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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 TWO

WENDY KRONICK, Plaintiff and Appellant, v. DEBRA A. OPRI et al., Defendants and Respondents.	B241510 (Consolidated with B246369) (Los Angeles County Super. Ct. No. SC106598)

APPEAL from a judgment and an order of the Superior Court of Los Angeles County. Lisa Hart Cole, Judge. The judgment confirming the arbitration award is reversed and remanded with directions. The appeal from the sanction order is dismissed.

Law Offices of Robert S. Gerstein and Robert S. Gerstein for Plaintiff and Appellant.

Debra Opri, in pro. per., and for Defendants and Respondents.

Wendy Kronick (Kronick) appeals from the trial court's judgment confirming an arbitration award in favor of her former attorney, Debra A. Opri (Opri). Separately, Kronick appeals a $3,200 postjudgment discovery sanction. Because the trial court disregarded the process for selecting an arbitrator in the arbitration clause in Opri's retainer agreement, the arbitrator had no power to issue an award. As a result, we reverse the order confirming the award and remand with instructions for the trial court to vacate the award pursuant to Code of Civil Procedure section 1286.2, subdivision (a)(4).[1] The appeal from the sanction order is dismissed because it is not appealable.

FACTS

The Retainer Agreement and Arbitration Clause

In 2007, Kronick and Opri entered into a retainer agreement that contained an arbitration clause.

The arbitration clause provided: "Client agrees that any disputes between us relating to the interpretation or performance of this agreement, attorney[] fees and/or costs, or any dispute regarding the nature and quality of the services provided hereunder . . . shall be submitted to binding arbitration in Los Angeles County before a retired California Superior Court judge following the procedures set forth in California Code of Civil Procedure Sections 1282 and 1286. The initiator of the proceedings shall do so in writing by submitting two names of retired California Court judges to the responding party, and if the responding party does not agree to any of the two nominees, within ten [10] days the responding party shall provide two names of retired California Superior Court judges from which the initiating party may choose one. If the parties cannot agree on an arbitrator, one shall be chosen by a court of competent jurisdiction from the four nominees." (Emphasis omitted.)

Kronick's Demand for Arbitration

On November 23, 2009, Kronick sent Opri a letter stating that Kronick was "herewith presenting a claim against you for legal malpractice, breach of fiduciary duty,

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[1] All further statutory references are to the Code of Civil Procedures unless otherwise indicated.

fraud, conversion of . . . funds, breach of contract and intentional [infliction] of emotional distress." According to Kronick, she did not have a copy of the retainer agreement and therefore needed Opri to send one. Over the course of the next several weeks, Kronick sent Opri a series of e-mails requesting communication and a copy of the retainer agreement. On December 15, 2009, Kronick sent an e-mail to Opri which included the following first paragraph: "You have failed to acknowledge my DEMAND FOR ARBITRATION and I would appreciate your promptly doing so. Your retainer sets forth how the arbitrators are to be selected and I am, therefore, listing my two proposed retired judges as follows: Aviva Bobb [(Judge Bobb)] and Judith Chirlin [(Judge Chirlin)]."

Opri replied to the December 15, 2009, e-mail and stated, in part: "As to your statements concerning a demand for arbitration, when I receive a procedurally proper formal demand for arbitration, I will respond accordingly, including consideration of your proffered 'arbitrators[.]'" To this, Kronick replied that "my initiation of arbitration was done properly and you are now a defendant therein and required to respond as a defendant. If you fail to cooperate, I will have at least two choices: [¶] I can petition the court to compel arbitration and to select one of my proposed arbitrators, or I can regard your uncooperativeness as being a knowing election by you to waive arbitration and proceed regularly in court."

Kronick's Lawsuit

On January 27, 2010, Kronick filed a complaint against Opri alleging causes of action for negligence, breach of fiduciary duty, fraud, conversion, intentional infliction of emotional distress and declaratory relief.

