amend an award to determine an issue the arbitrator had inadvertently neglected to initially decide. The decision does not set forth whether a binding or non-binding award was at issue.

TIME CONSIDERATIONS

Subsequent decisions since A.M. Classic have concerned themselves with the time frame permitted for amending or supplementing an arbitration award. The Court in A.M. Classic did not set forth any time frame or restrictions on amendments or supplementations. In Century City Medical Plaza vs. Sperling, Issacs, & Eisenberg (2001) 86 Cal.App.4th 865, the Second District Court of Appeal followed the decision in A.M. Classic but added an additional condition: Century City determined that an amended or supplemental award must be requested and acted upon within the time frame allowed for the correction of an award by any applicable statute or any controlling rules applicable to the particular arbitration at issue. The Court acknowledged

that this was not a condition originally set forth in A.M. Classic, but Century City determined such a condition would necessarily be required. The Court went on to state that an amended or supplemented award should not enjoy “more generous temporal restrictions than those provided for expressly authorized corrections or modifications under CCP Section 1284...” [Century City Medical Plaza, at page 881, footnote 25].

A subsequent case, Delany vs. Dahl (2002) 99 Cal.App.4th 647 issued by the Fourth District Court of Appeal, utilized the same legal analysis set forth in A.M. Classic but held that an arbitrator may amend or supplement an award at any time prior to judicial confirmation of the arbitration award. The Court recognized the decision in Century City, but determined that its time constraints contradict the policies set forth in the Moncharsh decision and subsequent decisions which promote the finality of, and the limited judicial intervention in, the arbitration process. Delany held that it would be a waste of the parties’ time and money to artificially set a time frame for amending or supplementing an arbitration award when it is inadvertently incomplete and can be corrected without substantial prejudice to the legitimate interests of a party. “To deny arbitrators the authority to complete their tasks under such circumstances elevates form over substance” [citing A.M. Classic, *supra*, 70 Cal.App.4th at 1478]. The Court of Appeal therefore concluded that there is no compelling reason to prohibit an amendment or supplementation of a fee arbitration award at any time prior to judicial confirmation of the award.

CONCLUSION

Predicated upon the reasoning and the decision in Delaney, *supra*, which incorporates the findings of the A.M. Classic decision, an arbitrator may amend or supplement an award within the limitations set forth in this advisory and in the relevant case law at any time prior to judicial confirmation. It is recommended, however, that if such an amendment or supplementation is going to be issued, the arbitrator should do so at the earliest possible opportunity so as to alert the parties to the arbitrator’s intentions.