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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FOUR

EPSILON ELECTRONICS, INC., Plaintiff and Respondent, v. L.A. CLOSEOUT, INC. et al., Defendants and Appellants.	B278358 (Los Angeles County Super. Ct. No. BC410253)

APPEAL from a judgment of the Superior Court of Los Angeles County, Howard L. Halm, Judge and Steven J. Kleifield, Judge. Reversed.

Law Office of Baruch C. Cohen and Baruch C. Cohen for Plaintiff and Respondent.

Etehad Law, Simon P. Etehad and Steven G. Candelas; Benedon & Serlin, Gerald M. Serlin and Judith E. Posner for Defendants and Appellants.

Appellants L.A. Closeout, Inc. and Ramin Javahery appeal the trial court's order confirming an arbitration award in favor of respondent Epsilon Electronics, Inc. (Epsilon). The award was issued six years after the matter was initially submitted to arbitration and represented a reversal of the arbitrators' original decision in appellants' favor. Appellants contend the original decision was final and binding, and that controlling law and the parties' arbitration agreement forbad reconsideration or rehearing of the matter once that decision was rendered. We agree and reverse.

FACTUAL AND PROCEDURAL BACKGROUND

A. *2009 Lawsuit and First Arbitration*

In March 2009, respondent brought suit against appellants for breach of contract, promissory estoppel, fraud, negligent misrepresentation, conversion, money had and received and unjust enrichment. Epsilon contended that in September 2008, appellants had borrowed $1.425 million to finance purchase of an inventory of consumer electronics and video games, and had agreed to repay the loan, plus interest, within one to two weeks of receipt of the funds. According to the complaint, none of the loaned funds had been repaid.

In April 2010, Javahery and Epsilon's principal, Jack Rochel, stipulated that the matter be submitted to binding arbitration before the Beis Din Rabbinical Court (Beis Din).[1]

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[1] Beis Din is spelled various ways in the briefs and record. We adopt the spelling used in the parties' stipulation and the
(*Fn. is continued on the next page.*)

The stipulation included a request that the superior court action be stayed. In May 2010, the court instead dismissed the action without prejudice.

Prior to undergoing arbitration, the parties signed a written agreement stating that they "agree to submit to binding arbitration administered by the [Beis Din] . . . all of the claims, counterclaims and defenses arising out of or relating to the following controversy: [¶] *Epsilon Electronics, Inc.,* [*et al.*] *v. LA Closeout, Inc.*[, *et al.*]." The agreement further stated: "The parties will accept the arbitral award of the [Beis Din] as binding, final and conclusive. In this regard, the parties waive (a) any right to challenge, appeal or seek to vacate the arbitral award under section 1286.2 of the Code [of Civil Procedure] or otherwise, (b) any right to seek correction of the award under section 1284 of the Code [of Civil Procedure] or otherwise, and (c) any right to appeal to another [Beis Din].[2] Notwithstanding the foregoing, a

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judgment issued by the rabbinical court. Courts have held that the results of Beis Din proceedings may be enforced as though they were arbitration awards. (*Dial 800 v. Fesbinder* (2004) 118 Cal.App.4th 32, 46-47, and cases cited therein.) In addition, the parties' stipulation stated that the decision of the Beis Din "may be made a Judgment of this court under all applicable law regarding binding arbitration."

2 Section 1284 of the Code of Civil Procedure provides that arbitrators may correct an award on "any of the grounds set forth in subdivisions (a) and (c) of Section 1286.6 not later than 30 days after service of a signed copy of the award on the applicant." Subdivision (a) of section 1286.6 allows correction if "[t]here was
(*Fn. is continued on the next page.*)

party may request the correction of a clerical or other non-substantive error in the arbitral award and may request that the award be amplified to include the disposition of an issue that was submitted to the arbitral panel but was not fully dealt with in the arbitral award." It also stated: "[T]he arbitrators will be deemed to retain jurisdiction of the controversy pursuant to this Agreement to the extent necessary to interpret, implement or enforce the award."

