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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

FORWARD CALABASAS, INC. et al.,

Plaintiffs and Respondents,

v.

ALEKSANDR GOLDSHTADT et al.,

Defendants and Appellants.

B264756

(Los Angeles County
Super. Ct. No. BS153292)

APPEAL from a judgment of the Superior Court of Los Angeles County, Barbara M. Scheper, Judge. Affirmed.

Law Offices of Mark Rabinovich and Mark Rabinovich for Defendants and Appellants.

Shane, DiGiuseppe & Rodgers and Stephen A. DiGiuseppe for Plaintiffs and Respondents.

I. INTRODUCTION

Defendants, Aleksandr Goldshtadt, also known as Alex Gold, and his real estate firm, Lead Realty and Financial Services, Inc. (Lead Realty), appeal from an April 15, 2015 judgment. The judgment was entered in favor of plaintiffs, Forward Calabasas, Inc. doing business as Keller Williams Realty Calabasas Estates (Keller Williams), Sally Solomon and Zachary King. The judgment was entered after the trial court granted plaintiffs' petition to confirm an arbitration award. Defendants argue the arbitrators exceeded their power in granting the arbitration award because defendants did not agree to arbitrate their dispute. We disagree. Defendants were required to arbitrate the commission dispute with plaintiffs pursuant to their arbitration agreement with the Southland Regional Association of Realtors (Southland Association). In addition, defendants failed to provide an adequate record of the hearing on the petition to confirm the arbitration award. We affirm the judgment.

II. BACKGROUND

A. Background Concerning the Underlying Arbitration

The following background matters are taken from plaintiffs' petition to confirm the arbitration award and the declaration of Michelle Gerhard-Hernandez. Ms. Solomon is a licensed California real estate broker employed by Keller Williams. She is the responsible real estate broker and officer through whom Keller Williams is licensed as a real estate broker. Mr. King is a licensed California real estate sales agent employed by Keller Williams. Both Ms. Solomon and Mr. King are realtor members of the Southland Association. In addition, Ms. Solomon is a realtor member of the Southland Association on behalf of Keller Williams.

On April 10, 2014, plaintiffs submitted to the Southland Association their request for arbitration of a commission dispute with defendants. Mr. Goldshtadt is a licensed

California real estate broker and responsible officer through whom Lead Realty is licensed as a real estate broker. Mr. Goldshtadt hired Mr. King to act as a realtor. Mr. King was engaged to locate residential property for the Goldshtadts. According to the petition, “[Mr. Goldshtadt] did not tell Mr. King that he was himself a licensed real estate broker.” Mr. King found real property priced at over \$5 million for the Goldshtadts. The couple liked the property. They told Mr. King to conduct an investigation of the property’s size and improvements with the city building department. Later, Mr. Goldshtadt spoke with Mr. King. Mr. Goldshtadt indicated he and his wife were not interested in the property. While Mr. King searched for other property for the couple, Mr. Goldshtadt directly contacted the sellers’ agent to purchase the property. Upon close of escrow, Mr. Goldshtadt received \$140,250 in commission as the real estate broker.

On April 11, 2014, the Southland Association notified defendants of plaintiffs’ arbitration request. Attached to the April 11, 2014 letter from the Southland Association are: the request for arbitration; a respondent arbitration agreement form; and its arbitration rules. The April 11, 2014 letter states: “If the Respondent does not submit to Arbitration within fifteen (15) days of receipt of notice of Arbitration, by returning the Respondent Arbitration Agreement (form A-5), he/she shall be deemed delinquent. As soon as possible after the 15 days, a Notice of Default shall be sent by Registered Mail to said delinquent Respondent, advising him/her that they are in default and, if the Response is not received within five (5) days of the Notice of Default, that Respondent shall be deemed in default, shall receive no further notices and shall not be entitled to appear and defend against the claim.” Defendants were given until April 28, 2014, to respond to the Southland Association letter. Defendants, through their counsel, asserted the Southland Association had no right to compel arbitration because it would deprive defendants of their jury trial right.

