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Got Arbitration Appeal?

The arbitration is over. You review the award and discover that it contains an error of law. Can you appeal? Generally, the merits of the award are not subject to judicial review. The answer lies in whether the arbitration agreement deprived the arbitrators of the power to commit legal error.

The statutes governing judicial review to correct or vacate an award include the ground that “[t]he arbitrators exceeded their powers.”¹ In *Cable Connection, Inc. v. DIRECTV, Inc.* (2008) 44 Cal. 4th 1334, the California Supreme Court explained that “while the statutory grounds for correction and vacation of arbitration awards do not ordinarily include errors of law, contractual limitations on the arbitrators’ powers can alter the usual scope of review.” *Id.* at 1356.

In *DIRECTV*, the parties’ arbitration clause stated:

“The arbitrators shall not have the power to commit errors of law or legal reasoning, and the award may be vacated or corrected on appeal to a court of competent jurisdiction for any such error.”

The Supreme Court concluded that the first sentence of that clause “deprive[ed] the arbitrators of the power to commit legal error” and the second sentence “specifically provided for judicial review of such error.” Thus, legal errors were expressly deemed an “excess of arbitral authority that is reviewable by the courts.” *Id.* at 1361.

A provision requiring arbitrators to simply “apply the law” leaves open the possibility that they are empowered to apply it “wrongly as well as rightly.” Instead, specify that errors of law are beyond the arbitrators’ powers and reviewable by the courts. This allows for the benefits of arbitration and avoids the risk of legal error.

¹ Code Civ. Proc., §§ 1286.2, subd. (a)(4); 1286.6, subd. (b).