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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

REBECCA M. BUCKLEY, Plaintiff and Appellant, v. EL DORADO ENTERPRISES, INC., Defendant and Respondent.	B282204 (Los Angeles County Super. Ct. No. BC535634)

APPEAL from an order of the Superior Court of Los Angeles County, Mel Red Recana, Judge. Affirmed.

Letizia Law Firm and Clarice J. Letizia for Plaintiff and Appellant.

Lipsitz Green Scime Cambria, Jonathan W. Brown; Mark S. Hoffman, Mark S. Hoffman and Erika L. Mansky for Defendant and Respondent.

Rebecca M. Buckley[1] (Buckley) sued her former employer, El Dorado Enterprises, Inc. (El Dorado) for employment discrimination. Pursuant to a stipulation of the parties, the trial court ordered the case to binding arbitration. The arbitrator issued an award purportedly disposing of all issues submitted for arbitration. Although the arbitrator found that Buckley prevailed on two of her six claims, he did not award her any monetary damages, because she "suffered no actual out of pocket loss." In issuing his award, the arbitrator observed that Buckley had not sought to recover her attorney fees. Three months later, following a postaward motion by Buckley, the arbitrator issued a second award, granting Buckley, as the "prevailing party," her attorney fees and costs.

Buckley subsequently petitioned the trial court to confirm the two awards, while El Dorado moved to vacate the second award. The trial court confirmed the initial award but vacated the second award on the ground that it exceeded the arbitrator's powers.

On appeal, Buckley argues that the trial court erred because, under the rules governing the arbitration, the arbitrator had the authority to issue the second, supplemental fee award. We disagree and, accordingly, affirm the trial court's order.

BACKGROUND

In May 2012, El Dorado hired Buckley as a snack bar attendant. At that time, Buckley signed a written agreement committing her to resolve any legal controversy that might arise between her and El Dorado through binding arbitration before

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[1] At the time she filed her complaint, Ms. Buckley was known as Rebecca Bosse.

the American Arbitration Association (AAA). Any such arbitration would be conducted pursuant to the then-applicable Employment Arbitration Rules and Procedures of the AAA (the Rules).

Five months later, in October 2012, Buckley informed El Dorado that she was pregnant. In January 2013, six months into her pregnancy, Buckley advised El Dorado that based on her doctor's orders; she could not lift buckets full of ice due to their weight. El Dorado requested a written note from Buckley's doctor regarding any work restrictions arising from her pregnancy. After Buckley provided a written note from her doctor stating that she was not to lift more than 15 pounds, El Dorado advised her that it could not accommodate the work restriction. On January 17, 2013, El Dorado placed Buckley on a temporary pregnancy leave of absence without pay.

After being placed on leave, Buckley retained legal counsel. On February 12, 2013, Buckley filed a complaint with the Department of Fair Employment and Housing. A week later, on February 19, 2013, El Dorado allowed Buckley to return to work under her doctor's weight-lifting restriction. At that time, El Dorado compensated Buckley for all back pay that was owed to her while on unpaid pregnancy leave.

A year later, in February 2014, Buckley sued El Dorado in state court alleging six causes of action: pregnancy discrimination; failure to accommodate; failure to engage in the interactive process; retaliation; harassment; and failure to prevent harassment, retaliation, and discrimination. A number of her claims, including her pregnancy discrimination and failure to accommodate claims, were based expressly on purported violations of the California Fair Employment and Housing Act

(Gov. Code, § 12900 et seq.) (FEHA). By her complaint, Buckley sought, among other things, compensatory damages, damages for emotional distress, punitive damages, and her "attorney[ ] fees as provided by statute."[2]

In April 2014, the parties stipulated to binding arbitration before the AAA and, in May 2014, the trial court ordered the parties to arbitration.

I. The July 2016 award

On July 11, 2016, the AAA sent a letter to the parties confirming that the arbitration hearing had been "completed on July 7, 2016, and declared closed by the arbitrator on that date." The letter further advised the parties that "the arbitrator shall have 30 days from that date, or until August 8, 2016 to render the Award."