At a hearing before the Beis Din, a third party, Ezri Namvar, testified that rather than lending money to appellants, Epsilon had agreed to lend the funds to Namvar, who gave the funds to appellants to repay a debt he owed them. On November 23, 2010, the Beis Din issued its "Psak Din" (Judgment). (Capitalization omitted.) The Psak Din

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an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award." Subdivision (c) permits correction if "[t]he award is imperfect in a matter of form, not affecting the merits of the controversy." Section 1286.2 of the Code of Civil Procedure permits the court to vacate the award if it was "procured by corruption, fraud or other undue means," there was "corruption in any of the arbitrators," the rights of a party were prejudiced by misconduct of an arbitrator, the arbitrators exceeded their powers, the rights of a party were prejudiced by the refusal of the arbitrators to postpone the hearing after a showing of good cause or to hear evidence material to the controversy, or an arbitrator was subject to disqualification but failed to disclose the grounds for disqualification or failed to disqualify him or herself upon timely demand. Undesignated statutory references are to the Code of Civil Procedure.

found that Epsilon had transferred $1.425 million to accounts designated by appellants. It acknowledged Epsilon's claim that appellants had agreed to repay the loan, plus ten percent interest, within one to two weeks. However, the Beis Din found, in accordance with the testimony of Namvar, that Namvar "arranged for [Epsilon] to pay funds to [appellants] on [Namvar's] behalf," that "[Namvar] . . . arranged the payment from [Epsilon] as a favor to himself," and that "the transfer of funds . . . was done on [Namvar's] behalf." Based on those findings, "no award [wa]s made on [Epsilon's] claim" because "[t]he evidence fail[ed] to establish the existence of an investment or loan between the parties, and d[id] not impeach the testimony of the sole witness to the transaction." Appellant did not seek to have the award confirmed by the court. Nor did Epsilon seek to have it vacated.

B. *Namvar's Deposition and Epsilon's Motion for Retrial*

Almost two years after the arbitration concluded, in June 2012, Namvar's deposition was taken in a lawsuit between Epsilon and the law firm that had represented it in the 2009 litigation and 2010 arbitration.[3] At the deposition,

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[3] Appellants were not parties to the 2012 litigation and did not have a representative at the deposition. At the time, Namvar was incarcerated in federal prison following his conviction of wire fraud in connection with an investment scheme.

the following exchanges occurred. "Q. . . . As part of [the loan] agreement, do you know whether any of your debt, whether it [be to] Javahery and his entities -- we're talking . . . over three million dollars in aggregate -- or any of your debt with Mr. Rochel and his entities [--] in aggregate, over five million [--] were any of those debts part of their individual deal?[4] [¶]. . . A. No. [¶]. . . [¶]. Q. . . . [D]id you go to Mr. Javahery [and/]or Mr. Rochel and ask them to consider your debts as part of their agreement for Mr. Javahery to obtain money? [¶] A. I don't remember those conversation, but I don't believe, at least for Rochel's part, that he had that understanding because that was the whole point of his contention when he sued Javahery. [¶] Q. . . . [D]id you personally go to Mr. Javahery or Mr. Rochel and say, hey, my debt to you, whether it be to Mr. Javahery or Mr. Rochel, can that be considered as part of your agreement between the two of you? [¶] A. You are talking about like a triangular offset? [¶] Q. Correct. [¶] A. None of that happened. [¶] Q. So there was no triangular offset? [¶] A. No. And . . . I don't believe there was any documents to that effect. [¶] Q. As you sit here today, were you ever part of the agreement between Mr. Javahery and Mr. Namvar where

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4 Namvar also had testified that he or his business had obtained loans from Rochel or one of his business entities multiple times in the past, that the loans totaled more than $5 million, and that it was their tradition not to document the loans with formal written agreements. Namvar further testified that in 2008, he owed Javahery more than $3 million.

Mr. Javahery obtained money from Mr. [Rochel]. [¶] . . . [¶] A. I wasn't a part of the agreement. I just made the introduction."

