CASE STUDY PREPARED FROM ORIGINAL PUBLISHED OPINION

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Honeycutt v JPMorgan Chase Bank, N.A. 8/2/18

Ethics; Mandatory Arbitrator Disclosure Requirements; Waiver of Objection; Vacating Award of Arbitrator

On November 6, 2013 Patrice Honeycutt filed this action against her former employer, JP Morgan Chase Bank, alleging causes of action for discrimination, retaliation, wrongful termination, and related claims. On March 7, 2014 the trial court granted Chase's petition to compel arbitration of Honeycutt's complaint.

On July 17, 2014 the American Arbitration Association (AAA), a dispute resolution provider organization, notified the parties the AAA had appointed a retired judge to serve as the arbitrator. The notice of appointment included a copy of the AAA's **disclosure worksheet**, completed by the arbitrator, which instructed the arbitrator: "It is most important that the parties have complete confidence in the arbitrator's impartiality. Therefore, please **disclose any past or present relationship with the parties, their counsel, or potential witnesses, direct or indirect, whether financial, professional, and social or of any other kind. This is a continuing obligation throughout your service on the case and**

should any additional direct or indirect contact arise during the course of the arbitration . . . it must also be disclosed. Any doubts should be resolved in favor of disclosure. If you are aware of direct or indirect contact with such individuals, please describe it below. Failure to make timely disclosures may forfeit your ability to collect compensation. The AAA will call the disclosure to the attention of the parties."

The worksheet further advised the arbitrator: "**California Code of Civil Procedure § 1281.9** (which incorporates CCP § 170.1 and the Ethics Standards for Neutral Arbitrators in Contractual Arbitration (Ethics Standards)) . . . and **CCP § 1281.95** require certain disclosures by a person nominated or appointed as an arbitrator. While the AAA makes this worksheet available to neutrals appointed to cases administered by the AAA, **the ultimate obligation for compliance with any statutory requirements, Rules and/or Ethics Standards lies with the neutral.**" The notice of appointment included a link to the Ethics Standards on the website of the California Judicial Branch.

The 11-page worksheet asked the arbitrator to answer a series of questions "yes" or "no." For example, the worksheet asked whether the arbitrator had a significant personal or attorney-client relationship with a party or lawyer for a party, a financial interest in a party to or the subject matter of the arbitration, or a professional or occupational license that had ever been revoked. The arbitrator had answered most of the questions "no," and signed and dated the worksheet.

At the end of the worksheet was a summary of the general provisions of the Ethics Standards governing an arbitrator's disclosure obligations.

Unfortunately, the parties received only 10 of the 11 pages of the arbitrator's disclosure worksheet. The missing page, page five, included Question No. 28, which asked whether the arbitrator, during the pendency of the arbitration, would "entertain offers of employment or new professional relationships in any capacity other than as a lawyer, expert witness, or consultant from a party or a lawyer for a party, including offers to serve as a dispute resolution neutral in another case." The arbitrator answered "yes" to answer No. 28. On page six, which the parties did receive, under the heading "Please explain any 'yes' answer to any question above and/or make any additional disclosures you believe are appropriate," the arbitrator wrote: "#28. I will entertain offers to serve as a dispute resolution in other cases. I will evaluate any potential conflict at that time prior to accepting the offer."

The disclosure documents from the AAA also included a document signed by the arbitrator and titled "**The Arbitrator's Oath.**" In the oath, the arbitrator attested that the arbitrator had "**conducted a conflicts check**, including a thorough review of the information" provided by the AAA about the case, and had performed all "obligations and duties to disclose in accordance with the Rules of the AAA, Code of Ethics for Commercial Arbitrators and/or all applicable statutes pertaining to arbitrator disclosures." The oath concluded,

immediately above the signature line, "The Arbitrator being duly sworn, hereby accepts this appointment, and will faithfully and fairly hear and decide the matters in controversy between the parties in accordance with their arbitration agreement, the Code of Ethics, and the rules of the AAA . . . ." A note at the bottom of the arbitrator's oath repeated the AAA's warning that the arbitrator, not the AAA, was responsible for complying with the disclosure requirements.