On July 29, 2016, within the 30-day window to issue an award, the AAA transmitted to the parties the arbitrator's signed award (the July award). In transmitting the July award, the AAA advised the parties that it had verified that the arbitrator had "submitted all requests for compensation" and that the AAA had "conducted a final reconciliation of the finances."

The July award confirmed that the "matter was considered submitted to the Arbitrator after receipt of the parties' post hearing briefs on July 7, 2016." As to the merits of Buckley's claims, the arbitrator found in her favor on her pregnancy discrimination and failure to accommodate claims, but against her on all of her remaining claims.

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[2] FEHA allows a trial court, in its discretion, to award to the prevailing party reasonable attorney fees and costs. (Gov. Code, § 12965, subd. (b).)

Although Buckley had prevailed on two of her claims, the arbitrator did not award her any compensatory damages for the following reason: "[Buckley] was put on an unpaid leave of absence for one month. She was reinstated with full back pay and all benefits. [Buckley] has suffered no actual out of pocket loss." The arbitrator also denied Buckley any damages for emotional distress and rejected her claims for punitive damages.

The July award did not find that Buckley was the prevailing party and did not award her attorney fees. In fact, the arbitrator noted that in Buckley's closing arbitration brief "[t]here was no request/motion for attorney[ ] fees made."

The July award did not state that there were any outstanding issues that remained to be decided or that the arbitrator retained jurisdiction to consider any issues that might arise from the July award. Instead, the arbitrator concluded by stating, "This Award is in full settlement of all claims submitted in this arbitration. All claims not expressly granted are hereby denied."

II. The October 2016 award

On September 14, 2016, Buckley filed a motion with the AAA seeking her attorney fees ($96,750) and costs ($9,602.35). El Dorado opposed the motion, arguing, among other things, that the July award was a final settlement of all claims submitted to the arbitrator.

On October 28, 2016, the arbitrator issued a second award (the October award). In the October award, the arbitrator found that Buckley was the prevailing party because she "proved the essential elements for pregnancy discrimination and failure to accommodate." As a result, the arbitrator awarded Buckley all of her requested attorney fees and a portion ($4,539.19) of her

requested costs. In addition, the arbitrator directed El Dorado to pay all of the AAA's administrative fees ($2,150) plus the arbitrator's compensation and expenses ($18,656.25).

In issuing the October award, the arbitrator noted that he had previously issued the July award, but he made no attempt to explain how or why he had been able to retain jurisdiction over the parties and their dispute in light of either the AAA's statement that arbitration was completed and declared closed or the language of the July award that it was made in full settlement of all claims submitted.

III. The trial court's decision

On December 5, 2016, Buckley petitioned the trial court to confirm both awards. On January 17, 2017, El Dorado moved to vacate the second award, arguing, among other things, that the October award was in excess of the arbitrator's powers.

On February 22, 2017, the trial court heard oral argument on the parties' opposing motions. Before the hearing, the trial court issued a tentative order confirming the July award and vacating the October award. The trial court based its tentative ruling on a finding that the arbitrator "was without authority" to issue the October award. After hearing oral argument and then taking the matter under submission, the trial court issued an order later that same day adopting its tentative ruling. Buckley timely appealed.

DISCUSSION

I. Standard of review

The California Arbitration Act (Code Civ. Proc., § 1280 et seq.[3]) (CAA) sets forth "a comprehensive statutory scheme regulating private arbitration in this state." (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 9.) Under the CAA, a trial court may vacate an arbitration award where an arbitrator exceeded his or her power. (See §§ 1285, 1286.2, subd. (a)(4), 1286.6, subd. (b);[4] *Advanced Micro Devices, Inc. v. Intel Corp*. (1994) 9 Cal.4th 362, 366.) " ' "[A]n arbitrator exceeds his powers when he acts in a manner not authorized by the contract or by law." ' " (*Greenspan v. LADT, LLC* (2010) 185 Cal.App.4th 1413, 1437.)