On May 8, 2014, the Southland Association sent defendants a notice of default. An arbitration hearing was held on September 3, 2014. Defendants did not appear at the hearing. At the conclusion of the hearing, the three realtor arbitrators awarded plaintiffs

\$140,500. Defendants were ordered to pay the amount within 14 days from the date of the hearing.

B. The Petition to Confirm Arbitration Award and Supporting Documents

On January 15, 2015, plaintiffs filed a petition to confirm the September 3, 2014 arbitration award. Plaintiffs asserted Ms. Solomon, Mr. King and Mr. Goldshtadt are realtor members of the Southland Association. As a member of the Southland Association, Mr. Goldshtadt agreed to arbitrate disputes with other members including Ms. Solomon and Mr. King. Plaintiffs contended defendants were required to arbitrate disputes with other members pursuant to the Southland Association's membership agreement and multiple listing service and professional standards rules. In addition, plaintiffs contended that defendants were required to arbitrate their dispute pursuant to the National Association of Realtors' ethics code.

In support of their petition, plaintiffs submitted a declaration from James Link, the chief executive officer of the Southland Association. Mr. Link explained that Southland Association members are licensed real estate brokers and salespersons. Real estate brokers may apply for the Southland Association realtor membership, which includes membership in the California and National Associations of Realtors. In addition, a real estate broker can apply to participate only in the multiple listing service, which allows brokers to share their listings with other participants.

In February 2004, Mr. Goldshtadt applied to participate in the Southland Association's multiple listing service. The Southland Association uses one application form for both realtor membership and multiple listing service participation. Paragraph 23 of the application form contains an arbitration agreement: "(a) I hereby agree for myself and the firm for which I act to binding arbitration of disputes with any member of this Association, with any member of [California Association of Realtors] in accordance with its rules and regulations or any client covered by the Association rules. (b) Further, I agree to binding arbitration in accordance with the Association Rules, with any other

MLS Participant of this Association/MLS or with any other MLS Participant or Subscriber of this Association/MLS or with any other MLS Participant or a Subscriber of the Association/MLS which shares a common database with this Association/MLS through a Regional or Reciprocal Agreement.” In addition, paragraph 31, subdivision (B) of the application form states: “I understand and agree that by becoming and remaining a participant or subscriber to the MLS, I agree to abide by the MLS rules, as from time to time amended, including but not limited to the following: . . . [¶] B. I agree to abide by all of the rules and regulations applicable to Broker MLS Participants as they now exist or as they may be adopted or amended from time to time by the Association: these ‘rules’ presently include the Multiple Listing Service Rules, Professional Standards Rules (which include the duty to arbitrate disputes as they relate to MLS participants) Association By-Laws pertaining to Licensee Certification and Membership rules pertaining to advising the Association of new associates, and all other rules regarding MLS participation and confidentiality, copies of which I have received, read and understand.” Mr. Goldshtadt also signed a second form acknowledging he received, read and agreed to abide by the Southland Association’s multiple listing service rules. Mr. Goldshtadt signed a third form agreeing to serve as the responsible realtor for his real estate firm. Mr. Goldshtadt certified he read the Southland Association’s bylaws; multiple listing service rules; membership rules; and professional standards rules.

The multiple listing service rules require arbitration of disputes in Rule 16. The mandatory arbitration provision set forth in Rule 16.1 states: “By becoming and remaining a Participant or Subscriber in the MLS, each Participant and Subscriber agrees to submit disputes arising out of the real estate business which also arises out of, or is in conjunction with, any listing filed with the MLS or any appraisal, to binding arbitration with any other Participant or Subscriber of this MLS, or participants or subscribers of any other MLS who are authorized to have access to this MLS under Section 6 of these rules. Such arbitrations shall be governed by the *California Code of Ethics and Arbitration Manual* as from time to time amended which is hereby incorporated by reference. This shall be deemed an arbitration agreement within the meaning of Part 3, Title 9 of the

California Code of Civil Procedure. Failure to submit to arbitration as provided herein shall be a violation of these MLS rules.”

In November 2005, Mr. Goldshtadt applied for realtor membership with the Southland Association. Mr. Link stated Mr. Goldshtadt attended an orientation for new Southland Association realtor members. The orientation included a presentation on the professional standards rules, including the duty to arbitrate disputes. As a realtor member, Mr. Goldshtadt agreed to comply with the Southland Association’s bylaws, rules and regulations and the National Association of Realtors’ ethics code.