The arbitrator conducted a six-day arbitration in April 2016. On August 30, 2016 the arbitrator issued an interim award in favor of Chase and against Honeycutt on all of her claims.

Counsel for Honeycutt was surprised she lost. On September 12, 2016 she wrote a letter to the AAA's manager of alternative dispute resolution services, stating: "It is rather stunning that the arbitrator found that Honeycutt did not meet her burden on every single cause of action given how strong the evidence was in her favor and the presentation of her case at the arbitration hearing." Counsel for Honeycutt asked the manager to identify every other case the arbitrator had accepted involving Chase and its counsel of record. Counsel also stated for the first time that she had not received all pages of the notice of appointment in July 2014 and that the copy she received was "missing a page, omitting questions 21 through 28 and their responses." Counsel wrote: "Be advised that we intend to vacate the award and request that further proceedings are stayed until I have received the requested information from your office."

On September 19, 2016 the manager sent counsel for Honeycutt the missing page of the arbitrator's July 17, 2014 disclosure worksheet. The manager also sent counsel for Honeycutt 10 letters from the arbitrator's case manager stating that, during the pendency of the arbitration between Honeycutt and Chase, the arbitrator **had been appointed to serve as an arbitrator in eight other employment cases involving counsel for Chase and two other cases (one of which was an employment case) involving Chase.** The parties had previously received only four of the eight letters concerning employment cases involving counsel for Chase.

On September 28, 2016 counsel for Honeycutt sent the manager a formal objection to the arbitrator's continuing to serve in this matter and a request for the arbitrator's "immediate disqualification." Citing relevant provisions of the Code of Civil Procedure and the Ethics Standards for Neutral Arbitrators in Contractual Arbitration (Ethics Standards), counsel for Honeycutt argued, among other things, that she had not received the entire initial disclosure by the arbitrator (because of the missing page) and that the arbitrator "failed to disclose all cases that she accepted from Chase's counsel during the pendency of the arbitration." Specifically, counsel for Honeycutt asserted the arbitrator had failed to disclose "at least four additional cases with Chase's law firm since being appointed to this matter."

On October 10, 2016 the manager advised counsel for Honeycutt the **AAA had denied Honeycutt's request to disqualify the arbitrator.** The manager wrote: "After careful consideration of the parties' contentions, the AAA has determined that the arbitrator will be reaffirmed as an arbitrator in the . . . matter."

On November 15, 2016 the arbitrator issued a final award ordering Honeycutt to "take nothing on her claims," denying Chase's request for costs, and ruling the $5,240 in arbitration administrative fees and the $62,067.50 in arbitrator compensation and expenses were "to be borne as incurred."

Honeycutt filed a petition to vacate the arbitration award, and Chase filed a petition to confirm it. In her petition to vacate (and her opposition to Chase's petition to confirm) Honeycutt argued the arbitrator violated the Ethics Standards by failing to disclose offers of employment, including employment as an arbitrator or mediator in other cases involving the parties or attorneys in the arbitration. Honeycutt repeated her argument the arbitrator's July 17, 2014 initial disclosure was incomplete because it did not include the page with the question and affirmative answer concerning whether the arbitrator would accept offers to serve as a neutral arbitrator in other cases involving Chase or its attorneys. Honeycutt also contended, as she had before the AAA, the arbitrator failed to disclose four of the eight other cases the arbitrator accepted involving counsel for Chase while the arbitration was pending. Honeycutt argued these

and other grounds for disqualification entitled her to vacate the arbitration award.

Chase argued the arbitrator made all initial disclosures in a timely manner because, the parties did receive the page with the explanation for the arbitrator's answer, which stated the arbitrator would entertain such offers. Chase also pointed out that, because "it was readily apparent that a page was missing from the disclosures when Honeycutt first received the initial disclosure statement," her request to disqualify the arbitrator was untimely. Chase contended Honeycutt was "well aware of the Arbitrator's intent to accept offers to serve as a neutral in other cases, including cases involving the same parties and lawyers in this case, because the Arbitrator's handwritten note on the following page alone provided her with all the information that she needed to assess whether disqualification was appropriate."