The complaint alleged that Opri represented Kronick in a dissolution of marriage case, which was filed in 2008. When Opri was retained, she misrepresented her qualifications and expertise. Kronick paid a $5,000 retainer and then an additional $3,000. During the course of the proceeding, Opri was paid $75,000 and $10,000 by Kronick's husband, Joseph Shalant (Shalant). During the course of her representation, Opri billed Kronick exorbitant amounts for time and service despite knowing her dire economic circumstances. In June 2009, the family court entered a dissolution of

marriage judgment. At that time, Opri misappropriated $10,000 of Kronick's spousal support. All other issues concerning property and support were reserved for trial. Kronick terminated Opri's services and hired a different attorney. Soon after, Kronick and Shalant reconciled.

Opri's Petition to Compel Arbitration

In March 2010, Opri petitioned to compel Kronick to arbitrate.

The parties convened for a hearing on June 3, 2010. The trial court granted the petition. Subsequently, it stated that the "plaintiff is to take the laboring oar generally on an arbitration," and asked Kronick's counsel if he wanted Opri to take the laboring oar instead. He stated, "That's fine. We can talk about that." The trial court stated, "Okay. [Opri] to initiate the arbitration proceeding." Opri replied, "Your Honor, it is up to them to initiate because it's their complaint." Responding, the trial court stated, "I understand. . . . [A]nd I would like you to take the laboring oar in the event [Kronick] doesn't choose to do [so]." Later, Kronick's counsel pointed out that his client "has already submitted two names. So I don't see that being an obstacle[.]" As a consequence, the trial court stated that Kronick "is to take the laboring oar[.]"

Opri's July 12, 2010 Letter; Kronick's Response

On July 12, 2010, Opri sent a letter via e-mail to Kronick and accused her of delaying the arbitration process by failing "to file a formal demand for arbitration." Additionally, Opri stated: "For the record, my office in my absence did receive immediately prior to the July 4th holiday, an informal telephone call from ARC, during which ARC advised that while you have contacted them, you had not filed any formal arbitration demand with them, nor paid any fees necessary to start the process, nor even forwarded a copy of the subject retainer for their review and advisement to you of the same. Your claims as to your purported attempts to, '. . . set up a conference with Judge Bobb . . .' [are] ridiculous given that you have not even properly started the process after all this time, so as to submit the matter with ARC, Judge Bobb, or any other arbitrator[,] for that matter. Judge [Chirlin], who you also reference in your letter, is not even

affiliated with ARC. This unfortunately is becoming a circular display of how much you seek to frustrate the arbitration process.

"To reiterate, long ago you were advised that your proposed arbitrators were not acceptable and that you needed to follow proper procedure in order to initiate this arbitration, after which time proposed arbitrators could be exchanged. Instead of properly initiating an arbitration by formal demand, you chose to subsequently file a civil lawsuit in violation of your arbitration requirements. . . .

"Once and for all, so that this merry-go-round you are creating can end and to assist you, I have taken the liberty of doing your job, and procuring and providing herewith ALL the arbitration rules and formal demand forms [for] ARC, ADR, and JAMS respectively. Please note upon your review of same that there are requirements for a proper formal arbitration demand for each, or for whichever you choose.

"Finally, while we continue to reject those names you provided as arbitrators and despite the fact you still have not yet filed a formal demand with anyone, we herewith provide our two retired judges[']at JAMS in Santa Monica: Retired Hon. David Perez [(Judge Perez)], or Retired Hon. Melinda Johnson [(Judge Johnson)]. Both are well versed in family law. Once you have filed a formal demand for arbitration, we are also agreeable to conduct a good faith meeting regarding selection of an arbitrator[.]"

Attached to the letter, Opri provided Kronick with demand forms as well as rules from ARC, ADR and JAMS.

Kronick replied by e-mail and insisted she had properly demanded arbitration as detailed in the retainer agreement.