We review a trial court's decision regarding a petition to vacate an arbitration award de novo. (*Advanced Micro Devices, Inc. v. Intel Corp., supra*, 9 Cal.4th at p. 376, fn. 9; *Royal Alliance Associates, Inc. v. Liebhaber*, *supra,* 2 Cal.App.5th at p. 1106.) Although we review the trial court's decision de novo, we normally "give substantial deference to the arbitrator's own assessment of his contractual authority." (*Kelly Sutherlin McLeod Architecture, Inc. v. Schneickert* (2011) 194 Cal.App.4th 519, 528.) However, where, as here, the parties to the arbitration agreement have stipulated that the arbitrator lacked the power to commit errors of law or fact and permitted the trial court to vacate or correct an award for such error, we review the

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

[4] These provisions of the CAA are "not by their terms modifiable or avoidable by consent of the parties." (*Royal Alliance Associates, Inc. v. Liebhaber* (2016) 2 Cal.App.5th 1092, 1107.)

arbitrator's decisions de novo.[5] (*Cable Connection, supra*, *supra*, 44 Cal.4th at p. 1361 [arbitration agreement can expand scope of postarbitration judicial review].) Our de novo review extends to the arbitrator's interpretation of the rules governing the

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[5] Buckley argues the parties' arbitration agreement does not contain the "express and indispensible language" required for such review under the teaching of *Cable Connection, Inc. v. DIRECTV, Inc.* (2008) 44 Cal.4th 1334 (*Cable Connection*), and its progeny. We are not persuaded by Buckley's argument for two principal reasons.

First, our Supreme Court in *Cable Connection*, *supra*, 44 Cal.4th 1334 expressly declined to decide what "formulation[ ] would be sufficient to confer the expanded scope of review." (*Id*. at p. 1361.) Instead, it emphasized only that the arbitration agreement must show the "the parties . . . clearly agree[d] that legal errors are an excess of arbitral authority that is reviewable by the courts." (*Ibid*.)

Second, the language at issue here is as clear as that in *Cable Connection*, *supra*, 44 Cal.4th 1334. In that case, our Supreme Court held that an arbitration provision stating that " '[t]he arbitrators shall not have the power to commit errors of law or legal reasoning' " was sufficient "to take [the parties] out of the general rule that the merits of the award are not subject to judicial review." (*Id.* at p. 1361 & fn. 20.) Here, Buckley and El Dorado agreed that the arbitrator "shall render a decision which conforms to the facts . . . and the law as it would be applied by a court sitting in the State of California." In addition, the parties agreed that "[a]ny party may apply to a court of competent jurisdiction for entry of judgment on the arbitration award. The court *shall review the arbitration award, including the findings of fact*, and *shall determine whether they are supported by* . . . a *proper application of law to the facts*. . . . [*I*]*f the court finds that the award is not supported by the facts or the law, then the court may vacate the award*." (Italics added.)

arbitration. (See *Greenspan v. LADT, LLC*, *supra*, 185 Cal.App.4th at p. 1451 [arbitrator's interpretation of rules reviewed on merits where parties have so agreed]; *Cable Connection*, *supra*, 44 Cal.4th at pp. 1364–1366 [reviewing de novo arbitrators' alleged legal error regarding class arbitration under AAA's rules].)

II. The October award was improper under the CAA

Under the CAA, arbitrators must issue awards that "include a determination of *all* the questions *submitted*." (§ 1283.4, italics added.) To discharge that obligation, arbitrators may use a single award or "a multiple incremental or successive award process as a means, in an appropriate case, of finally deciding all submitted issues." (*Hightower v. Superior Court* (2001) 86 Cal.App.4th 1415, 1434, italics omitted.)

