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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

DA'AD MAKHLOUF, Plaintiff and Appellant, v. GHADA YOUNG, Defendant and Respondent.	B278652 (Los Angeles County Super. Ct. No. BC528123)

APPEAL from a judgment of the Superior Court of Los Angeles County, Samantha P. Jessner, Judge. Affirmed.

Geragos & Geragos, Mark J. Geragos, Tina Glandian, Alex Alarcon; Kirakosian & Associates and Greg L. Kirakosian for Plaintiff and Appellant.

Isaacs Clouse Crose & Oxford and John A. Crose, Jr. for Defendant and Respondent.

Da'ad Makhlouf (Makhlouf) appeals a judgment confirming an arbitration award obtained by Ghada Young (Young), following the denial of Makhlouf's motion to vacate the award.

The essential issues presented are whether the award should have been vacated on the grounds that (1) the arbitrator, Judge Kennedy (Ret.), failed to disclose he had previously acted as a mediator in this matter; (2) Makhlouf did not personally sign a stipulation form for Judge Kennedy to act both as mediator and as arbitrator, in a process known as Med-Arb; and (3) the arbitrator should have disqualified himself.

The arguments are unavailing. With respect to the nondisclosure issue, there was nothing to disclose – prior to the arbitration, Makhlouf knew that Judge Kennedy, the mediator, would also act as the arbitrator in the upcoming arbitration. Further, Makhlouf waived any objection that she did not personally sign the Med-Arb stipulation form because she did not raise the issue until after the arbitrator issued the adverse award. We also conclude the arbitrator was not required to disqualify himself. Therefore, the trial court properly refused to vacate the award and proceeded to enter a judgment confirming the award.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Events leading up to the issuance of the arbitration award.*

Makhlouf and Young are certified court reporters and are also sisters. Beginning in 1994, they operated as 50-50 partners in an oral partnership known as Lex. Over the years, problems developed and in December 2013, Makhlouf filed an action in the superior court for dissolution of the partnership.

On April 7, 2014, the parties held an all-day mediation session before Judge Kennedy, under the auspices of Judicial Arbitration and Mediation Service (JAMS).[1] Both parties and their attorneys were present. Each side met with Judge Kennedy privately, and they also had a brief joint discussion. The mediation was unsuccessful.

On September 23, 2014, the trial court entered a stipulated order which vacated the trial date and submitted all issues to binding arbitration before Judge Kennedy, under the auspices of JAMS. The stipulation was signed by the parties as well as by their respective attorneys. The stipulation stated "the parties agree to attempt to negotiate terms of dissolution" and "that only unresolved issues will be submitted to the arbitrator for hearing."

Thereafter, in November 2014, the parties entered into another stipulation, namely, a stipulation for mediation followed by arbitration, a process known as "Med-Arb," again designating Judge Kennedy and JAMS. In Med-Arb, the parties initially attempt to agree on a resolution with the assistance of a mediator; if settlement is not reached, the matter is submitted to the same neutral for decision.[2]

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[1] Although Makhlouf attended the mediation, she asserts she does not recall meeting Judge Kennedy.

[2] The stipulation for Med-Arb stated in relevant part: "In a normal arbitration in which the neutral decides the outcome based on evidence received in an open session, it would be both unethical and unlawful for an arbitrator to receive information from one party in the absence of the other. [¶] Accordingly, this combined process may proceed only with the consent of the parties and counsel. Moreover, JAMS and Hon. John W. Kennedy, Jr. (Ret.) will conduct such a proceeding only with a knowing waiver of the parties' right to have the arbitrator's

The Med-Arb stipulation was signed by the parties' attorneys, as well as by Young, but not by Makhlouf personally. The Med-Arb stipulation also included the provision that "[t]he attorneys whose signatures appear below attest that they have fully informed their clients of the alternative dispute resolution process available to them and have discussed the particular characteristics of the 'Med-Arb' process which is the subject of this document."