Opri's Demand for Arbitration Before JAMS

On July 14, 2010, Opri filed a form with JAMS entitled "Demand for Arbitration Before JAMS." She identified herself as the claimant, and she delineated the claim and relief she sought as follows: "fee dispute for unpaid atty fees/costs in sum of $129,326.41 plus add'l fees & costs[.]" The form indicated that Kronick could file a counterclaim according to the applicable arbitration rules, specifically: "[Kronick] to file claim arising from civil action as ordered by court in response to Opri's Petn to Compel

Arb." In addition, the form requested that the matter be set for a hearing at JAMS in Santa Monica, California.

Kronick's E-mail to JAMS; Her Subsequent Motion to Appoint Judge Bobb as the Arbitrator

On July 21, 2010, Kronick e-mailed JAMS and stated: "Please be advised we are not arbitrating with JAMS."

By way of motion, Kronick requested, inter alia, that the trial court appoint Judge Bobb as the arbitrator. Kronick quoted the arbitration provision and stated, in part, that "for the client to initiate arbitration, the retainer agreement only requires compliance with the . . . provision to select two . . . judges and to then notify the attorney of such, who then has 10 days to object and instead offer her nominees. Nothing is said and there is no requirement that the client must resort to one of the many arbitration services (such as JAMS, ARC, ADR, etc.) or notify the attorney of the initiation of the arbitration process other than by a writing that offers two retired judge arbitrators." Thereafter, Kronick argued that Opri "should be held to the mandatory provision of her retainer giving her 10 days to name her arbitrator nominees. She should not be reprieved for having ignored the 'shall' mandatory provision to timely name her choice for arbitrator. Th[e] court should properly appoint Judge Bobb, plaintiff's first choice and to whom [Opri] never timely objected."

JAMS' Recognition that it Lacked Jurisdiction

On August 11, 2010, a business manager from JAMS wrote to Opri, stating: "I am writing to advise you that at this [juncture], JAMS cannot proceed in appointing an arbitrator in the above-referenced matter due to [Kronick's] e-mail dated July 21, 2010[,] in which she objects to using JAMS. [¶] The parties' contract is explicit in its determination as to how the arbitrator will be selected and reads: 'If the parties cannot agree to an arbitrator, one shall be chosen by a court of competent jurisdiction from the four nominees.' While [Opri] has advised that they nominate [Judge Johnson] and [Judge Perez], [Kronick] has responded only to say that she objects to JAMS. Further, the Court's Notice of Ruling on Petition to Compel Arbitration dated June 3, 2010[,] does not

suggest any deviation from the original contract between the parties and therefore, JAMS cannot [proceed] without a court order giving JAMS jurisdiction to hear this matter and appoint an arbitrator."

Opri's Motion to Appoint Judge Perez

Via motion, Opri filed a motion to appoint Judge Perez on the ground that "[t]he terms of the retainer agreement provide that [the] court shall select an arbitrator if the parties cannot otherwise agree."

The September 21, 2010, Hearing

At the hearing on the motions to appoint an arbitrator, the trial court started off by saying, "I think that there is a real confusion about what is required by the agreement. The agreement does not require that the person who is initiating arbitration actually go to initiate the arbitration. However, it does require that the parties submit the name of two nominees and then to try to agree. [¶] Ms. Kronick, you did not do that. You've been insistent, apparently, according to the paperwork, that it be Judge Bobb who should do your arbitration. In the meantime, I did order [Opri] to go to JAMS, to go to whomever, and to initiate proceedings, and she did do that on my order."

The trial court asked Opri if she paid money, and she said, "I had to pay for both sides for the case management. They are just waiting for your order appointing one to two arbitrators." Based on that, the trial court stated, "Given that it was my order and that [Opri] did do it, I would appoint somebody from JAMS."