After an arbitrator has issued a final award (or multiple incremental awards) resolving all submitted issues, the CAA and relevant case law narrowly circumscribe his/her power to modify the award. An arbitrator may modify a final award under two circumstances: (a) where the final award contains an error with regard to the resolution of the submitted issues; or (b) where the award failed to address a submitted issue.

A. AN ARBITRATOR'S POWER TO CORRECT AN ERROR

Under section 1284, an arbitrator may correct an award if there was an "evident miscalculation," or an "evident mistake" in describing a person, thing or property, or if the award is otherwise "imperfect in a matter of form, not affecting the merits of the controversy."[6] (§ 1286.6.) It has long been the rule in

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[6] Section 1284 also provides that application for a correction must be made "not later than 10 days" after service of

California that " 'when arbitrators have published their award by delivering it to the parties as the award, that it is not the subject of revision or correction by them, and that any alteration without the consent of the parties will vitiate it.' [Citation.] . . . [¶] . . . Section 1284 codifies the rule against changes in the award." (*Elliot & Ten Eyck Partnership v. City of Long Beach* (1997) 57 Cal.App.4th 495, 501–502.) In other words, under the statutory grounds for correction recognized in section 1284, "[t]he arbitrator may not reconsider the merits of the original award and make a new award under the guise of correction of the award." (*Landis v. Pinkertons, Inc.* (2004) 122 Cal.App.4th 985, 992.)

Consistent with the goal of respecting the finality of arbitration awards (see *Moncharsh v. Heily & Blase*, *supra*, 3 Cal.4th at p. 9), courts have held that section 1284 prohibits substantive amendments to final awards that include new awards of attorney fees. For example, in *Severtson v. Williams Construction Co.* (1985) 173 Cal.App.3d 86, which involved a

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the award and that any such correction must be made "not later than 30 days" after service of the original award.

The parties dispute whether the October award was timely under section 1284. Buckley contends that it was timely because, among other things, she promptly requested relief from the arbitrator following the issuance of the July award and the parties agreed to have the matter determined more than 30 days after the issuance of the July award. For its part, El Dorado argues that the October award was untimely because there was no agreement to effectively waive the time limits of section 1284. We decline to resolve this aspect of the parties' dispute, because as discussed, below, we hold that the October award was contrary to California law regardless of its timeliness.

dispute between property owners and a contractor, the arbitrator issued a final award that included a contractual attorney fee award that was based, in part, on an estimation of the fees incurred for the two days of the hearing and the time spent researching and writing the opening and closing arguments. (*Id*. at pp. 95–96.) The property owners, as prevailing parties, requested an award of additional attorney fees, "because the prevailing party could not be known until after the arbitrator made his award, and only thereafter could a full cost bill be prepared." (*Id*. at p. 95.) The arbitrator duly revised the final award to include the additional, actually-incurred fees. (*Id*. at pp. 90, 95–96.) The property owners sought confirmation of the revised final award, while the contractor sought to have the original award approved. (*Id*. at p. 89.) The trial court approved the original award and vacated the revised award, finding that the arbitrator had no authority to amend the original award. (*Ibid*.) The Court of Appeal affirmed, holding that the original "award [for fees] could not thereafter be 'corrected' to reflect the attorneys' fees and costs actually incurred because the arbitrator's estimate, whether mistaken or not, was conclusive"—that is, the arbitrator's original estimate was not an "evident miscalculation" as required by the CAA. (*Id*. at p. 96.)

Similarly, in *Cooper v. Lavely & Singer Professional Corp*. (2014) 230 Cal.App.4th 1, the court held that the arbitrator exceeded his powers by revising a final award to include attorney fees that previously had been denied. (*Id*. at p. 5.) In reaching its decision, the Court of Appeal noted, "Nothing in the [arbitration] Rules or the record suggests that the final award was not final for purposes of correction under section 1284. . . . Furthermore, the arbitrator expressly identified the final award

as his 'Final Award'; it was in writing and was served on the parties; it resolved all the issues reserved in the interim award, including the questions related to attorney fees and costs; and it included determinations on all the issues submitted in the arbitration." (*Id*. at pp. 18–19.)