Article VII, section 2 of the Southland Association’s bylaws requires realtor members to comply with the California and National Association of Realtors’ constitutions, bylaws, policies, rules and ethics codes. Article VII, section 2 states compliance includes the duty to arbitrate as specified in the ethics code and professional standards rules. In addition, article VII, section 2 requires realtor members to arbitrate all disputes with other members: “By becoming and remaining a member, every REALTOR member agrees that he or she and the corporation or firm for which he or she acts as a partner, officer, principal, or branch office manager, will submit to arbitration through the [Southland Association] all disputes with any other member or members of the public subject to the conditions set forth in the Code of Ethics and Arbitration Manual and Professional Standards Rules.”

Further, realtor members are obligated to arbitrate all disputes with other members under section 3 of the Southland Association’s professional standards rules. Section 3, subdivision (b) states: “Among the Duties of Membership are: . . . [¶] b. To submit to Arbitration by the Association’s facilities all disputes with any other MEMBER or MLS PARTICIPANT/SUBSCRIBER if either party to the dispute should so request, and to abide by the Arbitrators’ award. (No MEMBER shall be required to submit to Arbitration a dispute that occurred prior to his membership application.) If a member resigns or otherwise causes membership to terminate, the duty to submit to arbitration continues in effect even after membership lapses or is terminated, provided that the dispute arose while the former member was a REALTOR member. This shall be deemed

an Arbitration agreement within the meaning of Part 3, Title 9 of the California Code of Civil Procedure. (See Bylaws, Article VII, Section 1) (MLS Rules, Section 14.)”

Finally, article 17 of the National Association of Realtors’ code of ethics requires realtor members to arbitrate disputes. Article 17 provides: “In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between Realtors (principals) associated with different firms, arising out of their relationship as Realtors, the Realtors shall mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, Realtors shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.”

C. The Opposition

In their opposition to the petition to confirm the arbitration award, defendants argued they were not subject to the arbitration provisions contained in the Southland Association’s: application form; the professional standards rules; multiple listing service rules; or code of ethics. Defendants asserted the 2004 application form executed by Mr. Goldshtadt is missing the arbitration provisions on pages 2 and 3 because the Southland Association did not retain these two pages. Defendants further contended Mr. Goldshtadt was not a realtor member of the Southland Association. Mr. Goldshtadt submitted a declaration denying he was a member, realtor or responsible realtor of the Southland Association or any other association of realtors. Mr. Goldshtadt stated on September 9, 2005, he informed the Southland Association he wanted to update his real estate firm’s name on the multiple listing service account. Mr. Goldshtadt filled out the document to change his firm’s name. At the request of a Southland Association representative, Mr. Goldshtadt’s secretary filled out another form entitled “Application for REALTOR Participation in the Multiple Listing Service.” The secretary signed the application on Mr. Goldshtadt’s behalf and sent it to the Southland Association. Mr. Goldshtadt stated by signing the two forms in 2005, he only intended to update his firm’s name and to

remain a multiple listing service participant. Mr. Goldshtadt denied he submitted an application to the Southland Association requesting to be a realtor member.

In addition, defendants argued they are not subject to arbitration because of two exceptions set forth in section 4 of the Southland Association's professional standards rules. Section 4, subdivisions (c) and (d) state in part: "As a condition of participation in the Southland Regional Association of REALTORS Multiple Listing Service, each MLS PARTICIPANT/SUBSCRIBER agrees to arbitrate disputes with any other MLS PARTICIPANT/SUBSCRIBER or MEMBER of the MLS according to the Bylaws and the [Southland Association's] Professional Standards Rules with the following exceptions and clarifications [¶] [¶] c. If an MLS PARTICIPANT/SUBSCRIBER and a MEMBER are parties to the dispute and the MLS PARTICIPANT/SUBSCRIBER is not a MEMBER of any Association of REALTORS, the dispute will be resolved as follows, as elected by the MLS PARTICIPANT/SUBSCRIBER: [¶] (1) By a panel selected pursuant to the Bylaws and Professional Standards Rules of the [Southland Association] or, [¶] (2) Any other mediation service agreed to by both parties or; [¶] (3) They must use the American Arbitration Association. [¶] d. MLS PARTICIPANTS/SUBSCRIBERS, when acting solely as principals in a real estate transaction, are not obligated to arbitrate disputes with other MEMBERS or MLS PARTICIPANTS/SUBSCRIBERS absent a specific written agreement to the contrary."