More than three years later, on November 20, 2015, Epsilon's counsel emailed the Beis Din to request a retrial based on "newly discovered" evidence, referring to Namvar's 2012 deposition testimony.[5] Rabbi Avrohom Union responded "you may have the grounds for a retrial," but "I will need to discuss with [the other arbitrators]." He asked Epsilon's counsel to "research whether arbitrators can call a retrial" because Rabbi Union's understanding was that "once a final ruling was entered we lose jurisdiction." Epsilon's counsel responded: "The definitive answer to the question of the [Beis Din's] retained jurisdiction is in the [Beis Din's] arbitration agreement, section 8 that specifically states that the [Beis Din] retains jurisdiction: 'the arbitrator will be deemed to retain jurisdiction of the controversy pursuant to this agreement to the extent necessary to . . . interpret, implement or enforce the award.'" (Bolding, underlining and italics omitted.) On November 30, Rabbi Union responded: "The award was finalized when we rendered judgment. [¶] We give you leave to seek clarification from the Superior Court as to our ability to grant a rehearing based on the

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[5] Copies of the emails were sent to appellants' former attorney, G. Richard Green, at an account he no longer used. Green did not notice the emails until December 2015.

discovery of new evidence. If the Court confirms that we are able to retry the case we will set a new hearing."

On January 13, 2016, Epsilon moved for an order to vacate the dismissal and to remand the matter to the Beis Din for further proceedings. Epsilon argued that the court had the power to grant a request for remand to the Beis Din under the statutes governing arbitration, and cited Penal Code section 1473, subdivision (e)(1) for the proposition that "California law mandates that testimony which has been recanted will be treated as false evidence, and, if the party can show it was key to the decision, the repudiated testimony will serve as strong grounds for the judgment to be overturned."[6] Epsilon contended, as it had previously, that the Beis Din retained jurisdiction over the matter under the provision of the arbitration agreement stating "the arbitrators will be deemed to retain jurisdiction of the controversy pursuant to this Agreement to the extent necessary to interpret, implement or enforce the award." Epsilon further contended that Namvar's allegedly perjured testimony at the arbitration hearing amounted to extrinsic fraud, which "[Epsilon] and its counsel were not prepared to meet [or] . . . challenge . . . ." Epsilon stated that the original Psak Din should not be allowed to stand because "fraudulent conduct" formed "the entire basis for [appellants'] defense, and consequently for the [Beis Din's] decision."

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[6] Penal Code section 1473, et seq. governs prisoner petitions for habeas corpus.

Notice of Epsilon's motion was served by mail on January 12, 2016 on Green, appellants' former attorney, at an old address. Javahery was aware of the motion by mid-January. Nonetheless, appellants filed no opposition to the motion; nor did Javahery appear at the hearing, which took place February 18, 2016 before Judge Kleifield. Following the hearing, Epsilon filed a notice of ruling stating: "The Court having reviewed and considered the unopposed Motion and the oral argument made at the hearing, and good cause thereon, this Court denied without prejudice the Motion for the stated reason that the [Beis Din] still retains jurisdiction in this matter, and it could hear [Epsilon's] Motion for a Retrial Based on Newly Discovered Evidence of Defendants' and Witness' Perjury if it wants to."[7] (Italics omitted.)

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[7] The parties did not include Judge Kleifield's February 18, 2016 minute order in the record. On our own motion, we took judicial notice of it. (See Evid. Code, §§ 452, subd. (d), 459, subd. (a).) The order said nothing about the Beis Din's retaining jurisdiction; nor did it authorize the Beis Din to reconsider its former ruling. Rather, the order stated: "[W]hen a case is sent to arbitration, the court only has limited jurisdiction to confirm the arbitrator[']s award or vacate the award, neither which has been requested in this motion. [¶] The court has no[] authority to 'remand' anything to the arbitrator, as this controversy has already been submitted, and the Superior Court's authority is limited to the powers granted by statute. [¶] The court finds that the request by the arbitrator amounts to a request for an advisory opinion, and the court will not issue such a ruling. [¶] Motion is denied without prej[ud]ice to the moving party seeking relief within the court's authority."