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decision based solely on information received in the presence of each other. [¶] By their signature below, the parties hereto waive any right to complain of ex-parte (private) contact between Hon. John W. Kennedy, Jr. (Ret.) and the opposing party or counsel and waive their respective right to have an arbitration award based solely upon information communicated to the mediator in their presence. [¶] The parties hereto acknowledge that information so communicated during the mediation may be received by the neutral in confidence and may not be communicated to the adverse party. It is further acknowledged that such information, which the absent and adverse party may believe to be false, may influence the decision of the neutral when the neutral acts as an arbitrator. Notwithstanding these factors, it is the desire of the parties to proceed with this combined process and they hereby waive any defect in the procedure and the right to oppose confirmation or to seek vacature of any award rendered by the neutral on account of the above-described conduct of the neutral. . . . [¶] The parties also acknowledge that the fact that the neutral presided as a mediator shall not provide a basis to seek the disqualification of the neutral as an arbitrator, whether pursuant to California Code of Civil Procedure section 1281.9 or otherwise, and the parties waive the right to do so. They also waive the right to any disclosure that might otherwise be required by section 1281.9 or the California Rules of Court Ethics Standards for Neutral Arbitrators in Contractual Arbitration."

On December 8, 2014, the parties conducted an all day mediation session with Judge Kennedy. The matter did not settle and it eventually proceeded to binding arbitration.[3] In an email dated January 6, 2015, Makhlouf's attorney complained to Young's attorney that Young had wrongfully converted and/or blocked access to various items belonging to Makhlouf, and stated that if the matter were not resolved promptly, Makhlouf would seek ex parte relief from Judge Kennedy. Makhlouf then petitioned Judge Kennedy, as arbitrator, for injunctive relief, and following a hearing, on January 20, 2015, Judge Kennedy issued an "Arbitrator's Order" for injunctive relief and orderly continuation of the court reporting business.

Makhlouf and Young then entered into a stipulation, pursuant to the January 20, 2015 order, resolving their claims of access to a post office box. The stipulation, which was personally signed by Makhlouf and Young, acknowledged they had "submitted to binding arbitration before [Judge Kennedy]."

On June 22, 2015, Makhlouf filed the operative third amended complaint with JAMS; the caption of the pleading identified Judge Kennedy as the arbitrator.

The arbitration proceeded with hearings from August 24 to August 28, 2015, with both parties in attendance. Several additional days of hearings were held in the subsequent months,

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[3] We note the chronology is unclear as to the date the mediation phase of the Med-Arb ended. While the declaration of Young's counsel stated the final mediation session took place on December 8, 2014, Makhlouf stated there was another mediation session on January 13, 2015, at which point she allegedly learned that Judge Kennedy would be the arbitrator.

and the evidence was finally closed as of January 27, 2016. The parties then submitted post-arbitration briefs.

On May 25, 2016, the arbitrator issued an 11-page award. On the cause of action for an accounting, the arbitrator found that Makhlouf withdrew more from the Lex partnership than did Young, and ordered Makhlouf to pay Young $297,222.72 to equalize her capital account. As for Makhlouf's claims against Young for breach of fiduciary duty, unfair competition, and breach of loyalty, the arbitrator awarded $15,000 as an offset against the sum that Makhlouf owed as an equalizing payment, resulting in a net award to Young in the sum of $282,222.72.

2. *Makhlouf's post-award challenge to the arbitrator, and Young's response thereto.*

Following the issuance of the award, Makhlouf retained new counsel, Kirakosian & Associates. On June 24, 2016, Greg Kirakosian sent a letter to counsel for Young and to Judge Kennedy, requesting that the award be vacated. The letter stated in relevant part that "[i]t is Ms. Makhlouf's contention that all awards made in connection [with] this matter are entirely invalid and should be vacated as no authority existed for such an order, it was contrary to the parties' agreement to arbitrate, and went beyond Judge Kennedy's powers as mediator. This is particularly true in light of the fact that Ms. Makhlouf had not been informed of, had not consented to, and had never signed JAMS' 'Stipulation for Mediation Followed by Arbitration' as required before Judge Kennedy could act as arbitrator following mediation. As such, any award must be vacated."

