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COMMENTARY

## Kevin Spacey Ordered to Pay \$31M in 'House of Cards' Sexual Misconduct Case

Los Angeles Superior Court Judge Mel Red Recana has ordered Spacey to pay the producers of House of Cards nearly \$31 million in damages stemming from his removal from the series amid serious sexual misconduct allegations.

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Employment Law

By Jeffrey Campolongo

A house of cards is a 17th century expression that refers to a structure or argument built on a shaky foundation or one that will collapse if a necessary (but possibly overlooked or unappreciated) element is removed. (Source, Wikipedia, 2022). As any fan of politics or TV drama knows, a house of cards may hold up in the short term, but eventually it will give way to scrutiny. It would appear the house of cards erected by Academy Award winning-actor Kevin Spacey has crumbled.

Los Angeles Superior Court Judge Mel Red Recana has ordered Spacey to pay the producers of House of Cards nearly \$31 million in damages stemming from his removal from the series amid serious sexual misconduct allegations. The case is captioned *MRC II Distribution v. Spacey*, Case No. 21STCP03831 (Ca. Super. Ct., Los Angeles) (Aug. 4, 2022). The producers of the hit show on Netflix, MRC II Distribution Company, L.P. (MRC), sued Spacey in arbitration contending that Spacey owed them millions in lost profits because his removal, prompted by the sexual misconduct allegations, forced the network to rewrite the entirety of season six and truncating it from 13 episodes to just eight. Spacey's lawyers tried to throw out the award, saying his behavior amounted to nothing more than "sexual innuendos" and "innocent horseplay" and did not violate MRC's anti-harassment policy.

Spacey's character on the show, Frank Underwood, was cut from the series after allegations surfaced that Spacey groped a production assistant and sexually preyed on young men. Recana said Spacey and his legal team "fail to demonstrate that this is even a close case," and confirmed Spacey would have to pay the nearly \$31 million award, which was previously

handed down by an arbitrator in October 2020. Spacey filed his own counterclaim, alleging that MRC breached his contract by firing him, however, that claim was rejected in the arbitration as well.

## The Underlying Allegations and Arbitration Award

According to Recana's 14-page decision, dozens of explosive allegations surfaced in the press beginning in October 2017 that accused Spacey of systematically preying upon, sexually harassing, and groping young men whom he worked with throughout his career in film, television and theater projects. MRC conducted a thorough months-long investigation with a preeminent workplace investigator, wrote Spacey out of the final season of "House of Cards," and ultimately terminated Spacey's acting and executive producing contracts.

The opinion indicates that the parties litigated for years in a confidential arbitration forum, engaged in extensive discovery that included more than 20 depositions, and had an eight-day evidentiary hearing. The arbitrator, Bruce A. Friedman, issued a final award on Oct. 19, 2020, where he found entirely in favor of MRC on all claims for breach of contract and ordered Spacey to pay MRC more than \$30 million in compensatory damages, attorney fees and costs.

Arbitrator Friedman found that Spacey's conduct constituted a material breach of his acting and executive producing agreements and that Spacey's breaches excused MRC's obligations to pay him any further compensation in connection with "House of Cards." The arbitration award was affirmed on Nov. 5, 2021, in a proceeding before a three-arbitrator panel. MRC filed a petition to confirm the arbitration award on Nov. 22, 2021, effectively making public the confidential nature of the arbitration proceedings.

## Judge Recana's Ruling

At the outset, the decision sets forth the standard for vacating a private arbitration award, citing the extremely narrow grounds for vacatur. Here, Spacey attorney Jonathan E. Phillips argued that the award should be vacated, alleging the arbitrator exceeded the scope of his authority by considering evidence extrinsic to the specific breach of contract at issue in the arbitration proceeding. Specifically, the arbitrator cited an Oct. 29, 2017, BuzzFeed article and a Nov. 2, 2017, CNN article as the impetus for the internal investigation. Spacey contended that the investigation was only initiated after Netflix made the decision to exclude Spacey from the final season of "House of Cards." Thus, the decision to cut ties with Spacey and its agreement to rework the final season could not have flowed from the alleged sexual assault.

Recana said that this argument by Spacey essentially came down to the distinction between extrinsic versus intrinsic evidence, and direct versus circumstantial evidence. He wrote: "It appears what Spacey refers to as evidence "extrinsic" to the breach of contract is actually circumstantial evidence, as opposed to direct evidence. Spacey fails to show that the arbitrator cannot consider circumstantial evidence in arriving at his arbitration award. Such a proposition would seem completely at odds with the Arbitrator's authority." Citing long-

standing authority, the judge said that courts have no authority to disagree with an arbitrator's honest judgment as long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority.

Spacey also argued that the damages awarded to MRC were not rationally related to the arbitrator's identified breaches, however, the court determined that Spacey was simply arguing the merits of his positions in the underlying case, a matter for which the reviewing court has no authority. The arbitrator's conclusion that Spacey's breach caused the aforesaid damages is a factual finding which the court generally cannot review for error. Judge Recana concluded that he was "not compelled to infer that the arbitrator's award was not based on the breach of the parties' agreements or that it was based on an external source."

Given the extremely high burden to demonstrate that a decision exceeds the arbitrator's powers, even in a close case, an arbitrator's award must stand. In this case, according to Recana, Spacey failed to demonstrate that this was even "close" let alone worthy of judicial intervention. The final award was not so utterly irrational that it amounted to an arbitrary remaking of the parties' contracts, the judge concluded.

## Spacey's Other Legal Woes

In October 2017, actor Anthony Rapp accused Spacey of making unwanted sexual advances when Rapp was 14 and Spacey was 26. Spacey was allegedly drunk at the time. Spacey apologized in a statement on Twitter saying he was "beyond horrified to hear his story." "I want to deal with this honestly and openly, and that starts with examining my own behavior," he wrote. On Sept. 9, 2020, Rapp sued Spacey for sexual assault, sexual battery, and intentional infliction of emotional distress under the Child Victims Act.

Spacey was also charged in Massachusetts with indecent assault and battery. In July 2019, the case was dropped after the victim in the case declined to take the stand. In December 2019, Spacey had charges against him dropped in a sexual battery case when the accuser, a massage therapist, reportedly died of cancer in September.

Overseas, Spacey was charged by the Crown Prosecution Service in the United Kingdom with four counts of sexual assault against three individuals. On July 14, Spacey pleaded not guilty to the charges in the U.K., and his case is expected to go to trial.

## When Life Imitates Art

Some quotes to live by from the diminutive character, Frank Underwood, played by Spacey in "House of Cards":

- Proximity to power deludes some into believing they wield it.
- The road to power is paved with hypocrisy and casualties. Never regret.
- If you don't like how the table is set, turn over the table.
- The president is like a lone tree in an empty field—he leans whichever way the wind is blowing.
- I've always loathed the necessity of sleep. Like death, it puts even the most powerful men

on their backs.

- What a martyr craves more than anything is a sword to fall on. So you sharpen the blade, hold it at just the right angle, and then 3, 2, 1...
- Competency is such a rare bird in these woods, that I always appreciate it when I see it.
- There are two kinds of pain. The sort of pain that makes you strong, or useless pain. The sort of pain that's only suffering. I have no patience for useless.
- For those of us climbing to the top of the food chain, there can be no mercy. There is but one rule: hunt or be hunted.
- That's how you devour a whale. One bite at a time.

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