Regarding the arbitrator's failure to disclose during the arbitration four of the eight other matters involving counsel for Chase, Chase asserted Honeycutt had not identified any mandatory disclosure the arbitrator failed to make (even though Honeycutt had identified at least four of them) and pointed to a September 23, 2016 email from the AAA manager stating she had "provided all supplemental disclosure letters showing the new cases involving the Parties/Attorneys to this matter after the initial disclosures were made."

The trial court confirmed the arbitration award. The court found "the arbitrator sufficiently made the required disclosures, as outlined in the opposition to the motion to vacate." Finally, the court found "there was no prejudice shown as to any alleged ground to vacate."

The trial court entered judgment confirming the arbitration award. Honeycutt timely appealed.

The Second District Court of Appeal began its opinion by reciting that "Courts have long struggled with the problem of ensuring not only the neutrality but also the perception of neutrality of arbitrators, who wield tremendous power to decide cases and whose actions lack, for the most part, substantive judicial review." (*Mahnke v. Superior Court* (2009) 180 Cal.App.4th 565, 573.) "'Because arbitrators wield such mighty and largely unchecked power, the Legislature has taken an increasingly more active role in protecting the fairness of the process.'" (*Royal Alliance Associates, Inc. v. Liebhaber* (2016) 2 Cal.App.5th 1092, 1105; see *Gray v. Chiu* (2013) 212 Cal.App.4th 1355, 1362) Indeed, "the Legislature has gone out of its way, particularly in recent years, to regulate in the area of arbitrator neutrality by revising the procedures relating to the disqualification of private arbitrators and by adding, as a penalty for noncompliance, judicial vacation of the arbitration award." (*Azteca Const., Inc. v. ADR Consulting, Inc.* (2004) 121 Cal.App.4th 1156, 1167)

In 2001 the Legislature sought to provide 'basic measures of consumer protection with respect to private arbitration, such as minimum ethical standards and remedies for the arbitrator's failure to comply with existing disclosure requirements.'" (*Azteca*, at p. 1165, fn. Omitted; see Code Civ. Proc., § 1281.85.) The Legislature was concerned "'the growing use of private arbitrators—including the imposition of mandatory pre-dispute binding arbitration contracts in consumer and employment disputes—has given rise to a largely unregulated private justice industry.'" These developments evinced "an unmistakable legislative intent to oversee and enforce ethical standards for private arbitrators." (*Azteca*, at p. 1165.)

The Judicial Council responded to the Legislature's directive by adopting the Ethics Standards to provide "protection against specific conflicts of interest where they exist." (*Sandquist v. Lebo Automotive, Inc.* (2016) 1 Cal.5th 233, 260, fn. 8; see *Ovitz v. Schulman* (2005) 133 Cal.App.4th 830, 833 (*Ovitz*).) "Pursuant to section 1281.85, the Judicial Council adopted ethics standards and requirements for neutral arbitrators. Their **express purpose is to establish the minimum standards of conduct for neutral arbitrators, to 'guide the conduct of arbitrators, to inform and protect participants in arbitration, and to promote public confidence in the arbitration process**.' The Ethics Standards obligate arbitrators to inform themselves of matters subject to mandatory disclosure." (*Gray v. Chiu*, at pp. 1362-1363)

The Code of Civil Procedure and the Ethics Standards impose various disclosure obligations on neutral arbitrators. Section 1281.9, subdivision (a), provides "the arbitrator must disclose 'any ground specified in Section 170.1 for disqualification of a judge,' as well as 'matters required to be disclosed by the ethics standards for neutral arbitrators adopted by the Judicial Council . . . .'" (*United Health Centers of San Joaquin Valley, Inc. v. Superior Court* (2014) 229 Cal.App.4th 63, 75-76; see *Haworth v. Superior Court* (2010) 50 Cal.4th 372, 381; *Ovitz*, at p. 833) Significantly, "an arbitrator's duty of disclosure is a continuing one." (*Gray v. Chiu,* at p. 1363)

