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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

PRITPAUL S. SAPPAL.

Plaintiff and Appellant,

v.

BUSINESS INVESTMENT
MANAGEMENT et al.,

Defendants and Respondents.

A128699

(Alameda County
Super. Ct. No. RG08395796)

Pritpaul S. Sappal (Sappal), appearing in propria persona, appeals the trial court's order confirming an arbitration award in favor of defendants Business Investment Management and others. We affirm.

BACKGROUND

In June 2008, Sappal filed a complaint against Business Investment Management and its agents, Victor Safyan, a real estate agent, and Josef Olshanetsky, Safyan's supervising real estate broker (collectively, BIM), stating causes of action for fraud and deceit, negligent misrepresentation, conversion and intentional infliction of emotional distress. In the complaint, Sappal alleged BIM agreed to act as the listing agent for the sale of his garage, pursuant to a listing agreement signed by the parties in March 2000.¹

¹ The Listing Agreement, attached to the complaint as Exhibit 1, contains a binding arbitration clause, which states: "In the event of dispute over the performance of this agreement, the parties shall mutually select an arbitrator who shall decide the matter as provided by C.C.P. Section 1280, et seq., with reasonable attorney fees to the prevailing party."

BIM finalized the sale of Sappal's garage to a buyer for the sum of \$175,000 in June 2000. In October 2004, the buyer sued Sappal, alleging Sappal misrepresented the value of the business at the time of the sale and did not inform buyer of outstanding Health and Safety Code violations on the site. Sappal settled the suit and paid the buyer \$530,000 in damages.

Sappal further alleged that BIM misrepresented the value of the business to the buyer, failed to make relevant financial disclosures to buyer, and failed to advise Sappal that he was required to disclose outstanding code violations to the buyer. Sappal sought the return of the \$17,500 in broker fees he paid to BIM, as well as general and consequential damages, punitive damages, costs and attorney fees.

The matter was referred to arbitration before JAMS arbitrator, the Hon. Robert B. Yonts (Ret.).² In January 2010, Arbitrator Yonts issued an order granting BIM's motion for summary judgment concluding the causes of action alleged by Sappal were barred under the applicable statutes of limitations. Sappal requested reconsideration of the arbitrator's summary judgment order, arguing he did not discover the fraud until buyer filed the fifth amended complaint in August 2007, and that the arbitrator's ruling did not encompass all causes of action. The arbitrator denied reconsideration, finding that Sappal was on notice of BIM's potential fraud and misrepresentation when the buyer filed suit and concluding the summary judgment ruling disposed of all causes of action. In February 2010, the arbitrator issued a final arbitration award, granting summary judgment in favor of BIM and awarding BIM costs and attorney fees in the total sum of \$134,134.

BIM then filed a petition to confirm the arbitration award in Superior Court. Sappal opposed confirmation, contending the award should be vacated because the arbitrator failed to render a decision on each of his claims. He also asserted the arbitrator exceeded his powers by awarding attorney fees pursuant to the arbitration clause in the

² There is no transcript of the arbitration proceedings in the appellate record.

listing agreement, rather than deciding the issue under the arbitration clause in the purchase contract, which did not provide for attorney fees to the prevailing party.

Sappal appeared, representing himself in propria persona, at the hearing on the petition to confirm arbitration award on April 16, 2010. Sappal has not provided us with a reporter's transcript of that hearing as part of the record on appeal. Following the hearing, the trial court entered a Judgment Confirming Contractual Arbitration Award (judgment) according to the terms of the final arbitration award. In addition, the judgment granted BIM \$1,440 in costs and attorney fees in connection with the petition to confirm arbitration award, as well as prejudgment interest on the arbitration award. Sappal filed a notice of appeal on June 1, 2010.

DISCUSSION

In *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, our Supreme Court made it clear that the grounds for judicial review of a contractual arbitration award are extremely limited. Under *Moncharsh*, we cannot review the merits of the underlying controversy, the arbitrator's reasoning, or the sufficiency of the evidence supporting the award. (See *id.* at p. 11.) Even "an error of law appear[ing] on the face of the award causing substantial injustice" does not provide grounds for judicial review. (*Id.* at p. 28.) The only grounds for challenging an arbitration award are those described in Code of Civil Procedure sections 1286.2 and 1286.6.³ (See *Moncharsh, supra*, 3 Cal.4th at p. 33.)

Here, Sappal contends that the trial court should have vacated the arbitration award on grounds specified in 1286.2, namely his rights were "were substantially prejudiced by misconduct of a neutral arbitrator" (§ 1286.2, subd. (a)(3)), and the arbitrator exceeded his powers. (§ 1286.2, subd. (a)(4)). We discuss Sappal's contentions below and conclude they are meritless.

