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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

INMOBILIARIA BUENAVENTURAS S.A. DE C.V., Plaintiff and Appellant, v. CHICAGO TITLE COMPANY, Defendant and Respondent.	B289831 (Los Angeles County Super. Ct. No. BS171419)

APPEAL from a judgment of the Superior Court of Los Angeles County. Elizabeth Feffer, Judge. Reversed and remanded with directions.

Niddrie Addams Fuller Singh and David A. Niddrie; International Practice Group and Guillermo Marrero, for Plaintiff and Appellant.

Loeb & Loeb, W. Allan Edmiston and Edward K. Lee; The Page Firm and Richard W. Page; Greines, Martin, Stein & Richland, Robin Meadow, Jeffrey E. Raskin, and Nadia Sarkis, for Defendant and Respondent.

Inmobiliaria Buenaventuras S.A. de C.V. (IBU) appeals from the judgment vacating a $2,200,000 arbitration award in its favor on a breach of contract claim against Chicago Title Company (CTC). We reverse the judgment and direct the trial court to enter judgment in IBU's favor.

BACKGROUND

The purchase and sale agreement

IBU and KR Playa III, S. de R.L. de C.V. (Seller) entered into an agreement (the PSA) for the purchase and sale of real property in Quintana Roo, Mexico (the Properties) for $20 million. CTC agreed to serve as escrow agent for the transaction.

The PSA required IBU to make a $2 million payment, to be applied toward the purchase price, by depositing that sum into an escrow account held by CTC. The PSA states that the $2 million deposit is non-refundable, except in the event of Seller's material default or the non-occurrence of a specified condition precedent. IBU and Seller agreed to close the transaction no later than August 21, 2009, by executing a public deed of transfer (the Contrato Definitivo or Final Agreement) before a Mexican notary.

The PSA was executed in both Spanish and English. It states, however, that the Spanish language version will control in the event of any discrepancy between the Spanish and English language versions.

The Second Clause of the PSA governs the payment and release of the $2 million deposit. The English language version of that clause states:

> "The parties agree that the price for the purchase and sale of the Properties (the '<u>Purchase Price</u>') is the amount of US$20,000,000.00 (Twenty Million Dollars 00/100 legal currency of the United States of America), which shall be paid as follows:

"(a) Promissory Buyer, upon execution of this Agreement, shall deposit into an account held by Chicago Title Company, as escrow agent ('Escrow Agent'), the amount of US$2,000,000.00 (Two Million and 00/100 Dollars legal currency of the United States of America), as a deposit exclusively to guarantee the performance of the obligations of Promissory Buyer under the terms of this Agreement (the 'Deposit');

"(b) the Deposit shall be non-refundable [except in the event of a material default by Promissory Seller under this Agreement or non-occurrence of a Condition Precedent (as defined below),[1] in which case the Deposit shall be refunded to Promissory Buyer] and (i) shall be immediately released to Promissory Seller upon receipt by Escrow Agent and shall be credited towards the Purchase Price upon mutual execution of the Final Agreement or (ii) retained by Promissory Seller in the event that the Promissory Buyer does not timely execute the Final Agreement for any reason other than material default by Promissory Seller or due to the non-occurrence of a Condition Precedent (as defined below);

"(c) the balance of the Purchase Price shall be delivered by Promissory Buyer to Escrow Agent on

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[1] The PSA specifies two conditions precedent to the closing: (1) "Title to the Properties shall be evidenced by the irrevocable commitment" of CTC to issue a title insurance policy "showing lien-free title to the Property vested in [IBU]" and (2) Seller's delivery to IBU of "a standard 'certificate of no liens'" on the Properties.

> the same day as the execution of the Final Agreement. Upon execution of the Final Agreement the escrowed funds shall be released by Escrow Agent to Promissory Seller."