The Ethics Standards at issue in this appeal are standards 7 and 12, which the Judicial Council adopted to address the "'bias, or appearance of bias, that may flow from one side in an arbitration being a source or potential source of additional employment, and thus additional income, for the arbitrator.'" (*Ovitz*, at p. 839.) Ethics standard 7 describes the disclosure obligations of a "person nominated or appointed as an arbitrator." The proposed arbitrator must make the initial disclosures listed in standard 7 in writing "within 10 days of service of notice of the proposed nomination or appointment". Thus, although the arbitrator initially makes the disclosures required by standard 7 at the outset of the arbitration, **the arbitrator's duty to make these disclosures "is a <u>continuing duty</u>, applying from service of the notice of the arbitrator's proposed nomination or appointment until the conclusion of the arbitration proceeding."**

Ethics standard 7 requires the arbitrator to "disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt that the arbitrator would be able to be impartial . . . ." Ethics standard 7(d) lists examples of such matters, including a family, attorney-client, or "significant personal" relationship with a party or lawyer in the arbitration, a financial or other interest in the outcome of the arbitration, and knowledge of "disputed evidentiary facts concerning the proceeding." Ethics standard 7(d)(4)(A)(i) requires the arbitrator to disclose whether the arbitrator is serving "as a neutral arbitrator in another prior or pending . . . case involving a party to the current arbitration or a lawyer for a party." Ethics standard 7(e) requires the arbitrator to disclose other matters relating to professional discipline and the arbitrator's inability to conduct and complete the arbitration in a timely manner.

Ethics standard 12 generally describes the disclosure obligations of an arbitrator "from the time of appointment until the conclusion of the arbitration" (Ethics Standards, std. 12(a)), although some of its provisions apply to the initial disclosures a proposed arbitrator must make. For example, Ethics standard 12(b)(1) provides that, "within ten calendar days of service of notice of the proposed nomination or appointment, a proposed arbitrator must disclose to all parties in writing if, while that arbitration is pending, he or she will entertain offers of employment or new professional relationships in any capacity other than as a lawyer, expert witness, or consultant from a party or a lawyer for a party,

including offers to serve as a dispute resolution neutral in another case." Ethics standard 12(a) prohibits an arbitrator from entertaining or accepting "any offers of employment or new professional relationships as a lawyer, an expert witness, or a consultant from a party or a lawyer for a party in the pending arbitration."

If an arbitrator in a consumer arbitration like this one makes that disclosure, the arbitrator must also state that he or she "will inform the parties as required under Ethics standard 12(d) if he or she **subsequently** receives an offer while that arbitration is pending."

Ethics standard 12(d), in turn, provides that, if the arbitrator makes the disclosure in Ethics standard 12(b) regarding entertaining offers to serve as a dispute resolution neutral in another case involving the same parties or lawyers, "the arbitrator may entertain such offers. However, in consumer arbitrations, from the time of appointment until the conclusion of the arbitration, the arbitrator must inform all parties to the current arbitration of any such offer and whether it was accepted as provided in this subdivision." The arbitrator must notify the parties in writing "within five days of receiving the offer and, if the arbitrator accepts the offer, must notify the parties in writing within five days of that acceptance. The arbitrator's notice must identify the party or attorney who made the offer and provide a general description of the employment or new professional relationship that was offered including, if the offer is to serve as a dispute resolution neutral, whether the offer is to serve in a single case or multiple

cases." (Ethics Standards, std. 12(d)(1); see Knight et al., Cal. Practice Guide: Alternative Dispute Resolution (The Rutter Group 2017) 7:142.2-7:142.3)

Judicial review of private arbitration awards is generally limited to the statutory grounds for vacating or correcting an award. (*Moshonov v. Walsh* (2000) 22 Cal.4th 771, 775; *ECC Capital Corp. v. Manatt, Phelps & Phillips, LLP* (2017) 9 Cal.App.5th 885, 899-900 (*ECC Capital*).) One of those statutory grounds is **section 1286.2, subdivision (a)(6)(A), which provides that, if the arbitrator fails "to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware," the court "shall vacate the award."** (See *Haworth*, at p. 381; *ECC Capital*, at p. 901; *Rebmann v. Rohde* (2011) 196 Cal.App.4th 1283, 1290; see also *La Serena Properties v. Weisbach* (2010) 186 Cal.App.4th 893, 903; *Ovitz*, at p. 833) "On its face, the statute leaves no room for discretion. If a statutory ground for vacating the award exists, the trial court must vacate the award." (*Ovitz*, at p. 845.)