In response Young's counsel wrote "[t]he patently untimely challenge represents impermissible gamesmanship by a party that willingly initiated and participated in lengthy arbitration

hearings, and invoked the arbitrator's authority along the way, and only questions it for the first time after receiving an adverse award." Young's counsel explained, "[t]he after-the-fact challenge is especially inappropriate here because Ms. Makhlouf not only submitted affirmative claims into the arbitration as Claimant, she at various points submitted interim claims to the Arbitrator to enforce interim orders Claimant herself sought going back to January 2015 – Orders made well before the plenary hearings began in August. Having sought relief under the Arbitrator's orders, she is precluded from challenging his authority *ex post facto*."

Young's counsel continued, "This action was mediated before Judge Kennedy all the way back to April 2014. Claimant cannot pretend she did not know Judge Kennedy's role as mediator. Nonetheless, she herself signed the September 2014 Stipulation (emailed to you earlier today) ordering all issues to arbitration, specifically to Judge Kennedy, though that Stipulation itself acknowledged that the parties would continue the mediation effort in order to potentially reduce the disputed issues in arbitration. Indeed, Claimant, through her then counsel, was the party to propose the mediation/arbitration approach. That agreement is the only one that bears on the Arbitrator's power and authority to conduct the hearings and enter an award. At no time prior to the commencement of several days of plenary hearings on the merits that began in August 2015, or prior to that in connection with hearings on each party's claims seeking interim relief in February and April of 2015, did Claimant voice any objection to Judge Kennedy hearing [and] deciding all claims on the merits."

3. *JAMS denies the request to disqualify Judge Kennedy*.

JAMS treated Makhlouf's counsel's letter of June 24, 2016 as a request to disqualify the arbitrator, and referred the letter to its National Arbitration Committee for review and decision pursuant to JAMS's rules. Thereafter, the National Arbitration Committee denied the request to disqualify Judge Kennedy, stating: "Following mediation in April 2014, the parties and counsel specifically agreed to arbitration with Judge Kennedy. This is evidenced by the Stipulation and Order entered by the Court on September 23, 2014. In addition, though not necessary in this instance due to the Court Order, Claimant's counsel again agreed on behalf of Claimant to arbitration with Judge Kennedy in the November 2014 Stipulation. As such, Judge Kennedy properly proceeded with arbitration. Further, this denial is based on the delay in making the request which resulted in a waiver of the objection. (See, for example, Comprehensive Rule 27(b).) A party may not wait to object until after the receipt of an adverse ruling and then raise disqualification issues. [¶] Taking into account the materiality of the facts and any prejudice to the parties at this late stage of the case,[4] the disqualification is denied, and the matter will proceed."

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4 With respect to the issue of prejudice, Young's counsel wrote to Kirakosian that Young "spent more than $75,000 in arbitrator's fees along the way with no suggestion of a challenge to Judge Kennedy's authority."

4. *Makhlouf's motion in the superior court to vacate the award.*

On August 23, 2016, Makhlouf filed a motion to vacate the award, supported by her declaration,[5] challenging the award on the following three grounds:

Arbitrator failed to disclose the conflicts inherent in the Med-Arb process. Due to Judge Kennedy's prior service as mediator in this matter, he learned confidential information concerning each party's claims, defenses, and positions, and he was required to disclose that fact and to obtain a waiver before taking on his role as arbitrator.

Arbitrator exceeded his powers by engaging in the Med-Arb process without Makhlouf's required informed written consent. Makhlouf only agreed to arbitration with a neutral arbitrator, not a Med-Arb process with a non-neutral who would first learn confidential information concerning the parties and informally familiarize himself with facts concerning the dispute before hearing evidence and coming to a binding decision. Makhlouf did not sign the stipulation for Med-Arb, which was only signed by her attorney. The Med-Arb stipulation form specifically requires the party to sign the form personally, and her counsel did not have either express or implied authority to sign the stipulation on her behalf.

Arbitrator substantially prejudiced Makhlouf's rights by failing to disqualify himself and improperly refusing Makhlouf's demands for disqualification. During the mediation phase of the

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[5] Young objected extensively to Makhlouf's moving declaration, the trial court sustained Young's objections in their entirety, and Makhlouf does not challenge the trial court's evidentiary rulings on appeal.