The trial court asked Kronick, who was representing herself, if she wished to submit two names from JAMS. Kronick stated she already submitted two names in December 2009 as required by the retainer agreement. In response, the trial court stated, "Okay. But we're a little bit past that now." The trial court indicated that it would give Kronick time to submit two names from JAMS. Then it noted that Kronick was representing herself and stated, "Okay. And so you're held to the same standard as a lawyer. I ordered her to initiate proceedings. If you didn't, you didn't. So she initiated the proceedings. Now that that's been done, we're at JAMS. The money has been paid. It's been initiated. So because you're pro per, I'm prepared to allow you to submit two

additional names. And if you want me to choose among those four names, I will do so. Is that what you would like to do?" Kronick responded, "Yes, I would like to do that."

At that point, the trial court stated, "Okay. I'll give you two days to do that. I'll put this over two days. I'll continue it. Everything that is on for today I'll put it over for two days to October 23rd, 2010[.]"

The September 23, 2010, Hearing; the Nunc Pro Tunc Order

A hearing was held on September 23, 2010. Kronick did not attend. The trial court indicated that it had received a letter from Kronick providing the names of two arbitrators. When asked if she received the nominees, Opri replied, "I did, Your Honor. And we did our due diligence as much as we could yesterday. We cannot accept them primarily because they're not available to get this done in the time we need. And, two, they don't know family law. They're primarily intellectual property. [¶] What I did so this court can have a selection is I asked JAMS in the abundance of caution to give us two new names[,] so can I give [them] to the court[?] They are available, and they do know family law."

The trial court said it would accept the new names. Opri replied, "The names are Sheila Sonenshine [(Justice Sonenshine)] . . . . And then Candace Cooper [Justice Cooper]. I would ask the court to seriously consider, since this is a significant family law matter, either [Justice Sonenshine] or [Judge Johnson]."

The trial court appointed Justice Sonenshine.

After the hearing was over, the trial court issued a minute order that reiterated the appointment of Justice Sonenshine and then stated: "It appearing to the Court that through inadvertence and clerical error, the minute order dated 9-21-10 does not properly reflect the order of the Court. Said minute order is corrected NUNC PRO TUNC as of that date: [¶] BY STRIKING: [¶] The Court orders the above matter continued to 10-25-10 at 9:00 a.m. . . . [¶] BY SUBSTITUTING: [¶] The Court orders the above matters continued to 9-23-10 at 8:30 a.m. . . ."

The Arbitration Award

After arbitration, Justice Sonenshine issued a First Amended Final Award. It awarded Opri $129,326.41 in attorney fees, plus 10 percent interest from the date Opri initiated arbitration with JAMS in July 2010. It also awarded Opri $18,556.63 for the costs of the arbitration.

Opri's Petition to Confirm the Arbitration Award; Kronick's Petition to Vacate the Arbitration Award; Kronick's Appeal

Opri petitioned the trial court to confirm the arbitration award. Kronick petitioned to vacate the award and incorporated her petition into her opposition to Opri's petition to confirm.

At the hearing, Kronick was represented by counsel who argued, in part, that Kronick, "in fact, went through the arbitration procedure, and [Opri] was supposed to respond in ten days. She never did. [The trial court] mention[ed] that there was a list of four judges[, but] . . . never was [Justice] Sonenshine on that list, and yet [the trial court] appointed [Justice] Sonenshine." Later, counsel stated that he did not understand how the trial court could appoint Justice Sonenshine.

The trial court denied Kronick's petition and granted Opri's petition. In the tentative ruling, which the trial court adopted as its final ruling, it acknowledged that "an award issued by an improperly appointed arbitrator is properly vacated on grounds that the arbitrators exceed their powers under [Code of Civil Procedure section] 1286.2. . . ." According to the trial court, Kronick "was ordered to initiate the arbitration process according [to] the accepted convention" but "took no steps to begin the arbitration at ARC or anywhere else." Because the parties could not agree "to [the] appointment of the other's nominee(s)[,]" the trial court "asked both parties to submit four nominees and it chose from that list of nominees. This was precisely the procedure set forth in the contract. [¶] Kronick claims that the [trial court] improperly restricted the arbitration forum, unilaterally chose JAMS and restricted any nominees to JAMS. The [trial court] did no such thing. Due to Kronick's delay in complying with the [trial court's] underlying order, Opri initiated arbitration at JAMS, which entailed payment of the