Ethics standard 12(b) required the arbitrator to disclose, within 10 days of the proposed appointment as an arbitrator, whether the arbitrator would entertain offers from a lawyer or party to the arbitration to serve as a dispute resolution neutral in another matter. **The arbitrator did not comply with this requirement** because the arbitrator's initial disclosure did not include the page containing the question asking whether the arbitrator would entertain such offers and the arbitrator's "yes" answer, even though on the next page the arbitrator

made a handwritten notation stating the arbitrator would entertain such offers. And despite Chase's assertion that "the page containing responses to AAA's disclosure questions 20-28 was not included with the initial disclosures, apparently as the result of clerical error," there is no evidence of such a clerical error.

Moreover, even if the arbitrator had provided counsel with all pages of the disclosure worksheet, the arbitrator's handwritten explanation for the (undisclosed) answer to Question No. 28, which the parties did receive, did not comply with Ethics standard 12(b)(2), which requires the arbitrator in a consumer arbitration to state that the arbitrator will inform the parties if the arbitrator receives an offer. **The rule requires disclosure regardless of the arbitrator's personal evaluation of whether there is a conflict and even if the arbitrator does not accept the offer.**

Honeycutt, however, **waived her right to vacate** the award based on the arbitrator's failures to comply with Ethics standard 12(b). **A party may waive the right to disqualify an arbitrator by failing to object to the arbitrator's failure to disclose a matter the Ethics Standards require the arbitrator to disclose.** Section 1281.91, subdivision (c), provides that the "right of a party to disqualify a proposed neutral arbitrator pursuant to this section shall be waived if the party fails to serve" a notice of disqualification **within 15 days after the arbitrator fails to comply with the disclosure obligations** under section 1281.9 or

the Ethics Standards, "unless the proposed nominee or appointee makes a material omission or material misrepresentation in his or her disclosure." (See *United Health Centers of San Joaquin Valley, Inc. v. Superior Court*, at p. 83; *Ovitz*, at p. 846)

Honeycutt knew in July 2014, upon learning the identity of the proposed arbitrator and receiving the incomplete disclosure worksheet, that the arbitrator had failed to send the parties the page containing Question Nos. 21 and-28. Honeycutt also knew that the arbitrator had answered Question No. 28 and that the answer related to a question about serving as an arbitrator or mediator in other cases. Honeycutt even knew the answer to Question No. 28 **did not comply with Ethics standard 12(b)(2)(A) because the arbitrator's answer did not state the arbitrator would inform the parties of offers and acceptances while the arbitration was pending. By failing to serve a notice of disqualification within 15 days of receiving the arbitrator's defective disclosure, Honeycutt waived her right to disqualify the arbitrator.** (See *Dornbirer v. Kaiser Foundation Health Plan, Inc.* (2008) 166 Cal.App.4th 831, 846)

Honeycutt's remedy for the arbitrator's violations of Ethics standard 12(b) was to object to the defective disclosures, demand the arbitrator make complete and compliant disclosures, or move to disqualify the arbitrator at the time. Honeycutt was not entitled to wait and see how the arbitration turned out before raising these issues. (See *ECC Capital*, at p. 906; *Mt. Holyoke Homes, L.P. v. Jeffer*

Mangels Butler & Mitchell, LLP (2013) 219 Cal.App.4th 1299, 1314; *Cummings v. Future Nissan* (2005) 128 Cal.App.4th 321, 329) As the court stated in *United Health Centers of San Joaquin Valley, Inc. v. Superior Court*, *at p.* 63, in words equally applicable to Honeycutt: "While an arbitrator has a duty to disclose all of the details required to be disclosed pursuant to section 1281.9 and the Ethics Standards, **a party aware that a disclosure is incomplete or otherwise fails to meet the statutory disclosure requirements cannot passively reserve the issue for consideration after the arbitration has concluded. Instead, the party must disqualify the arbitrator on that basis before the arbitration begins.**" To hold otherwise would allow Honeycutt to "'"play games" with the arbitration and not raise the issue'" until she lost. (*Cummings* at p. 328; see *Caminetti v. Pacific Mut. Life Ins. Co. of Cal.* (1943) 22 Cal.2d 386, 392)