B. AN ARBITRATOR'S POWER TO RULE ON OMITTED ISSUE

In addition to the statutory grounds for correction stated in section 1284, California courts have permitted arbitrators to amend a purported final award to include rulings on issues that were inadvertently omitted from the award. *A.M. Classic Construction, Inc. v. Tri–Build Development Co*. (1999) 70 Cal.App.4th 1470 (*A.M. Classic Construction*), is illustrative.

In *A.M. Classic Construction*, *supra*, 70 Cal.App.4th 1470, a subcontractor working on a public elementary school fell into a contract dispute with the contractor and with the city employing the contractor. After the subcontractor sued the contractor and the city for damages, the matter was submitted to an arbitrator, whose decision awarded the subcontractor damages against the contractor, but did not resolve the dispute between the subcontractor and the city. (*Id.* at p. 1472.) Before the trial court confirmed the award, the subcontractor asked the arbitrator to amend the award to address the submitted but unresolved dispute. (*Id*. at pp. 1472–1473.) The arbitrator issued an amended award, which contained a ruling in the subcontractor's favor against the city. (*Id*. at p. 1473.) The trial court confirmed the amended award and the Court of Appeal affirmed its decision, concluding: "California's contractual arbitration law permits arbitrators to issue an amended award to resolve an issue omitted from the original award through the mistake, inadvertence, or excusable neglect *of the arbitrator* if the

amendment is made before judicial confirmation of the original award, is not inconsistent with other findings on the merits of the controversy, and does not cause demonstrable prejudice to the legitimate interests of any party." (*Id.* at p. 1478, italics added.) The court reasoned "it would be irrational to discard all the time and money spent by the parties where an arbitration award is inadvertently incomplete in one respect and where the oversight can be corrected without substantial prejudice to the legitimate interests of a party. To deny arbitrators the authority to complete their task under such circumstances elevates form over substance." (*Ibid.*)

Following *A.M. Classic Construction*, other courts have recognized the existence of a nonstatutory amendment doctrine regarding omitted issues. For example in *Century City Medical Plaza v. Sperling, Isaacs & Eisenberg* (2001) 86 Cal.App.4th 865, the Court of Appeal held that when a final award failed to address prejudgment interest, costs, and attorney fees due to the arbitrator's mistake, inadvertence, or excusable neglect, an arbitrator may amend an award to include rulings on those issues. (*Id.* at pp. 881–882.) In reaching its decision, *Century City* stressed that the omitted issue must have been one that was actually submitted to the arbitrator: "a ruling on one or more submitted issues as to which the parties were entitled to a decision but which was omitted from the initial award through the *arbitrator's* mistake, inadvertence or excusable neglect is entirely justified." (*Id.* at p. 881, italics added.)

C. THE OCTOBER AWARD NEITHER CORRECTED AN ERROR NOR ADDRESSED A SUBMITTED BUT OMITTED ISSUE

The October award does not fall within the CAA's definition of a permissible correction. By determining that Buckley was the

prevailing party and awarding attorney fees and costs to her, the arbitrator in his October award was not correcting a miscalculation or inaccurate description contained in the July award or correcting a defect in that award's form. Rather, he was determining a new issue—that is, an issue that was not submitted to him to resolve before the arbitration closed. In the July award, the arbitrator expressly stated that Buckley had not submitted the issue of her attorney fees to him.

Since the issue of Buckley's attorney fees was omitted from the July award through Buckley's (not the arbitrator's) mistake, inadvertence, or excusable neglect, the arbitrator lacked the authority to issue a supplemental award resolving that issue. While California law permits an arbitrator to address a submitted issue that he/she neglected to address in the award, it does not, as discussed above, permit an arbitrator to address in a supplemental or amended award an issue that *a party* failed to submit, especially one whose resolution cannot be resolved without substantial prejudice to the legitimate interests of a party. Such liberality would run counter to the public policy supporting the finality of arbitral awards. Accordingly, we hold that the arbitrator exceeded his powers under the CAA and relevant case law when he issued the October award.