In January and February 2016, Javahery called and emailed Rabbi Union stating he had assumed the first Psak Din was final, that appellants objected to a rehearing, and that he did not understand how the matter could be reheard. Javahery further stated that he could not afford to hire an attorney for another hearing. Relying on Epsilon's notice of ruling, Rabbi Union responded that the Superior Court had said "it is possible to reopen a case if new evidence is presented . . . at the hearing where you did not appear." Rabbi Union further stated: "If you choose not to appear before us, we will have to look at the evidence in your absence," and "[y]ou do not have to have an attorney in order to appear before us, but we are obligated to have that hearing."

C. *Second Arbitration and Award*

On February 24, 2016, Epsilon's counsel emailed Rabbi Union requesting that the Beis Din schedule a hearing on Epsilon's motion for rehearing. On March 28, the parties returned to a hearing before the Beis Din. On June 7, the Beis Din issued a new Psak Din, ruling in favor of Epsilon. The new Psak Din stated that Epsilon had presented "incontrovertible evidence" impeaching Namvar's prior testimony, leading the panel to conclude that appellants had deliberately misled the Beis Din arbitrators at the 2010 hearing. The Beis Din awarded Epsilon $1,502,797, payable in installments.

D. *Order Confirming Second Award*

On June 15, 2016, Epsilon moved to confirm the second Psak Din.[8] On August 11, 2016, appellants moved to vacate the hearing on the ground that the new award was void, as the Beis Din had no jurisdiction to modify its "binding and final" 2010 Psak Din. Javahery stated in an attached declaration that he had been led to believe the March 2016 hearing before the Beis Din was for the purpose of discussing whether a new trial was appropriate, and that he could have provided additional evidence had he known there would be an evidentiary hearing. The court (Judge Halm) denied the motion to vacate the hearing. Appellants thereafter filed an opposition, noting that the express terms of the arbitration agreement precluded any reconsideration, that appellants had not agreed to a second arbitration, and that the Beis Din had no jurisdiction to hold a second evidentiary hearing, but was limited to interpreting, implementing or enforcing its original award. Epsilon filed a reply, contending among other things, that the opposition was late.

At the September 28, 2016 hearing, the trial court granted Epsilon's motion to confirm the award. In its order, it noted that appellants' opposition was untimely, but stated that it had considered all legal arguments raised by the parties. The court observed that under section 1286.2, it had the power to vacate an arbitration award where "[t]he

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[8] This motion was served on appellants.

arbitrators exceeded their powers . . . ." The court concluded, however, that the Beis Din arbitrators had not exceeded their powers because the prohibition on challenging the award contained in the arbitration agreement did not "specifically address whether a rehearing based on newly discovered evidence [was] warranted," and "only pertain[ed] to the rights of the parties, and not to the powers of the arbitrator[s]." The court further stated: "The evidence reflects that the arbitrator did not act rashly in deciding to rehear the dispute. Rather, the arbitrator assessed his authority under the contract and the governing law and determined that he had jurisdiction to rehear the matter based on newly discovered evidence."

Judgment was entered. Appellants timely appealed.

DISCUSSION

A. *February 18, 2016 Order*

Preliminarily, we address the trial court's February 18, 2016 order, issued at a hearing at which appellants were not present, and at which Epsilon asked the court to remand the matter to the Beis Din. Appellants contend the court "exceeded its jurisdiction" by issuing a ruling that permitted Epsilon to return to the Beis Din. Epsilon insists that to the extent the instant appeal challenges the February 18 order, it is time barred.

The February order provided no basis for an appeal by appellants, as it denied Epsilon's motion as being beyond the power of the court, refused to give the arbitrators an

"advisory opinion" concerning their jurisdiction to hold a rehearing, and invited Epsilon to seek relief "within the court's authority." Moreover, assuming Epsilon's misleading characterization of the trial court's order convinced appellants and the Beis Din that the court had authorized a rehearing, such an order would not have been appealable. (*Muao v. Grosvenor Properties, Ltd.* (2002) 99 Cal.App.4th 1085, 1088 [order directing arbitration is not appealable, but is reviewable on appeal from judgment entered after confirmation of the award]; accord, *Nelsen v. Legacy Partners Residential, Inc.* (2012) 207 Cal.App.4th 1115, 1121-1122.)