D. The Reply

In reply, plaintiffs asserted defendants were required but failed to raise their objections with the arbitrators at the arbitration hearing. Plaintiffs also argued the multiple listing service's rules do not provide exceptions to mandatory arbitration. Further, plaintiffs contended Mr. Goldshtadt is a realtor member because since 2005 he has paid membership dues to various realtor associations. Plaintiffs submitted a declaration from Rob Schwab, the chief financial officer of the Southland Association. Mr. Schwab stated Mr. Goldshtadt was billed for multiple listing service access every

year. Separately, Mr. Goldshtadt was billed dues for membership with the Southland Association and the California and National Associations of Realtors. Mr. Goldshtadt paid prorated dues in 2005 because he applied to be a realtor member on November 22, 2005. Attached to Mr. Schwab's declaration is a computer printout showing Mr. Goldshtadt paid multiple listing service access fees and membership dues from 2005 to 2014 for the: Southland Association; California Association of Realtors; and National Association of Realtors.

Plaintiffs also submitted the declaration of their attorney, Stephen A. DiGiuseppe. The declaration was submitted to rebut defendants' assertion that an arbitration exception applied because Mr. Goldshtadt acted solely as a principal in the real estate transaction. Mr. DiGiuseppe obtained records from the custodian of records for Hilton & Hyland Real Estate, Inc., the sellers' real estate brokers. The records include the purchase agreement, a disclosure statement regarding real estate agency relationship, and the seller's final settlement statement, all of which are attached to Mr. DiGiuseppe's declaration. Page 8 of the purchase agreement identifies Mr. Goldshtadt as both a buyer and the real estate broker. The disclosure statement lists Mr. Goldshtadt as both a buyer *and the real estate broker* acting on behalf of his firm, Lead Realty. The seller's final settlement statement shows Lead Realty was paid a commission of \$140,250.

E. Trial Court Ruling

On April 13, 2015, the trial court held a hearing on the petition to confirm the arbitration award. No reporter's transcript of the hearing or a suitable substitute has been provided by defendants. The trial court ruled: "Petitioner seeks the court's order confirming an arbitration award made against respondents. The Petition is granted for the reasons stated in the moving papers. The arguments made by respondent[s] in opposition to the motion should have been raised with the arbitrator." A judgment confirming the arbitration award was entered on April 15, 2015. Defendants filed their notice of appeal on June 9, 2015.

III. DISCUSSION

A. Standard of Review

Our review of a judgment confirming an arbitration award is limited to the grounds set forth in Code of Civil Procedure¹ sections 1286.2 (to vacate) and 1286.6 (for correction). (*Aguilar v. Lerner* (2004) 32 Cal.4th 974, 982; *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 33.) We review the trial court's order de novo where the facts are undisputed. (*SWAB Financial, LLC v. E*Trade Securities, LLC* (2007) 150 Cal.App.4th 1181, 1196; *Malek v. Blue Cross of California* (2004) 121 Cal.App.4th 44, 55.) To the extent the trial court's ruling rests upon a determination of disputed facts, we review for substantial evidence. (*SWAB Financial, LLC v. E*Trade Securities, LLC, supra*, 150 Cal.App.4th at p. 1196; *Malek v. Blue Cross of California, supra*, 121 Cal.App.4th 44 at pp. 55-56.) Here, much of the appeal involves disputed factual issues concerning documents signed by Mr. Goldshtadt.

B. Inadequate Record

On September 9, 2015, we requested the parties to brief whether defendants' failure to designate a reporter's transcript or suitable substitute warrants affirmance based on the inadequacy of the record. In response, defendants argue the absence of a reporter's transcript does not render the record inadequate. He contends the trial court's decision is subject to de novo review and thus a reporter's transcript is not necessary. We disagree. As noted, one of the issues we must decide is whether there is substantial evidence present.