Med-Arb process on January 13, 2015 (see fn. 3, *ante*), Judge Kennedy downplayed the seriousness of Young's conduct, causing Makhlouf to request that the mediation end and the matter proceed to arbitration. Makhlouf claimed that January 13, 2015 was "the first time that Plaintiff was given notice that Judge Kennedy would also be acting as arbitrator. Plaintiff immediately protested based on [his] past behavior and based on [her] understanding of her agreement to [forgo] trial and submit to arbitration with an impartial neutral arbitrator." Further, "[u]pon Plaintiff's protests for lack of consent, Judge Kennedy was required to explain and disclose that she had, in fact, never signed the Stipulation for Med-Arb and that her attorney was not provided with the authority to sign on her behalf." Although the arbitrator knew that Makhlouf had not executed the Med-Arb stipulation, he "misrepresented and incorrectly advised Plaintiff that her consent was not needed."

5. *Young's opposition to the motion to vacate the award and request that the award be confirmed.*

In response, Young opposed the motion to vacate the award and requested that it be confirmed. Young argued that a party is barred from proceeding through arbitration on the merits only to challenge the arbitrator's authority when the award is adverse. In order to challenge an award on the basis of an alleged absence of arbitrator authority, a litigant must have raised the point before the arbitrator, rather than engaging in the gamesmanship of a post-award attack. The after-the-fact challenge was especially inappropriate because Makhlouf, as claimant, had submitted affirmative claims to the arbitrator.

Further, the matter had been mediated before Judge Kennedy all the way back to Apri1 2014, and Makhlouf was

aware of Judge Kennedy's role as mediator. Also, she personally signed the September 2014 stipulation which ordered arbitration before Judge Kennedy, and which indicated that the parties would continue the mediation effort in order to narrow the issues for arbitration.

With respect to the absence of Makhlouf's signature on the JAMS Med-Arb stipulation form, Young argued that JAMS already had determined that Makhlouf's delay in challenging Judge Kennedy resulted in a waiver under JAMS rule 27(b), and that JAMS's decision in that regard was final under JAMS rule 15(i).

Further, although Makhlouf did not personally sign the Med-Arb stipulation form, that form included the recital that the "attorneys whose signatures appear below attest that they have fully informed their clients of the alternative dispute resolution process available to them and have discussed the particular characteristics of the 'Med-Arb' process which is the subject of this document." Therefore, Makhlouf could not argue that she did not authorize her counsel to bind her to the arbitration with Judge Kennedy following mediation.

6. *Trial court's ruling*.

On September 27, 2016, the trial court entered an order that denied the motion to vacate the award, and instead, confirmed the award.

The trial court rejected Makhlouf's argument that the award had to be vacated due to Judge Kennedy's failure to disclose his familiarity with the case, stating Makhlouf "clearly waived her disqualification objection as the parties had engaged in mediation with Judge Kennedy since April 2014 . . . , and yet proceeded to agree to arbitration before Judge Kennedy and

failed to raise the disqualification issue until after the arbitration award was issued." It is "clear that both [Makhlouf] and her attorneys had actual knowledge of Judge Kennedy's involvement in the mediation and therefore cannot raise a disqualification issue after the award has been issued."

The trial court also rejected Makhlouf's argument that the award had to be vacated on the ground Judge Kennedy exceeded his powers by engaging in the Med-Arb process without her written consent. This argument was based on the Med-Arb stipulation form dated November 2014, "notably after [Makhlouf] expressly agreed to arbitration on September 24, 2014. However, Plaintiff did not raise this issue before the arbitrator and continued with the arbitration." By "fully participating in the arbitration, despite knowledge of [Judge] Kennedy's prior involvement, and waiting until after the arbitration award was decided against her, [Makhlouf] has waived her right to challenge Judge Kennedy's authority to enter the award."