B. *Validity of Second Arbitration Award*

"California has a long-established and well-settled policy favoring arbitration as a speedy and inexpensive means of settling disputes. [Citation.] This policy is reflected in the comprehensive statutory scheme set out in the California Arbitration Act. (§ 1280 et seq.) The purpose of the act is to promote contractual arbitration, in accordance with this policy, as a more expeditious and less expensive means of resolving disputes than by litigation in court. [Citation.]" (*Hightower v. Superior Court* (2001) 86 Cal.App.4th 1415, 1431, italics omitted.) "Thus, it is clearly the expectation of the parties to an arbitration agreement that the arbitrator's decision will be both binding and final. [Citation.] 'This expectation of finality strongly informs the parties' choice of an arbitral forum over a judicial one. The arbitrator's decision should be the end not the beginning of

the dispute.'" (*Id*. at p. 1432, quoting *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 9.) "'[A]n arbitration decision is final and conclusive *because the parties have agreed that it be so*. By ensuring that an arbitrator's decision is final and binding, courts simply assure that the parties receive the benefit of their bargain.'" (*Hightower v. Superior Court, supra,* at p. 1432.)

Appellants contend the 2010 Psak Din was a final and binding arbitration decision, which could not be changed by submission of new evidence years after its issuance, even though Namvar may have committed perjury at the 2010 arbitration hearing. We agree.

We first point out that perjury does not constitute extrinsic fraud, and does not provide a ground to overturn a civil judgment years after the fact. (*Kachig v. Boothe* (1971) 22 Cal.App.3d 626, 633 ["[I]t is settled beyond controversy that a decree will not be vacated merely because it was obtained by forged documents or perjured testimony"]; see *Buesa v. City of Los Angeles* (2009) 177 Cal.App.4th 1537, 1545-1548 [plaintiff police officers could not attack in separate proceeding findings of administrative board of rights hearing by establishing that their sergeant testified falsely at the hearing].) The injured party is expected to realize "'that a false claim or defense can be supported in no other way,'" and "'must be prepared to meet and expose perjury then and there.'" (*Kachig v. Boothe*, *supra*, at p. 633.) "'The reason of this rule is, that there must be an end of litigation; and when parties have once submitted a

matter, or have had the opportunity of submitting it, for investigation and determination, and when they have exhausted every means for reviewing such determination in the same proceeding, it must be regarded as final and conclusive . . . .'" (*Ibid.*) As the Supreme Court has explained "'[e]ndless litigation in which nothing was ever finally determined, would be worse than occasional miscarriages of justice.'" (*Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1, 11, quoting *Pico v. Cohn* (1891) 91 Cal. 129, 133-134.)

Moreover, to the extent a claim of perjury could support vacating a final arbitration decision under section 1286.2, the time within to bring a motion to vacate such an award is limited by section 1288, which requires petitions to vacate to be "served and filed not later than 100 days after the date of the service of a signed copy of the award on the petitioner." Relief from an arbitration decision "must be sought in a timely manner. A court may not vacate an award unless a petition requesting such relief has been duly filed and served [citation] not later than 100 days after the date of service of a signed copy of the award upon the petitioning party. [Citation.]" (*Louise Gardens of Encino Homeowners' Assn., Inc. v. Truck Ins. Exchange, Inc*. (2000) 82 Cal.App.4th 648, 658; accord, *Abers v. Rohrs* (2013) 217 Cal.App.4th 1199, 1211 ["The trial court's power to vacate an arbitration award is governed by statute, and the deadline for seeking such relief is mandatory"].)