As relevant here, the Spanish language version of subparagraphs (b) and (c) of the PSA's Second Clause (as translated into English in the arbitration award), states:

> "(b) the Deposit shall be nonrefundable [except in the event of a material default by the Promissory Seller under this Agreement or non-occurrence of a Condition Precedent (as defined below), in which case the Deposit shall be refunded to the Promissory Buyer] and (i) shall be immediately released to Promissory Seller upon receipt by Escrow Agent and shall be credited towards the Purchase Price upon mutual execution of the Final Agreement or (ii) shall be retained by the Promissory Seller in the event that the Promissory Buyer does not timely execute the Final Agreement for any reason other than material default by Promissory Seller or due to the non-occurrence of a Condition Precedent (as defined below);
>
> "(c) the remaining unpaid balance of the Price shall be delivered to the Escrow Agent simultaneously the same day as the Final Agreement (as defined below) is signed. At the moment of signing the Final Agreement, the totality of the funds of the Price shall be released by the Escrow Agent to the Promissory Seller."

IBU made the required $2 million deposit into an account held by CTC in Los Angeles on July 27, 2009, at 9:25 a.m. That same day, at 10:36 a.m., Seller's attorney, Frank Iaffaldano, sent

an email to CTC demanding immediate release of the $2 million to Seller's affiliate, Kor Playa. CTC contacted Iaffaldano's office for clarification as to the basis for Seller's demand. Iaffaldano referred CTC to subparagraph (b) of the Second Clause of the PSA, which states that the $2 million deposit is "non-refundable" and provides for its immediate release to Seller upon receipt by CTC. At 1:19 p.m. on July 27, 2009, CTC informed Iaffaldano by electronic communication that the $2 million had been disbursed to a California bank account held by Seller's affiliate, Kor Playa. At 1:39 p.m. that same day, CTC notified IBU by electronic communication that the $2 million deposit had been released to Seller.

A dispute arose between the parties regarding disbursement of the $2 million. The purchase transaction did not close, and Seller sold the Properties to a third party for $18 million.

The arbitration

IBU sued CTC in Mexico seeking return of the $2 million. The parties agreed to binding arbitration of their dispute. Their written arbitration agreement states that "[t]he scope of the arbitration shall include any dispute, claim or controversy between CTC and [IBU] relating to the [PSA]." The arbitration agreement further states that "the arbitration shall be governed by JAMS Streamlined Arbitration Rules and Procedures subject to modification through the mutual agreement of the Parties and the Arbitrator."

IBU and CTC appointed Lic. Carlos Loperena Ruiz as the sole arbitrator in the case. Upon his appointment, the arbitrator made two written disclosures: (1) he had served as an arbitrator in two other arbitrations in which Jones Day, CTC's co-counsel in

the underlying arbitration in this case, had represented a party; and (2) his daughter, an attorney, had previously worked as both in-house and outside counsel for Seller. Neither IBU nor CTC raised any objection after these disclosures.

The parties submitted arbitration briefs and extensive documentary evidence, including declarations by percipient and expert witnesses. On March 9, 2017, the arbitrator issued an order stating that he would review the witness declarations in lieu of hearing direct testimony at the arbitration hearing, and that the only testimony to be presented at the hearing would be on cross-examination by the opposing party. In response to the March 9, 2017 order, IBU indicated that it intended to cross-examine only Iaffaldano. CTC requested that all of IBU's witnesses, including expert witnesses, be available at the hearing for cross-examination. In addition, CTC asked that its expert, Charles Hansen, be allowed to testify as a rebuttal witness "as necessary." IBU objected to Hansen's proposed rebuttal testimony as inconsistent with the arbitrator's March 9, 2017 order. The arbitrator denied CTC's request for rebuttal testimony by Hansen, noting that IBU had not designated Hansen as a witness for cross-examination. He reiterated his March 9, 2017 order limiting testimony at the hearing to cross-examination by the opposing party. Both IBU and CTC subsequently withdrew their respective requests to cross-examine witnesses, and no witnesses testified at the arbitration hearing.

After CTC indicated that it intended to have two attorneys present closing arguments at the arbitration hearing, IBU asked that its expert on Mexican law, Louis Jorge Castro Gomez (Castro), be allowed to argue as IBU's co-counsel at the hearing.