Sappal asserts misconduct on the grounds that "[t]he White Arbitrator was favorably disposed towards the white defendants and their attorney and was prejudiced

³ Further statutory references are to the Code of Civil Procedure unless otherwise noted. Sappal claims do not invoke section 1286.6, which authorizes the court to "correct the award and confirm it as corrected" on certain grounds. (See § 1286.6)

against the colored claimant.” Essentially, Sappal bases this claim on the fact that the arbitrator denied his motion for reconsideration of the arbitrator’s summary judgment ruling.⁴ “Bias is defined as a mental predilection or prejudice; a leaning of the mind; ‘a predisposition to decide a cause or an issue in a certain way, which does not leave the mind perfectly open to conviction.’ [Citation.] Bias or prejudice consists of a ‘mental attitude or disposition of the judge towards a party to the litigation[.]’ [Citation.]” (*Pacific Etc. Conference of United Methodist Church v. Superior Court* (1978) 82 Cal.App.3d 72, 86.) However, a party cannot premise a claim of bias on a judge’s statements made in his official capacity (*Jack Farenbaugh & Son v. Belmont Construction, Inc.* (1987) 194 Cal.App.3d 1023, 1031), or a judge’s substantive opinion on the evidence (*Kreling v. Superior Court* (1944) 25 Cal.2d 305, 312), or the judge’s ruling, even if the ruling is erroneous, (*McEwen v. Occidental Life Ins. Co.* (1916) 172 Cal. 6, 11). Here, the arbitrator’s denial of Sappal’s motion for reconsideration did not evidence a predisposition to resolve the underlying dispute in BIM’s favor and Sappal does not provide any other basis for his assertion of bias. Thus, we reject Sappal’s claim that the award should be vacated for arbitrator misconduct.

Sappal also asserts the attorney fee award was in excess of the arbitrator’s powers because the arbitration clause set forth in the purchase contract does not provide for attorney fees to a prevailing party. However Sappal’s claims against BIM were based on

⁴ In purported evidentiary support of his claim, Sappal cites to Exhibits 1-6, which he has attached to his opening brief. These same six Exhibits are the subject of Sappal’s motion to augment the record (filed April 8, 2011), opposed by BIM (opposition filed April 25, 2011), which was deferred to the decision of the appeal on its merits by order of this court filed on April 28, 2011. Exhibit 4 is the trial court’s order, dated April 16, 2010, granting BIM’s petition to confirm arbitration award. On the other hand, Exhibits 1-3 and 5-6 are emails and documents from the arbitration proceeding, and there is no evidence these exhibits were before the trial court. Accordingly, Sappal’s motion to augment the record is granted with respect to Exhibit 4, and denied with respect to Exhibits 1-3 and 5-6. (See Cal. Rules of Court, rule 8.155 (a) (1)(A); see also *DeYoung v. Del Mar Thoroughbred Club* (1984) 159 Cal.App.3d 858, 863, fn.3 [augmentation rule “does not contemplate the reviewing court should take original evidence to reverse a judgment (citation) and is not available where there is no good cause shown for the unavailability of the evidence below”].)

the Listing Agreement and he attached a copy of the Agreement to the complaint as Exhibit 1. The arbitration clause in the Listing Agreement authorizes the arbitrator to award “reasonable attorney fees to the prevailing party.” Moreover, in its motion to compel arbitration, BIM identified the arbitration clause in the Listing Agreement as a basis for its motion to compel arbitration, in compliance with California Rules of Court, rule 3.1330. Because the Listing Agreement provides for an award of attorney’s fees, the arbitrator did not exceed his powers in awarding attorney fees.

Last, Sappal also contends that the award is subject to vacation because the arbitrator failed to decide all issues submitted to him. In reviewing such a claim, “it is presumed that all issues submitted for decision have been passed on and resolved, and the burden of proving otherwise is upon the party challenging the award.” (*Rodrigues v. Keller* (1980) 113 Cal.App.3d 838, 842-843.) Moreover, “the failure of an arbitrator to make a finding on even an express claim does not invalidate the award, so long as the award ‘serves to settle the entire controversy’ (Citation.)” . . . Thus, “[a] decision simply that one of the parties should pay the other a sum of money is sufficiently determinative of all items embraced in the submission.” (Citation.)” (*Id.* at p. 843.)

Having reviewed the arbitrator’s summary judgment order, as well as the arbitrator’s order denying reconsideration of summary judgment, it is clear that the arbitrator’s orders were “determinative of all items embraced in the submission.” and that Sappal has failed to carry his burden of proving otherwise. (See *Rodrigues v. Keller, supra*, 113 Cal.App.3d at p. 843.)⁵

⁵ Further, whereas Sappal asserts the arbitrator applied an erroneous statute of limitations to his claims for breach of fiduciary duties and contribution and indemnity, this claim, even if true, asserts an error of law beyond our power of review. (See *Moncharsh, supra*, 3 Cal.4th at p. 12 [arbitrator’s error of law is not reviewable by the courts].)

DISPOSITION

The trial court's order confirming the arbitration award in favor of BIM is affirmed. Sappal shall bear costs on appeal.⁶

Jenkins, J.

We concur:

McGuinness, P. J.

Siggins, J.

⁶ BIM's motion for sanctions, filed on April 1, 2011, is denied.