More important, it has long been the rule in California that "'when arbitrators have published their award by delivering it to the parties as the award, . . . it is not the subject of revision or correction by them, and . . . any alteration without the consent of the parties will vitiate it.'" (*Elliott & Ten Eyck Partnership v. City of Long Beach* (1997) 57 Cal.App.4th 495, 501, quoting *Porter v. Scott* (1857) 7 Cal. 312, 316; accord, *Cooper v. Lavely & Singer Professional Corp*. (2014) 230 Cal.App.4th 1, 13 (*Cooper*).) As explained in *Banks v. Milwaukee Ins. Co*. (1966) 247 Cal.App.2d 34, the statutory provisions governing arbitration "confer[] on an arbitrator power to make corrections [to the original award] only in a very limited area" and within a limited time frame, and any attempted correction that comes too late or represents "a revision in substance" such as "adding an element of damages not covered . . . in the award as [originally] rendered," is void. (*Id*. at p. 37; accord, *Severtson v. Williams Construction Co*. (1985) 173 Cal.App.3d 86, 93 [trial court properly refused to confirm modified award issued by arbitrator based on reconsideration of certain evidence, where it was clear that original award represented "a deliberate choice rejecting [those] items of evidence"].)

In *Cooper,* the trial court confirmed an arbitration award that had been modified after the original award issued to include an attorney fee award. (*Cooper, supra,* 230 Cal.App.4th at p. 10.) This court reversed, explaining that "after the arbitrator has issued an award (or multiple incremental awards) resolving all submitted issues, section

1284 narrowly circumscribes the arbitrator's power to correct the stated resolution of those issues." (*Id.* at p. 12.) "'[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.'" (*Id.* at p. 14, quoting *Landis v. Pinkertons, Inc.* (2004) 122 Cal.App.4th 985, 992.) "California courts have permitted arbitrators to amend a purported final award to include rulings on an *omitted* issue." (*Cooper, supra,* at p. 14.) However, the governing statutes "do not permit the arbitrator to make substantive changes to the award's determinations of fact and law." (*Ibid.*)

As stated in *Cooper*, California courts have recognized the power of arbitrators to modify or make corrections to incomplete awards, but only where such corrections "resolve an issue omitted from the original award through the mistake, inadvertence, or excusable neglect of the arbitrator" and "the amendment . . . is not inconsistent with other findings on the merits of the controversy . . . ." (*A.M Classic Construction, Inc. v. Tri-Build Development Co.* (1999) 70 Cal.App.4th 1470, 1478; accord, *Delaney v. Dahl* (2002) 99 Cal.App.4th 647, 649; *Century City Medical Plaza v. Sperling, Isaacs & Eisenberg* (2001) 86 Cal.App.4th 865, 868-869.) In other words, "the power of an arbitrator to correct an award after it has been issued to the parties is limited to evident miscalculation of figures or descriptions of persons, things or property [citation] and non-substantive matters of form that do not affect the merits of the controversy.

[Citation.] [Unless a statutory exception applies], an arbitrator may not correct an award that he or she intended on the ground that he or she later determined a factual or legal error had been made in the award." (*Century City Medical Plaza*, *supra*, at p. 877, italics omitted.) "The critical distinction . . . is the one between an *inadvertent omission* and *the correction of an error in an intended ruling*." (*Id.* at p. 880.)

There is no dispute that the 2010 Psak Din represented the Beis Din's intended final and binding ruling on the merits of the claim between Epsilon and appellants with respect to the 2008 loan. The 2016 Psak Din represented a 180-degree reversal of the precise claim the Beis Din had previously determined. Reversing its original finding that appellants owed nothing to Epsilon, the Beis Din awarded Epsilon the entire amount sought, plus substantial interest. Thus, under the governing authority, the second Psak Din was not a valid award and should not have been confirmed.