CTC objected to the request on the ground that allowing Castro, one of IBU's designated experts, to serve as IBU's counsel at the arbitration hearing demonstrated "the lack of impartiality in Lic. Castro's written testimony." CTC further objected that allowing Castro to appear as IBU's counsel at the hearing but precluding CTC's expert, Hansen, from testifying resulted in a "more favorable standard for IBU than for [CTC]." In an April 21, 2017 email to the parties, the arbitrator communicated his ruling on the matter, stating that "[e]ach party may argue through one or more attorneys, including the one who acted as expert witness."

The arbitration hearing was held on May 4, 2017, in Mexico City. Castro was present as IBU's counsel. Hansen, CTC's expert, was not present.

After the arbitration hearing concluded, CTC and IBU submitted closing briefs. In its closing brief, CTC alleged that at the outset of the arbitration hearing, the arbitrator had disclosed an ex parte communication with Castro that purportedly occurred the day before the hearing. CTC further alleged that during the ex parte communication, Castro "apparently discussed his friendship with [the arbitrator's] daughter, [the arbitrator's] acquaintance with [Castro's] father and discussed the nature of the hearing to be conducted." CTC argued that Castro's and IBU's conduct was unethical and against California public policy.

The arbitrator issued a final award on July 18, 2017,[2] in which he stated that "the dispute is basically centered on the interpretation of the Second Clause of the [PSA], which contains the commitment to deliver the $2,000,000.00 USD to the escrow agent." The arbitrator found the Second Clause was ambiguous,

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[2] Upon the parties' request, the arbitrator subsequently corrected and modified the award on August 15, 2017.

because it could be interpreted to require CTC either (i) to retain the $2 million deposit in order to be able to refund that sum to IBU in the event of Seller's default or non-occurrence of a condition precedent, (ii) or to disburse the $2 million immediately to Seller, and to require Seller to refund that sum to IBU in the event of Seller's default or non-occurrence of a condition precedent.

The arbitrator noted that while both the English and Spanish language versions of subparagraph (b) of the PSA's Second Clause could be interpreted to require immediate release of the $2 million deposit upon receipt by CTC, the Spanish language version of subparagraph (c) conflicted with that interpretation, as it required CTC to release "the totality of the funds of the Price" to Seller "[a]t the moment of signing the Final Agreement."

The arbitrator applied Mexican law to resolve the ambiguity and concluded that "the meaning that must be given to the second clause of the [PSA] is that the delivery of the $2,000,000.00 USD was at the moment of signing the Final Agreement, and not immediately."

The arbitrator found that CTC had breached the PSA by prematurely releasing the $2 million deposit to Seller and awarded IBU $2.2 million, consisting of the deposit, plus prejudgment interest at one percent as provided in the Civil Code of the State of Quintana Roo.

Petition to confirm and cross-petition to vacate the arbitration award

IBU filed a petition in the Los Angeles Superior Court to confirm the arbitration award. CTC opposed the petition and cross-petitioned to vacate the award.

In support of its cross-petition to vacate, CTC submitted declarations by attorneys Richard W. Page and Jose Antonio Vasquez Cobo (Vasquez), who represented CTC at the arbitration hearing. Both Page and Vasquez state in their declarations that the arbitrator made additional disclosures at the outset of the arbitration hearing. According to Vasquez, the arbitrator "informed the parties that one day prior, on May 3, 2017, he received a telephone call from Attorney Castro [IBU's co-counsel at the hearing] 'to discuss logistical issues of the hearing.'" Page states in his declaration that the arbitrator "casually disclosed for the first time that he had *ex parte* communications with Attorney Castro the day before the hearing, during which they discussed the hearing." Vasquez and Page also state in their declarations that the arbitrator disclosed that he and Castro's father were friends, and that Castro and the arbitrator's daughter had attended law school together.