On October 18, 2016, the trial court entered a judgment confirming the award. On October 27, 2016, Makhlouf filed a timely notice of appeal.[6]

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[6] We construe the notice of appeal, which referred to the September 27, 2016 order denying the motion to vacate the arbitration award, as referring to the October 19, 2016 judgment confirming the award. (Code Civ. Proc., § 1294, subd. (d); *Ahdout v. Hekmatjah* (2013) 213 Cal.App.4th 21, 30.)

All further statutory references are to the Code of Civil Procedure, unless otherwise specified.

CONTENTIONS

Makhlouf contends the trial court erred in denying her motion to vacate the award based on (1) the arbitrator's failure to make the required disclosures, (2) the arbitrator's engaging in the Med-Arb process without Makhlouf's informed written consent, and (3) the arbitrator's failure to disqualify himself.

DISCUSSION

1. *General principles.*

a. *Grounds for vacating award.*

As relevant here, an award may be vacated on the ground that the "arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted." (§ 1286.2, subd. (a)(4).)

In addition, an award may be vacated if "[a]n arbitrator making the award either: (A) failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware; or (B) was subject to disqualification upon grounds specified in Section 1281.91 but failed upon receipt of timely demand to disqualify himself or herself as required by that provision." (§ 1286.2, subd. (a)(6).)[7]

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[7] Section 1281.9 states that "[i]n any arbitration pursuant to an arbitration agreement, when a person is to serve as a neutral arbitrator, the proposed neutral arbitrator shall disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial[.]" (*Id.*, at subd. (a).) Section 1281.91 provides for disqualification of an arbitrator who fails to comply with section 1281.9.

b. *Standard of appellate review.*

On appeal from an order denying a motion to vacate an arbitration award, we review the trial court's order (not the arbitration award) under a de novo standard. (*Malek v. Blue Cross of California* (2004) 121 Cal.App.4th 44, 55; *Haworth v. Superior Court* (2010) 50 Cal.4th 372, 383 [de novo standard applies to claim that arbitrator exceeded his or her powers, as well as to claim that arbitrator failed to make a required disclosure].) To the extent that the trial court's ruling rests upon a determination of disputed factual issues, we apply the substantial evidence test to those issues. (*Malek*, *supra*, at pp. 55–56; *United Health Centers of San Joaquin Valley, Inc. v. Superior Court* (2014) 229 Cal.App.4th 63, 74 (*United Health Centers*).)

2. *Trial court properly refused to vacate the award on the alleged ground that before arbitration began, Judge Kennedy failed to disclose his role as mediator in the Med-Arb proceeding.*

Makhlouf contends: After the parties executed the September 2014 stipulation in the superior court, designating Judge Kennedy as the neutral arbitrator, he provided his services to the parties as a mediator. During Judge Kennedy's role as mediator he became intimately aware of details concerning the matter at hand, and learned confidential information concerning each party's claims, defenses and positions. Once Judge Kennedy obtained this information, he was no longer an independent and neutral actor; however, he failed to disclose these conflicts before starting the arbitration process, in violation of section 1281.9. (See fn. 7, *ante*.) Therefore, the trial court should have granted Makhlouf's motion to vacate the award on the ground that Judge

Kennedy failed to disclose his conflicts and biases before proceeding as an alleged neutral arbitrator.[8]

The argument is meritless. Disclosure is required of all matters "that could cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial[.]" (§ 1281.9, subd. (a).) Makhlouf's theory is that Judge Kennedy needed to disclose the fact that in his role as mediator he had learned confidential information regarding the parties' positions.

However, Makhlouf was well aware that she had participated in mediation before Judge Kennedy in the initial phase of the Med-Arb, and thus she also knew that he had learned details concerning the matter at hand. Therefore, Makhlouf was not entitled to have the award vacated under section 1286.2, subdivision (a)(6) based on nondisclosure by the arbitrator.

Fininen v. Barlow (2006) 142 Cal.App.4th 185 (*Fininen*), is on point. There, a contractor (Barlow) contended that section 1286.2, subdivision (a)(6), required an arbitration award to be vacated because the arbitrator (McCollum) failed to disclose his role as the mediator in a prior lawsuit brought by Barlow. (*Id.* at p. 187.) The trial court denied Barlow's motion to vacate the award, and the reviewing court affirmed.