As noted, Ethics standard 12(d) provides that, if the arbitrator makes the initial disclosure under Ethics standard 12(b) that the arbitrator will entertain offers to serve as an arbitrator or mediator in another case involving the same parties or lawyers, the arbitrator may entertain such offers. And in consumer arbitrations, the arbitrator must also disclose (1) the offer (within five days of the offer) and (2) any acceptance (within five days of acceptance). (Ethics Standards, std. 12(d)(1).)

Chase does not dispute the arbitrator violated Ethics standard 12(d). The arbitrator accepted offers to serve as a neutral in eight other cases involving

Chase's attorneys and disclosed only four of them. Chase concedes "it appears that four supplemental disclosures regarding appointment of the arbitrator to arbitrations or mediations in which counsel for Chase was counsel were . . . not promptly distributed . . . to the parties." Nor does Chase dispute that the arbitrator's failure to disclose the four cases was "a failure to comply with the arbitrator's" disclosure obligations under the Ethics Standards.

The arbitrator also violated Ethics standard 7(d). As Chase concedes, one of the matters on the non-exclusive list of matters in Ethics standard 7(d) that an arbitrator has a continuing duty to disclose is service as an arbitrator in another pending case involving a party or lawyer for a party in the current arbitration. (Ethics Standard, stds. 7(d)(4), 7(f).) **By not disclosing the four pending arbitrations with counsel for Chase, the arbitrator violated the continuing disclosure duties under Ethics standard 7(d).**

An arbitrator's violation of his or her disclosure obligations under the Ethics Standards, however, does not necessarily entitle a party challenging an arbitration award to an order vacating the award. As we noted in *ECC Capital*, **the "statute requires vacating an award only when an arbitrator fails to disclose a ground for disqualification of which he or she was actually aware.** Section 1286.2, subdivision (a)(6)(A), requires actual awareness, not inquiry or constructive awareness." (*ECC Capital*, at p. 903.) As the party challenging the arbitration award, Honeycutt had the burden of proving actual awareness. (See

Rebmann v. Rohde, at p. 1290; *Guseinov v. Burns* (2006) 145 Cal.App.4th 944, 957.) The trial court made no finding on whether the arbitrator was aware of the ground for disqualification.

The parties dispute whether Honeycutt had the burden to show the arbitrator was aware of the four arbitrations with counsel for Chase or, instead, to show the arbitrator was aware of the failure to disclose the offers and acceptances of the four arbitrations with counsel for Chase.

Honeycutt is correct. If the arbitrator complies with the disclosure requirements of Ethics standard 12(d), the arbitrator does not also have to make the same disclosures under Ethics standard 7. Ethics standard 12(d)(3)(B) provides that, "if an arbitrator has informed the parties in a pending arbitration under Ethics standard 12(d)(1)," the "arbitrator is not also required to disclose that offer or its acceptance under Ethics standard 7." Ethics standard 7(b)(2)(b) similarly provides that, if the arbitrator "has informed the parties in the pending arbitration about any such offer and the acceptance of any such offer as required by subdivision (d) of standard 12, the arbitrator is not also required under this standard to disclose that offer or the acceptance of that offer to the parties in that arbitration."

But if the arbitrator does not make the required disclosures under Ethics

standard 12(d), the arbitrator must still comply with the disclosure obligations of Ethics standard 7, which, as noted, are continuing. Therefore, where the arbitrator fails to comply with the disclosure requirements of Ethics standard 12(d), a party seeking to vacate an award does not have to show the arbitrator was actually aware of the failure to disclose because, in that situation, Ethics standard 7(d) governs the arbitrator's disclosure obligations.