necessary fees. Opri was never instructed by [the trial court] to initiate arbitration at JAMS. Opri chose to do so of her own choice. After Opri initiated arbitration at JAMS, the parties returned to Court for selection of an arbitrator. The [trial court] never restricted Kronick's nominees to JAMS arbitrators. Kronick was free to nominate any persons of her choosing. However, because Opri had already initiated arbitration at JAMS, the most logical choice was to appoint an arbitrator at JAMS. Nomination of persons outside of JAMS would have amounted to no nomination at all. At most, the [trial court] conveyed these facts to Kronick as grounds for her to provide nominees from JAMS[.]"

Kronick appealed.

The Discovery Sanctions; Kronick's Second Appeal[2]

In December 2012, Opri moved to compel Kronick to provide further responses to document requests seeking information pertinent to Opri's attempt to collect on the judgment. Opri also sought sanctions.

In January 2013, the trial court granted Opri's motion to compel and sanctioned Kronick in the amount of $3,200.

Kronick appealed the sanctions order.

DISCUSSION

I. The Arbitration Award Must be Vacated.

Kronick contends that the judgment confirming the arbitration award must be reversed because Justice Sonenshine was not appointed in the manner required by the arbitration clause in the retainer agreement. We agree. Moreover, we reject Opri's argument that Kronick's appeal is improper because she failed to seek Justice Sonenshine's disqualification, and because Kronick should have asked Justice Sonenshine to interpret the arbitration clause to determine if she was properly appointed.

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[2] The second appeal, procedurally, was filed as a cross-appeal to Opri's appeal of a posttrial ruling on Kronick's claim for exemption regarding settlement proceeds from an unrelated action. We previously dismissed Opri's appeal.

A. Standard of review.

"We review de novo the trial court's order confirming the arbitration award." (*Gravillis v. Coldwell Banker Residential Brokerage Co.* (2010) 182 Cal.App.4th 503, 511.)[3] "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 v. Blue Cross of California* (2004) 121 Cal.App.4th 44, 55–56 (*Malek*).) Thus, "we must accept the trial court's findings of fact if substantial evidence supports them, and we must draw every reasonable inference to support the award." (*Alexander v. Blue Cross of California* (2001) 88 Cal.App.4th 1082, 1087.)

B. The California Arbitration Act.

Parties to an arbitration can petition to confirm, vacate or correct an award. (§ 1285 et seq.) "If a petition or response . . . is duly served and filed, the court shall confirm the award as made, whether rendered in this state or another state, unless in accordance with this chapter it corrects the award and confirms it as corrected, vacates the award or dismisses the proceeding." (§ 1286.)

C. Relevant case law.

Arbitration is a matter of contract, and the policy favoring arbitration does not apply to the resolution of disputes that are not encompassed within the agreement to arbitrate. (*American Home Assurance Co. v. Benowitz* (1991) 234 Cal.App.3d 192, 200, 204 (*American Home*), citing § 1286.2.) "The same is true of the powers of the arbitrator: they derive from the contract, and cannot exceed the contract to arbitrate and

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[3] Opri argues our standard of review is whether the trial court abused its discretion by granting Opri's petition to compel arbitration and by later appointing Justice Sonenshine as arbitrator. In doing so, she claims this standard of review is appropriate under section 1141.16, part of the statutory framework governing judicial arbitration. Judicial arbitration is a procedure through which a civil case may be referred to nonbinding arbitration before trial. However, this case is properly guided by section 1280 et seq., governing contractual arbitration, where parties agree to submit contractual disputes to binding arbitration. In fact, in March 2010, Opri petitioned to compel binding arbitration pursuant to several provisions within this sequence. We therefore adopt the standard of review appropriate for such disputes arising under those latter sections.

the parties' submission to arbitration. [Citations.] This is true, a fortiori, with respect to the selection of an arbitrator. A selection that is not authorized by the arbitration contract . . . confers no authority on the person selected. Unless this fundamental defect is waived by the parties, or a party is estopped from raising it, there is simply nothing to confirm. [Citation.]" (*Id*. at pp. 200–201; *Bosworth v. Whitmore* (2006) 135 Cal.App.4th 536, 552 [voiding an arbitration award because the trial court's appointment of the arbitrator violated the parties' contract].)