III. The October award was improper under the Rules

Having determined that the October award exceeded the arbitrator's powers under California law, we must now consider whether the Rules expanded the arbitrator's powers beyond those permitted under the CAA. As discussed in more detail below, we hold that they did not.

A. THE ARBITRATOR'S POWER TO MODIFY AN AWARD UNDER THE RULES[7]

The Rules provide for the subsequent modification of an award, but, like the CAA, they allow modification on only the narrowest of grounds. Specifically, rule 40 provides: "Within 20 days after the transmittal of an award, any party . . . may request the arbitrator to correct any clerical, typographical, technical, or computational errors in the award." Underlining the narrow parameters for a modification, rule 40 further provides that an arbitrator "is not empowered to redetermine the merits of any claim already decided." The Rules are silent with respect to inadvertently omitted issues.

B. THE OCTOBER AWARD EXCEEDED THE ARBITRATOR'S POWERS UNDER THE RULES

Buckley argues that because the Rules allow for the award of attorney fees (rule 39) and for the issuance of interim awards (rule 32), and because the rules further allow the arbitrator to "interpret and apply" the rules as they relate to his "powers and duties" (rule 48), the arbitrator was empowered to recast the July award as an interim award, thereby allowing him "to fashion a just separate, successive award of statutory FEHA attorney[ ] fees and costs." For support, Buckley relies heavily on a recent case, *Heimlich v. Shivji* (2017) 12 Cal.App.5th 152, 173–174, review granted August 23, 2017, S243029 (*Heimlich*), as persuasive authority that an arbitrator may "recharacterize an existing award as an interim, interlocutory, or partial award" in

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[7] We took judicial notice of the Rules pursuant to Buckley's motion and after taking into consideration El Dorado's opposition.

order to resolve a postaward request for attorney fees. Neither the facts, nor the Rules, nor *Heimlich* support Buckley's argument.

1. The facts do not support Buckley's argument

" 'The powers of an arbitrator derive from, and are limited by, the agreement to arbitrate.' " (*Gueyffier v. Ann Summers, Ltd*. (2008) 43 Cal.4th 1179, 1185.) There is nothing in the record before us indicating that at the time the parties entered into their agreement that there would be multiple or successive awards. The parties' arbitration agreement does not refer to multiple or successive awards; instead it refers to a single award.

In addition, there is nothing in the record indicating that once the parties initiated arbitration proceedings they agreed to bifurcate the arbitration and have successive awards—e.g., one phase and award to determine liability; another phase and award to determine whom was the prevailing party and whether there should be an award of attorney fees under FEHA.[8] In fact, the communications from the AAA transmitting the July award unambiguously indicated that the arbitration was conducted in a single phase and that that phase was "completed" and "closed" as of July 7, 2016 (three weeks before the arbitrator issued the July award).

The July award, consistent with the communications from the AAA, did not refer to any follow-on proceedings or otherwise

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[8] In bifurcated proceedings where an attorney fees award is authorized, "the arbitrator will usually advise the parties after the conclusion of the initial hearing who is the prevailing party so that an application for fees can thereafter be made by that party." (Knight et al., Cal. Practice Guide: Alternative Dispute Resolution (The Rutter Group 2017) ¶ 5:422.5, p. 5-413.)

indicate that it was an interim award. In fact, the July award indicated the exact opposite. In the July award, the arbitrator does not state (or even suggest) that he was retaining jurisdiction after the issuance of the July award.[9] Indeed, in the award's closing paragraph, the arbitrator plainly indicates that his jurisdiction is at an end because all issues have been conclusively resolved: "This Award is in *full* settlement of *all* claims submitted in this arbitration. *All claims not expressly granted are hereby denied*."[10] (Italics added.)