In response, IBU submitted declarations by its attorneys, Castro and Guillermo Marrero, denying that the arbitrator had made any disclosures at the arbitration hearing.[3] Castro and Marrero both denied that the arbitrator had disclosed any ex parte communications with Castro, and Castro denied that any such ex parte communications occurred. According to both Castro and Marrero, the arbitrator at the outset of the hearing

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[3] The arbitrator also submitted a declaration denying that he had made any of the additional disclosures attested to by Vasquez and Page in their declarations. The trial court sustained CTC's objection to the arbitrator's declaration as untimely, and IBU does not challenge that evidentiary ruling. We therefore do not consider the arbitrator's declaration. (See *Frittelli, Inc. v. 350 North Canon Drive, LP* (2011) 202 Cal.App.4th 35, 41, & fn. 1.)

thanked Castro for having made the arrangements for the conference room facilities where the arbitration hearing was held. Castro and Marrero both state in their declarations that the arbitrator noted at the outset of the hearing that he was familiar with the attorneys on both sides, and that he had professional relationships with Vasquez, a Jones Day attorney who was present at the hearing on behalf of CTC, and with Castro's father (who did not represent either party and who was not present at the hearing). Both Castro and Marrero further state in their declarations that the arbitrator assured the parties that his professional relationships with the parties' lawyers would not impact his impartiality and that he then asked both sides whether they were ready to proceed. Both CTC and IBU agreed through their attorneys to proceed with the hearing.

After a March 6, 2018 hearing on IBU's petition to confirm the arbitration award and CTC's cross-petition to vacate the award, the trial court issued an order vacating the arbitration award on two grounds: (1) the award was based on a "completely irrational" reading of the PSA that constituted an arbitrary remaking of the contract, and (2) CTC was denied a fair hearing because the arbitrator was biased and failed to comply with his disclosure obligations.

A judgment vacating the arbitration award was entered in CTC's favor on March 6, 2018. This appeal followed.

ISSUES PRESENTED ON APPEAL

1. Whether the arbitrator acted in excess of his powers because his interpretation of the PSA was irrational or resulted in an arbitrary remaking of the contract.

2. Whether CTC was denied a fair hearing because of arbitrator bias.

DISCUSSION

I. Applicable law and standard of review

Code of Civil Procedure section 1286.2, subdivision (a) sets forth the exclusive grounds for vacating an arbitrator's award.[4] These include circumstances in which the arbitrator acts in excess of his or her authority (§ 1286.2, subd. (a)(4)), or is biased. (§ 1286.2, subd. (a)(6).)

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

Section 1286.2, subdivision (a) provides in pertinent part: "Subject to Section 1286.4, the court shall vacate the award if the court determines any of the following: (1) The award was procured by corruption, fraud or other undue means. [¶] (2) There was corruption in any of the arbitrators. [¶] (3) The rights of the party were substantially prejudiced by the misconduct of a neutral arbitrator. [¶] (4) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted. [¶] (5) The rights of the party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefor or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title. [¶] (6) An arbitrator making the award either: (A) failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware; or (B) was subject to disqualification upon grounds specified in Section 1281.91 but failed upon receipt of timely demand to disqualify himself or herself as required by that provision."

We review de novo the parties' contentions as to whether the arbitrator acted in excess of his powers (*Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362, 376, fn. 9 (*Advanced Micro*) or demonstrated bias.[5] (*Haworth v. Superior Court* (2010) 50 Cal.4th 372, 383 (*Haworth*); *Greenspan v. LADT, LLC* (2010) 185 Cal.App.4th 1413, 1457.) While our review is de novo, the scope of that review is very narrow. (*Moshonov v. Walsh* (2000) 22 Cal.4th 771, 775 (*Moshonov*).) As a general rule, a court cannot review an arbitrator's decision for errors of fact or law. (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 11 (*Moncharsh*).)

II. Interpretation of the PSA

Our Supreme Court has held that when interpretation of a contract underlying a dispute is "within the matter submitted to arbitration," even an interpretation that amounts to an error of law on a submitted issue is not in excess of the arbitrator's powers within the meaning of section 1286.2. (*Moshonov, supra,* 22 Cal.4th at p. 779.) The parties' arbitration agreement in this case broadly encompasses "any dispute, claim or controversy . . . relating to the [PSA]." Interpretation of the PSA accordingly was

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[5] We reject CTC's contention that the substantial evidence standard governs our review of its challenge to the arbitration award based on the arbitrator's alleged bias. While it is true that the substantial evidence standard applies to the trial court's determinations based on the resolution of disputed facts (*Betz v. Pankow* (1993) 16 Cal.App.4th 919, 923 (*Betz*)), the facts here are undisputed, with the exception of alleged disclosures the arbitrator purportedly made at the outset of the hearing. As we discuss below, even assuming the alleged disclosures were made, CTC forfeited any challenge based on those disclosures by failing to object before the arbitration hearing commenced.