D. Contract interpretation.

Whether the trial court erred in appointing Justice Sonenshine depends on the agreed-upon procedure for appointment of an arbitrator.

In relevant part, the arbitration clause provides: "The initiator of the proceedings shall do so in writing by submitting two names of retired California court judges to the responding party, and if the responding party does not agree to any of the two nominees, within ten [10] days the responding party shall provide two names of retired California superior court judges from which the initiating party may choose one. If the parties cannot agree on an arbitrator, one shall be chosen by a court of competent jurisdiction from the four nominees."

Where, as here, the evidence is not in conflict, our interpretation of this contractual language is de novo. (*Rael v. Davis* (2008) 166 Cal.App.4th 1608, 1617.) We utilize the standard rules of interpretation. "When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible." (Civ. Code, § 1639.) "The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other." (Civ. Code, § 1641.) "The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed." (Civ. Code, § 1644.) "A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates." (§ 1647.) "In cases of uncertainty not removed by the preceding rules, the language of a contract

should be interpreted most strongly against the party who caused the uncertainty to exist." (Civ. Code, § 1654; *Banning Ranch Conservancy v. Superior Court* (2011) 193 Cal.App.4th 903, 913 ["Any ambiguity in a retainer agreement is construed in favor of the client and against the attorney"].)

In our view, the arbitration clause is clear and unambiguous. It contemplates a four-step process. Step One: a party initiates arbitration by submitting two names of retired California Court judges to the responding party. Step Two: within 10 days, the responding party either agrees to one of the names or submits an additional two names from which the initiating party can choose. Step Three: if the parties cannot agree, a trial court chooses from one of the four nominees. Step Four: once the arbitrator is chosen, the parties proceed to arbitration, which would involve complying with the rules of the forum with which the arbitrator is affiliated.

Undeniably, the selection of an arbitrator in Step One, Step Two and Step Three dictates the arbitral forum that is utilized in Step Four. Conversely, the arbitral forum cannot be used to dictate the arbitrator. Even if the arbitration clause were ambiguous on this point, we would construe the language against the author, Opri, because she is the one who caused the uncertainty to exist.

It is apparent from the record that Opri interpreted the arbitration clause to mean that the "initiator" of arbitration is a person who unilaterally selects an arbitral forum and then proceeds to reserve that forum by doing whatever it might otherwise require, such as paying a deposit. The problems with this interpretation are many. Opri suggests a technical or special meaning for the word "initiator," but there was no extrinsic evidence establishing such a meaning. Moreover, any such technical or special meaning would conflict with a party's unfettered right to nominate any retired California judge of his or her choosing because it would operate to restrict a party's nominees to arbitrators associated with a unilaterally selected forum. In addition, we note that an initiator is a person who initiates. The dictionary definition of "initiate" is "to begin, set going, or originate." (<http://www.dictionary.reference.com/initiate>[as of Sept. 30, 2014].) This ordinary and popular sense of the word suggests that the initiator of arbitration is merely

a person who indicates a desire to arbitrate by submitting two nominees for arbitrator. We therefore conclude that Opri's tacit interpretation must be rejected.

E. The trial court committed multiple errors; Justice Sonenshine was improperly appointed as arbitrator.

At the June 3, 2010, hearing, the trial court ordered Opri to initiate arbitration if it was not initiated by Kronick. From context, it is apparent that the trial court required Opri to unilaterally select an arbitral forum before the arbitrator was agreed upon by the parties or chosen by the trial court. This was error because the arbitration clause required the selection of the arbitrator to dictate the arbitral forum.