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[8] Although Makhlouf asserts in her opening brief that she does not recall meeting Judge Kennedy at the April 7, 2014 mediation, she does not contend that Judge Kennedy should have disclosed that he had been the mediator at the April 7, 2014 mediation session. Rather, Makhlouf's contention that Judge Kennedy had a duty to disclose relates to his dual role as mediator/arbitrator in the subsequent Med-Arb proceeding.

Fininen explained, "In denying Barlow's motion to vacate the award, the trial court considered and gave credence to the evidence that, before the arbitration, Barlow recognized McCollum and knew of his participation with Barlow in the prior mediation; that Barlow consented to McCollum as the arbitrator after McCollum advised all parties, in Barlow's presence, that he could not serve without the consent of all parties; that Barlow then waited many months either to check his own files regarding the prior mediation or to object to McCollum's continued participation; and that Barlow objected only after McCollum issued an award in favor of respondents. In view of such unique circumstances, the trial court reasonably could have concluded that it would be absurd to construe section 1286.2, subdivision (a)(6) to require that the arbitration award be vacated based on an incomplete or untimely disclosure concerning the [prior] mediation." (*Fininen*, *supra*, 142 Cal.App.4th at pp. 190–191.)

Here, before the arbitration began, Makhlouf knew that she had just undergone mediation with Judge Kennedy. She also was aware, prior to the arbitration, that Judge Kennedy had engaged in "ex parte sessions" with Young during mediation because, by Makhlouf's own admission, she had witnessed them. Thus, before arbitration commenced, Makhlouf knew all of the facts that she contends the arbitrator should have disclosed. Because the fact of Judge Kennedy's involvement in the mediation was self-evident, Judge Kennedy was not required to disclose it to Makhlouf. Under these circumstances, requiring an additional "disclosure" (or disqualifying Judge Kennedy for failing to have made one) would be pointless.

Further, as in *Fininen*, Makhlouf did not raise the purported nondisclosure issue until after the arbitrator issued an

unfavorable award. (*Fininen*, *supra*, 142 Cal.App.4th at p. 190.) 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." (*United Health Centers*, *supra*, 229 Cal.App.4th at p. 85.)

For these reasons, the trial court properly refused to vacate the award on the alleged ground that Judge Kennedy failed to disclose his role as mediator in the initial phase of the Med-Arb proceeding.

3. *No merit to Makhlouf's contention the trial court should have vacated the award on the ground she did not consent to the Med-Arb process*.

Makhlouf next asserts the award should have been vacated because she never gave informed written consent allowing Judge Kennedy to function both as a mediator and neutral arbitrator. This argument is based on the fact that the Med-Arb stipulation form lacked Makhlouf's signature on the signature line, although the Med-Arb stipulation was signed by Makhlouf's two attorneys. As the trial court found, Makhlouf's contention that she did not consent to Judge Kennedy's acting as arbitrator is without merit.

As a preliminary matter, Makhlouf lacks authority for the proposition that she was not bound by her attorney's consent to the Med-Arb, after she had already personally stipulated to arbitration. *Blanton v. Womancare, Inc.* (1985) 38 Cal.3d 396 (*Blanton*), on which Makhlouf relies, holds that an attorney, merely by virtue of his or her employment as such, lacks apparent authority to bind a client to arbitration because "[w]hen a client engages an attorney to litigate in a judicial forum, the

client has the right to be consulted, and his consent obtained, before the dispute is shifted to another, and quite different, forum." (*Id*. at pp. 407–408.) However, *Blanton* does not stand for the proposition that once a client has already stipulated to arbitration—as Makhlouf indisputably did here—her attorney cannot bind her to a particular arbitrator.