A judgment or order is presumed to be correct and appellant has a duty to provide the reviewing court with an adequate record to demonstrate error. (*In re Marriage of*

¹ Future statutory references are to the Code of Civil Procedure.

Arceneaux (1990) 51 Cal.3d 1130, 1133; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *Oliveira v. Kiesler* (2012) 206 Cal.App.4th 1349, 1362.) In numerous situations, courts have refused to reach the merits of an appellant's claims because appellant failed to provide a reporter's transcript of a pertinent proceeding or a suitable substitute. (*Walker v. Superior Court* (1991) 53 Cal.3d 257, 273-274 [transfer order]; *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296 [attorney fee motion hearing]; *Ballard v. Uribe* (1986) 41 Cal.3d 564, 574-575 (lead opn. of Grodin, J.) [new trial motion hearing]; *In re Kathy P.* (1979) 25 Cal.3d 91, 102 [hearing to determine whether counsel was waived and minor consented to informal adjudication]; *McAllister v. Los Angeles Unified School Dist.* (2013) 216 Cal.App.4th 1198, 1210-1211 [appellant forfeits challenge of denial of leave to amend]; *Wagner v. Wagner* (2008) 162 Cal.App.4th 249, 259 [discretionary relief under § 473, subd. (b)]; *Boeken v. Philip Morris, Inc.* (2005) 127 Cal.App.4th 1640, 1672 [no record of judge's ruling on an instruction request]; *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447 [attorney fee award affirmed where trial transcript not provided]; *Estate of Fain* (1999) 75 Cal.App.4th 973, 992 [no reporter's transcript of surcharge hearing]; *Hodges v. Mark* (1996) 49 Cal.App.4th 651, 657 [nonsuit motion affirmed where reporter's transcript not provided]; *Interinsurance Exchange v. Collins* (1994) 30 Cal.App.4th 1445, 1448 [monetary sanctions hearing]; *Hernandez v. City of Encinitas* (1994) 28 Cal.App.4th 1048, 1076-1077 [preliminary injunction hearing]; *Null v. City of Los Angeles* (1988) 206 Cal.App.3d 1528, 1532 [reporter's transcript fails to reflect content of special instructions]; *Buckhart v. San Francisco Residential Rent etc., Bd.* (1988) 197 Cal.App.3d 1032, 1036 [hearing on § 1094.5 petition]; *Sui v. Landi* (1985) 163 Cal.App.3d 383, 385 [order denying preliminary injunction dissolution affirmed based on lack of reporter's transcript]; *Rossiter v. Benoit* (1979) 88 Cal.App.3d 706, 711-712 [demurrer hearing]; *Calhoun v. Hildebrandt* (1964) 230 Cal.App.2d 70, 71-73 [argument to jury not in reporter's transcript]; *Ehman v. Moore* (1963) 221 Cal.App.2d 460, 462-463 [failure to secure reporter's transcript or settled statement as to offers of proof]; *Wetsel v. Garibaldi* (1958)

159 Cal.App.2d 4, 9-10 [no reporter's transcript of hearing ordering arbitration].)
Defendants failure to provide an adequate record warrants affirmance of the judgment.

C. The Order Confirming Arbitration Award is Supported by Substantial Evidence

Defendants argue the arbitration award must be vacated pursuant to section 1286.2, subdivision (a)(4) because the arbitrators exceeded their powers. Defendants claim the arbitrators did not have power to issue an award because defendants were not subject to any arbitration agreement. Defendants contentions are without merit.