Next, at the September 21, 2010, hearing, the trial court accused Kronick of failing to submit two nominees for Opri to consider. This factual finding is contradicted by the record. Kronick repeatedly submitted the names of Judge Bobb and Judge Chirlin as potential arbitrators. Subsequently, the trial court erred when it refused to accept Judge Bobb and Judge Chirlin as nominees and instead, in essence, required Kronick to submit two names from JAMS. Under the arbitration clause, Kronick had a right to nominate any retired California judge she wanted, and the trial court violated Kronick's contractual rights by restricting her choice.

Finally, the trial court held a continued hearing on September 23, 2010, despite having told Kronick that the continued hearing would be on October 23, 2010.[4] It does not appear from the record that Kronick was given proper notice of the hearing. At that hearing, the trial court indicated that it had received two nominees from Kronick that were apparently from JAMS. On Opri's representation that Kronick's two JAMS nominees were not acceptable, the trial court accepted two new names from Opri, Justice Sonenshine and Justice Cooper. This was error because the trial court essentially gave Opri four nominees. Then, the trial court erred by choosing Justice Sonenshine even though she was not one of Opri's original two nominees, and even though Kronick never had the opportunity to agree to a new nominee.

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[4] Also, apparently, the minute order from September 21, 2010, stated that the hearing would be on October 25, 2010.

F. Kronick's appeal is proper.

Opri contends that Kronick cannot seek to vacate the award based on section 1286.2, subdivision (a)(6)(b) on the theory that Justice Sonenshine was subject to disqualification but failed to disqualify herself. This is a straw man argument we do not need to address. Kronick's appeal is based on *American Home* and section 1286.2, subdivision (a)(4). Alternatively, Opri contends that because Kronick agreed to submit all disputes relating to the interpretation of the retainer agreement to arbitration, she should have asked Justice Sonenshine to determine whether she had been properly appointed and given the power to issue an award. We disagree. Because Justice Sonenshine was not properly appointed, she had no power to decide that issue. And though Kronick agreed to submit interpretation issues to the arbitrator, she was required to submit those issues only to an arbitrator that was properly appointed.

G. Conclusion.

The trial court ignored the appointment procedure in the arbitration clause and improperly appointed Justice Sonenshine. As a consequence, Justice Sonenshine lacked the power to issue an arbitration award. Because the arbitration award should not have been confirmed, it must be vacated.

II. The Appeal of the Discovery Sanctions Must be Dismissed.

In her second appeal, Kronick challenges the order awarding $3,200 in sanctions. But an order directing payment of monetary sanctions is appealable only if it exceeds $5,000. (§ 904.1, subd. (a)(12) [an appeal may be taken from "an order directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars ($5,000)"].) Therefore, the $3,200 sanction order is not appealable and Kronick's second appeal must be dismissed.

According to Kronick, the sanction order is made appealable by section 904.1, subdivision (a)(2), which provides that an appeal may be taken from "an order made after a judgment." We disagree. Subdivision (a)(12) is the more specific statute, so it controls. (*Lake v. Reed* (1997) 16 Cal.4th 448, 464 ["a more specific statute controls over a more general one"].)

Further, Kronick's reliance on section 904.1, subdivision (b) to save her appeal is misplaced. It provides that "[s]anction orders or judgments of five thousand dollars ($5,000) or less against a party or an attorney for a party may be reviewed on an appeal by that party after entry of final judgment in the main action, or, at the discretion of the [C]ourt of [A]ppeal, may be reviewed upon petition for an extraordinary writ." Here, the requested review is unavailable in connection with the appeal from the final judgment confirming the arbitration award because the sanction order was issued long after that appeal was filed. Thus, under section 904.1, subdivision (b), Kronick's sole avenue for review was through a writ petition.

All other issues are moot.

DISPOSITION

The judgment confirming the arbitration award is reversed, and the trial court is directed to vacate the arbitration award. Kronick's appeal of the order awarding discovery sanctions is dismissed.

The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.*
FERNS

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