In addition, although the October award acknowledges the July award, it does not recharacterize it as an interim award. Nor did the arbitrator style the October award as the final award in a series of awards. Instead, the arbitrator simply labeled the October award as follows: "Arbitrator's Award Re: Claimant's Motion for Attorney's Fees and Costs."

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[9] See *Hightower v. Superior Court*, *supra*, 86 Cal.App.4th at p. 1419 [arbitrator may issue " 'partial final award' " and reserve jurisdiction to decide issues arising from that award].

[10] The facts here are strikingly different from those in *Greenspan v. LADT, LLC*, *supra*, 185 Cal.App.4th 1413, another case upon which Buckley relies. In that case, the parties plainly contemplated a succession of awards. In June 2008, the arbitrator in *Greenspan* issued his first award, which was labeled an "Interim Award"; that award expressly stated that the arbitrator was retaining jurisdiction to consider a number of issues, including the award of attorney fees and costs. (*Id*. at pp. 1430–1431.) The interim award in *Greenspan* was followed approximately six weeks later in August 2008 by a second award expressly labeled "Final Award." (*Id*. at p. 1433.)

2. The Rules do not support Buckley's argument

Rule 32, allowing interim awards, is irrelevant because, as discussed above, there is no evidence that the parties ever agreed to have the arbitrator issue a series of piecemeal awards. Rule 39, allowing the arbitrator to award attorney fees, is beside the point because it is undisputed that Buckley failed to ask for such relief in a timely manner (i.e., prior to the closing of the arbitration). Rule 48, allowing the arbitrator to interpret the Rules, is of limited importance in light of the parties' agreement to subject the arbitration award to judicial review for errors of law and our holding above that the October award contravenes the CAA. Moreover, while rule 48 gave the arbitrator the power to interpret the Rules, it did not give him the power to ignore a rule completely. Rule 40 only allowed the July award to be modified if it contained a clerical, typographical, technical, or computational error. The October award's grant of more than $120,000 in fees, costs, and administrative expenses cannot reasonably be construed as the correction of a "clerical, typographical, technical, or computational error."

3. Heimlich does not support Buckley's argument

Buckley's reliance on *Heimlich*, *supra*, 12 Cal.App.5th 152, is misplaced because that case did not concern a postaward request for attorney fees. Instead, it involved something very different: a postaward request for costs pursuant to the offer of judgment statute, section 998. (*Id*. at p. 155.)

Section 998 authorizes arbitrators and courts to impose costs on parties whose arbitration awards were no more favorable than settlement offers they had rejected. As the court in *Heimlich*, *supra*, 12 Cal.App.5th 152 made clear, a "section 998 determination *necessarily* must postdate an arbitration award."

(*Id.* at p. 169, italics added.) This is so because there is "no need to burden arbitrators with the obligation in every case to inquire whether a section 998 offer had been made and rejected. Rather, the burden should be placed on the party seeking the benefit of section 998 to request an award of its postoffer costs. Rather than requiring this party to violate section 998, subdivision (b)(2) by prematurely disclosing the existence of a rejected offer in arbitration proceedings, we believe *a party's section 998 request should be deferred until after the arbitration award is made*." (*Id.* at p. 173, italics added.) In contrast, as any number of cases demonstrate, including other cases cited by Buckley (see, e.g., *Severtson v. Williams Construction Co.*, *supra*, 173 Cal.App.3d at pp. 95–96), necessity does not require that a party wait until after a final award has been made to seek its attorney fees.

IV. The order vacating the October award was correct

In sum, we hold that arbitrator exceeded his powers when he issued the October award because it was precluded by both the CAA and the Rules. Accordingly, we affirm the trial court's decision to vacate the October award.[11]

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[11] In light of our holding that the October award was improper under both the CAA and the Rules, we decline to address the parties' contending arguments over the arbitrator's finding in the October award that Buckley was the prevailing party.

DISPOSITION

The order is affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.