Under Ethics standard 7(d), an arbitrator must disclose "matters that could cause a person aware of the facts to reasonably entertain a doubt that the arbitrator would be able to be impartial," including service as an arbitrator for a party or lawyer for a party. (Ethics Standards, std. 7(d)(4)(A)(i).) Under section 1281.91, subdivision (b)(1), the pending arbitrations were grounds for disqualification of the arbitrator because they were "matters required to be disclosed by the Ethics Standards." (§ 1281.9, subd. (a)(2).) The arbitrator here was actually aware of the four other pending arbitrations involving counsel for Chase. Therefore, under section 1286.2, the arbitrator's failure to disclose the four arbitrations with counsel for Chase was a failure "to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware," which requires vacatur of the award. (See *Mt. Holyoke*, at p. 1315; Comment to Standard 7)

To vacate an arbitration award under section 1286.2 for a violation of Ethics standard 7(d), the party challenging the award must show that the arbitrator was

aware he or she was serving as an arbitrator in a pending arbitration involving the same parties or lawyers. Service as an arbitrator is the "matter" the arbitrator must disclose within 10 days of becoming aware of it under Ethics standard 7(c)(2) and the ground for disqualification under sections 1281.9, subdivision (a)(1), and 1281.91. An arbitrator may be unaware a case manager failed to send out a notice, an assistant accidently deleted an attorney from a proof of service, or an envelope or email was incorrectly addressed or lost in the mail or cyberspace. But an arbitrator knows he or she has an arbitration, and knows the parties and attorneys involved in that arbitration. (Cf. *Ovitz*, at p. 845)

Finally, Honeycutt did not waive her right to vacate the award based on the arbitrator's failure to make required disclosures under Ethics standard 7(d). The arbitrator did not disclose the four other matters involving counsel for Chase in which the arbitrator served as a dispute resolution neutral until after the arbitrator had completed the arbitration hearing and issued an interim award (and the arbitrator never disclosed any offers of employment to serve as a neutral). A party cannot waive a right she does not know she has. (See *Earl v. Saks & Co.* (1951) 36 Cal.2d 602, 609; *Tremaine v. Phoenix Assur. Co.* (1935) 6 Cal.App.2d 552, 557) The waiver provision in section 1281.91, subdivision (c), "applies only when the proposed arbitrator has made the requisite disclosure. This is made clear by the exception to the waiver rule posited in the last clause of the first sentence of the subdivision: '. . . unless the proposed nominee or appointee makes a material omission or material misrepresentation *in his or her*

disclosure.'" (*International Alliance of Theatrical Stage Employees, etc. v. Laughon* (2004) 118 Cal.App.4th 1380, 1392; see *Ovitz*, at p. 846; see also *Gray v. Chiu*, at p. 1366) When the AAA manager belatedly sent counsel for Honeycutt notice of the four arbitrations on September 19, 2016, Honeycutt moved to disqualify the arbitrator on September 28, 2016, within the 15 days required by section 1281.91, subdivision (c).

The arbitrator disclosure rules are strict and unforgiving. And for good reason. Although dispute resolution provider organizations may be in the business of justice, they are still in business. The public deserves and needs to know that the system of private justice that has taken over large portions of California law produces fair and just results from neutral decision makers. (See *Gray v. Chiu*, *supra*, 212 Cal.App.4th at p. 1366; *Advantage Medical Services, LLC v. Hoffman* (2008) 160 Cal.App.4th 806, 822; *Azteca*, at p. 1168) Although the disclosure rules the arbitrator violated here may seem technical, they are part of the Legislature's effort to ensure that private arbitrations are not only fair, but appear fair. (See *Ceriale v. AMCO Ins. Co.* (1996) 48 Cal.App.4th 500, 504) "That all may drink with confidence from their waters, the rivers of justice," whether they flow through our public or private systems of dispute resolution, "must not only be clean and pure, they must appear so to all reasonable men and women." (*U.S. v. State of Ala.* (11th Cir. 1987) 828 F.2d 1532, 1552.)

The arbitrator did not comply with several applicable disclosure

requirements, which gave rise to multiple grounds for disqualification. Because the arbitrator was actually aware of at least one of the grounds for disqualification, the resulting arbitration award was subject to vacatur. The judgment is reversed and remanded with directions for the trial court to vacate its order granting the petition to confirm the arbitration award and denying the petition to vacate it, and to enter a new order denying the petition to confirm the award and granting the petition to vacate it. Honeycutt is to recover her costs on appeal.

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