In any event, even if Makhlouf's attorney did lack the authority to agree to a particular arbitrator on her behalf, Makhlouf's subsequent participation in the arbitration ratified her attorney's consent to Judge Kennedy. *Blanton* recognized that unauthorized acts of an attorney "may be binding upon his client through ratification." (*Blanton*, *supra*, 38 Cal.3d at p. 408.) In the present case, by Makhlouf's own admission, she was aware by January 2015 that Judge Kennedy, who had acted as mediator, intended to serve as the arbitrator. The arbitration commenced in August 2015 and concluded in January 2016. On May 25, 2016, Judge Kennedy issued the award in Young's favor. Shortly thereafter, on June 24, 2016, in a letter to Judge Kennedy and opposing counsel, Makhlouf's newly retained counsel objected to the award on the ground that Makhlouf never signed the Med-Arb stipulation form. Thus, Makhlouf waited a year and a half to raise the issue, upon receiving an unfavorable award.

Although Makhlouf claims she immediately objected upon learning in January 2015 that Judge Kennedy would be acting as the arbitrator, and that she continually called for his disqualification, the assertion is unsupported by the record.[9]

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[9] Makhlouf claims that upon learning in January 2015 that Judge Kennedy would be acting as the arbitrator, she immediately objected and called for his disqualification, but the

What the record does reveal is that Makhlouf did not challenge Judge Kennedy's authority to act as arbitrator until after he ruled against her in May 2016. The record also reflects that Makhlouf knew how to make a record of her objection, as evidenced by the June 24, 2016 letter addressed to Judge Kennedy at JAMS, asserting she had not consented to the Med-Arb.

Makhlouf's belated challenge to the arbitrator's authority " 'runs afoul of the principle that '[a] claimant may not voluntarily submit his claim to arbitration, await the outcome, and if the decision is unfavorable, challenge the authority of the arbitrator to act.' " (*University of San Francisco Faculty Assn. v. University of San Francisco* (1983) 142 Cal.App.3d 942, 954; see also *O'Malley* [*v. Petroleum Maintenance Co*. (1957)] 48 Cal.2d [107,] 110 [a party 'may not agree to arbitrate a question and then, if the decision goes against it, litigate the question in another proceeding'].) Such conduct constitutes ' "gamesmanship" ' insofar as it allows a party ' "both to have his cake and eat it too." ' (*Caro* [*v. Smith* (1997)] 59 Cal.App.4th [725,] 731; see *Sy First Family Ltd. Partnership v. Cheung* (1999) 70 Cal.App.4th 1334, 1343.) Courts are disinclined, and rightly

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assertion is unsupported by the record. Makhlouf's claim that she promptly objected to Judge Kennedy in January 2015 relies on paragraphs 13 and 14 of her moving declaration. However, Young objected to those two paragraphs on a number of grounds, the trial court sustained Young's objections in their entirety, and Makhlouf does not challenge the trial court's evidentiary rulings on appeal. Accordingly, Makhlouf lacks factual support for her assertion that she objected to Judge Kennedy before he commenced the arbitration.

so, to reward such 'inequitable' conduct. (*Caro*, at p. 731.)" (*Douglass v. Serenivision, Inc.* (2018) 20 Cal.App.5th 376, 389.)

Accordingly, the trial court properly refused to vacate the award on the ground that Makhlouf did not personally sign the Med-Arb stipulation form.

4. *No merit to Makhlouf's contention the trial court should have vacated the award on the ground Judge Kennedy improperly failed to disqualify himself.*

Makhlouf's final contention is that the trial court erred in refusing to vacate the award based on the arbitrator's failure to disqualify himself. Makhlouf argues Judge Kennedy was required to disqualify himself "in light of [(1)] [his] knowledge that [Makhlouf] never executed the required consent for the [Med-Arb] process as well as [(2)] his knowledge about [Young's] illegal activity," knowledge which Judge Kennedy acquired during the mediation phase of the Med-Arb proceeding.

Our earlier discussion is equally applicable to these arguments. Having rejected Makhlouf's contentions that Judge Kennedy violated his disclosure obligation under section 1281.9, and that Judge Kennedy lacked authority to serve as arbitrator because Makhlouf did not consent to the Med-Arb, Makhlouf's contention that Judge Kennedy was required to disqualify himself is without merit.

DISPOSITION

The judgment confirming the arbitration award is affirmed. Young shall recover her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

LAVIN, J.

EGERTON, J.