Epsilon contends that because the 2010 Psak Din was never confirmed by the court, it was not sufficiently "final" to preclude reconsideration. It is mistaken. An arbitration decision becomes final and subject to the rule that the arbitrators may no longer alter it when it is "published" by "deliver[y] to the parties . . . ." (*Elliott & Ten Eyck Partnership v. City of Long Beach*, *supra*, 57 Cal.App.4th at p. 501.) Moreover, section 1287.6 provides: "An award that has not been confirmed or vacated has the same force and effect as a contract in writing between the parties to the

arbitration." (See *Walter v. National Indem. Co.* (1970) 3 Cal.App.3d 630, 634 ["An arbitration award not validly confirmed is nevertheless binding upon the parties as a written contract"]; *Doyle v. Giuliucci* (1965) 62 Cal.2d 606, 609 [purpose of section 1287.6 is to "strengthen [arbitration] awards by making clear that they are binding as contracts even after time for seeking judicial confirmation expires"].) An unconfirmed award also represents a final judgment for purposes of res judicata, precluding either party from litigating a second action arising out of the same transactional nucleus of facts. (*Bucur v. Ahmad* (2016) 244 Cal.App.4th 175, 189.) It follows that appellants' failure to seek confirmation of the 2010 Psak Din did not render it ineffective or permit Epsilon and the Beis Din to disregard it.[9]

Epsilon further contends that the Beis Din had the power to determine its own jurisdiction and to reach the conclusion that its powers to rehear the matter were "far in excess of the [superior court's]." We disagree. "The powers of an arbitrator derive from, and are limited by, the

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[9] At oral argument, Epsilon's counsel argued for the first time that the party's arbitration agreement provided that no arbitral decision would be final until confirmed. It does not. The relevant paragraph of the agreement permits -- but does not require -- confirmation of the arbitral award. (Arbitration Agreement, ¶8 ["Any party may obtain a judgment confirming the award by filing a petition in a court of competent jurisdiction in the County of Los Angeles"].)

agreement to arbitrate." (*Advanced Micro Devices, Inc. v. Intel Corp*. (1994) 9 Cal.4th 362, 375.) The consensual nature of arbitration "'allows the parties to structure their arbitration agreements as they see fit.'" (*Bunker Hill Park Ltd. v. U.S. Bank National Assn*. (2014) 231 Cal.App.4th 1315, 1326.) At the same time, however, ""'an 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.) Awards in excess of the powers conferred by the parties' agreement "may, under sections 1286.2 and 1286.6, be corrected or vacated by the court."[10] (*Advanced Micro Devices, Inc. v. Intel Corp., supra,* at p. 375.)

The instant arbitration agreement stated that the parties would accept the award of the Beis Din as "binding, final and conclusive." The agreement allowed the Beis Din to retain jurisdiction after the award was issued, but only "to the extent necessary to interpret, implement or enforce" it. Under no rational interpretation of the language of the arbitration agreement can the Beis Din's actions in holding a new hearing, taking additional evidence, and issuing a revised arbitration decision that reversed its original

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[10] "'In determining whether an arbitrator exceeded his powers, we review the trial court's decision de novo,'" and "'give substantial deference'" to the arbitrator's interpretation of the contract and his contractual authority. (*O'Flaherty v. Belgum* (2004) 115 Cal.App.4th 1044, 1056; accord, *Cooper, supra*, 230 Cal.App.4th at p. 12.)

findings fall under its powers to "interpret, implement or enforce" the original award.

Finally, Epsilon contends that appellants waived their right to object to the second hearing by participating in it. "[C]onsent to arbitration . . . will not be inferred solely from a party's conduct of appearing in the arbitral forum" if the party makes an objection "'prior to participat[ing]' in the arbitration." (*Douglass v. Serenivision, Inc.* (2018) 20 Cal.App.5th 376, 387; accord, *International Film Investors v. Arbitration Tribunal of Directors Guild* (1984) 152 Cal.App.3d 699, 706 ["preferred procedure" is to "proceed with the arbitration" and attack order compelling arbitration "in connection with a petition to vacate or confirm the arbitrator's award or on appeal from the judgment confirming the award"].) In his communications with Rabbi Union, Javahery made clear appellants' objection to going forward with a rehearing of a matter decided over five years earlier. His appearance at the hearing and attempt to defend the claim did not represent a waiver.

DISPOSITION

The judgment is reversed. Appellants are awarded their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

EPSTEIN, P. J.

WILLHITE, J.