There is substantial evidence showing defendants agreed to submit to binding arbitration as a multiple listing service participant. The 2004 multiple listing service application submitted by defendants contains an arbitration agreement in paragraph 23: “(a) I hereby agree for myself and the firm for which I act to binding arbitration of disputes with any member of this Association, with any member of [California Association of Realtors] in accordance with its rules and regulations or any client covered by the Association rules. (b) Further, I agree to binding arbitration in accordance with the Association Rules, with any other MLS Participant of this Association/MLS or with any other MLS Participant or Subscriber of this Association/MLS or with any other MLS Participant or a Subscriber of the Association/MLS which shares a common database with this Association/MLS through a Regional or Reciprocal Agreement.” In addition, paragraph 31, subdivision (b) of the application states: “I understand and agree that by becoming and remaining a participant or subscriber to the MLS, I agree to abide by the MLS rules, as from time to time amended, including but not limited to the following: . . . [¶] B. I agree to abide by all of the rules and regulations applicable to Broker MLS Participants as they now exist or as they may be adopted or amended from time to time by the Association: these ‘rules’ presently include the Multiple Listing Service Rules, Professional Standards Rules (which include the duty to arbitrate disputes as they relate to MLS participants) Association By-Laws pertaining to Licensee Certification and Membership rules pertaining to advising the Association of new associates, and all other

rules regarding MLS participation and confidentiality, copies of which I have received, read and understand.”

Defendants assert there is *no* evidence Mr. Goldshtadt received the complete application form including the arbitration provisions on pages 2 and 3. This contention is frivolous. Mr. Link explained under oath that the association retains pages 1 and 4 of the 2004 application, which were filled out and signed by Mr. Goldshtadt. Mr. Link, the Southland Association’s chief executive officer, stated page 2 is printed on the back of page 1 while page 4 is printed on the back of page 3. Thus, there is substantial evidence Mr. Goldshtadt received all 4 pages of the application because he filled out page 1 and signed page 4. In addition, Mr. Goldshtadt signed a separate form acknowledging he received, read and agreed to abide by the Southland Association’s multiple listing service rules. Mr. Goldshtadt signed another form agreeing to serve as the responsible realtor for his real estate firm. Mr. Goldshtadt certified he read the Southland Association’s bylaws and multiple listing service, membership and professional standards rules.

Rule 16.1 of the listing service rules obligates its participants to submit to mandatory arbitration. Rule 16.1 of the multiple listing service rules states: “By becoming and remaining a Participant or Subscriber in the MLS, each Participant and Subscriber agrees to submit disputes arising out of the real estate business which also arises out of, or is in conjunction with, any listing filed with the MLS or any appraisal, to binding arbitration with any other Participant or Subscriber of this MLS, or participants or subscribers of any other MLS who are authorized to have access to this MLS under Section 6 of these rules. Such arbitrations shall be governed by the *California Code of Ethics and Arbitration Manual* as from time to time amended which is hereby incorporated by reference. This shall be deemed an arbitration agreement within the meaning of Part 3, Title 9 of the California Code of Civil Procedure. Failure to submit to arbitration as provided herein shall be a violation of these MLS rules.”

Furthermore, defendants are required to submit to arbitration as a realtor member of the Southland Association and the California and National Associations of Realtors. Defendants deny they are a realtor member of these associations. However, the

uncontradicted evidence shows Mr. Goldshtadt paid membership dues for these associations from 2005 through 2014. These association membership dues are separate from the multiple listing service access fees paid by defendants from 2004 through 2014.

As a realtor member, defendants agreed to comply with the Southland Association's bylaws, rules and regulations, and the National Association of Realtors' ethics code. Article VII, section 2 of the Southland Association's bylaws requires realtor members to comply with the California and National Associations of Realtors' constitutions, bylaws, policies, rules and ethics codes. Article VII, section 2 states compliance includes the duty to arbitrate as specified in the ethics codes and professional standards rules. In addition, article VII, section 2 requires realtor members to arbitrate all disputes with other members: "By becoming and remaining a member, every REALTOR member agrees that he or she and the corporation or firm for which he or she acts as a partner, officer, principal, or branch office manager, will submit to arbitration through the [Southland Association] all disputes with any other member or members of the public subject to the conditions set forth in the Code of Ethics and Arbitration Manual and Professional Standards Rules."

Also, realtor members are obligated to arbitrate all disputes with other members under section 3 of the Southland Association's professional standards rules. Section 3, subdivision (b) states: "Among the Duties of Membership are: . . . [¶] b. To submit to Arbitration by the Association's facilities all disputes with any other MEMBER or MLS PARTICIPANT/SUBSCRIBER if either party to the dispute should so request, and to abide by the Arbitrators' award. (No MEMBER shall be required to submit to Arbitration a dispute that occurred prior to his membership application.) If a member resigns or otherwise causes membership to terminate, the duty to submit to arbitration continues in effect even after membership lapses or is terminated, provided that the dispute arose while the former member was a REALTOR member. This shall be deemed an Arbitration agreement within the meaning of Part 3, Title 9 of the California Code of Civil Procedure. (See Bylaws, Article VII, Section 1) (MLS Rules, Section 14.)"

In addition, article 17 of the National Association of Realtors' ethics code requires realtor members to arbitrate disputes. Article 17 provides: "In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between Realtors (principals) associated with different firms, arising out of their relationship as Realtors, the Realtors shall mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, Realtors shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter."

Defendants also argue they are not subject to arbitration because of the exceptions set forth in section 4, subdivisions (c) and (d) of the professional standards rules. As noted, section 4, subdivisions (c) and (d) provide: "As a condition of participation in the Southland Regional Association of REALTORS Multiple Listing Service, each MLS PARTICIPANT/SUBSCRIBER agrees to arbitrate disputes with any other MLS PARTICIPANT/SUBSCRIBER or MEMBER of the MLS according to the Bylaws and the [Southland Association] Professional Standards Rules with the following exceptions and clarifications [¶] [¶] c. If an MLS PARTICIPANT/SUBSCRIBER and a MEMBER are parties to the dispute and the MLS PARTICIPANT/SUBSCRIBER is not a MEMBER of any Association of REALTORS, the dispute will be resolved as follows, as elected by the MLS PARTICIPANT/SUBSCRIBER: [¶] (1) By a panel selected pursuant to the Bylaws and Professional Standards Rules of the [Southland Association] or, [¶] (2) Any other mediation service agreed to by both parties or; [¶] (3) They must use the American Arbitration Association. [¶] d. MLS PARTICIPANTS/SUBSCRIBERS, when acting solely as principals in a real estate transaction, are not obligated to arbitrate disputes with other MEMBERS or MLS PARTICIPANTS/SUBSCRIBERS absent a specific written agreement to the contrary."

Section 4, with a heading entitled "NON-MEMBER MANDATORY ARBITRATION AND RULES ADHERENCE," concerns *non-members'* agreement to arbitrate and exceptions to that obligation. The arbitration exception in section 4, subdivision (c) is inapplicable because there is substantial evidence Mr. Goldshtadt is a

realtor member. Furthermore, section 4, subdivision (d) does not apply because there is substantial evidence Mr. Goldshtadt did not act solely as a principal in the real estate transaction. There is substantial evidence Mr. Goldshtadt acted as both a principal and a real estate broker when he purchased his residential property. Page 8 of the purchase agreement identifies Mr. Goldshtadt as both a buyer and the real estate broker. The disclosure statement lists Mr. Goldshtadt as both a buyer and the real estate broker acting on behalf of his firm, Lead Realty. Further, the seller's final settlement statement shows Lead Realty was paid a commission of \$140,250. Substantial evidence supports the trial court's implicit finding of defendants' obligation to arbitrate the real estate commission dispute.

Finally, defendants contend the trial court erred by refusing to consider their arguments because they did not make them before the arbitrators. We disagree. In confirming the arbitration award, the trial court ruled: "The Petition is granted for the reasons stated in the moving papers. The arguments made by respondent in opposition to the motion should have been raised with the arbitrator." Plaintiffs' moving papers provide ample evidence of defendants' obligation to arbitrate the dispute. Because defendants agreed to arbitration, we need not decide whether they were required to make their arguments before the arbitrators before raising them with the trial court. (See *Moncharsh v. Heily & Blase, supra*, 3 Cal.4th at pp. 30-31; *Comerica Bank v. Howsam* (2012) 208 Cal.App.4th 790, 829-830.)

IV. DISPOSITION

The April 15, 2015 judgment is affirmed. Plaintiffs, Forward Calabasas, Inc. doing business as Keller Williams Realty Calabasas Estates, Sally Solomon and Zachary King, shall recover their costs on appeal from defendants, Aleksandr Goldshtadt, also known as Alex Gold, and Lead Realty and Financial Services, Inc.

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TURNER, P. J.

We concur:

KRIEGLER, J.

KUMAR, J. *

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.