"within the matter submitted to arbitration." (*Moshonov*, at p. 779.) The arbitrator's interpretation, even if legally incorrect, was not a valid basis for vacating the arbitration award. (*Ibid.*)

CTC nevertheless contends the arbitration award was properly vacated because it ""'rests on a 'completely irrational' construction of the contract [citations] or . . . amounts to an 'arbitrary remaking' of the contract.'" [Citations.]" (*Santa Monica College Faculty Assn. v. Santa Monica Community College Dist.* (2015) 243 Cal.App.4th 538, 550 (*Santa Monica College*), quoting *California Dept. of Human Resources v. Service Employees Internat. Union, Local 1000* (2012) 209 Cal.App.4th 1420, 1430.) The appropriate inquiry, however, is whether the award "bears a rational relationship to the underlying contract as interpreted, expressly or impliedly, by the arbitrator." (*Advanced Micro, supra,* 9 Cal.4th at p. 367.)

The arbitrator found the language of the PSA governing release of the $2 million deposit to be ambiguous. Specifically, he found subparagraph (b) of the Second Clause of the PSA, requiring immediate release of the $2 million deposit upon receipt by CTC, to conflict with the Spanish language version of subparagraph (c), which required CTC to release "the totality of the funds of the [purchase] Price" to the Seller "[a]t the moment of signing of the Final Agreement." The arbitrator resolved this conflict by applying Mexican law and interpreted the PSA to require release of the $2 million deposit, along with the balance of the purchase price, "at the moment of signing the Final Agreement, and not immediately."

When an arbitrator's interpretation of the contract is "within the range of ambiguity, i.e., within the ordinary bounds of semantic possibility, there can be no tenable claim that the

contract has been arbitrarily remade." (*Pacific Gas & Electric Co. v. Superior Court* (1993) 15 Cal.App.4th 576, 594. "[T]he standard is so strict that it should discourage all but the most serious claims of abuse." (*Ibid.*) The arbitrator's interpretation of the PSA, which turned on his reading of the controlling Spanish language terms, did not exceed the bounds of semantic possibility. The $2.2 million award to IBU bears a rational relationship to the PSA as interpreted by the arbitrator. (*Advanced Micro, supra,* 9 Cal.4th at p. 367.) We therefore will not disturb the arbitrator's interpretation. (*Santa Monica College, supra,* 243 Cal.App.4th at p. 551.)

III. Arbitrator bias

A. Applicable law

An arbitration award must be vacated "if the court determines, inter alia, that the rights of a party were substantially prejudiced by the misconduct or bias of a neutral arbitrator. [Citation.] The established test for making this determination when a party asserts prejudice because of an arbitrator's conflict of interest is whether the record reveals facts which might create an impression of possible bias. The test is an objective one -- whether such an impression is created in the eyes of the hypothetical reasonable person. [Citations.]" (*Betz v. Pankow* (1995) 31 Cal.App.4th 1503, 1508, fn. omitted.) Both bias and prejudice must be clearly established by the party seeking to vacate an award based on arbitrator bias. (*Roitz v. Coldwell Banker Residential Brokerage Co.* (1998) 62 Cal.App.4th 716, 724 (*Roitz*).)

A party claiming bias on the part of an arbitrator bears the burden of establishing facts supporting its position. (*Betz, supra,* 16 Cal.App.4th at p. 926.) To support a claim of arbitrator bias, a

party must demonstrate that the arbitrator had an interest in the subject matter of the arbitration or a preexisting business or social relationship with one of the parties that would color the arbitrator's judgment. (*Luster v. Collins* (1993) 15 Cal.App.4th 1338, 1345.)

"The party moving to set aside an arbitration award for evident partiality of the arbitrator must identify an undisclosed relationship between the arbitrator and a party or the party's agent that is so intimate, personally, socially, professionally, or financially, as to cast serious doubt on the arbitrator's impartiality; in addition, the alleged past or present conflicting personal or financial relationship with the arbitrator must be direct, definite, and capable of demonstration rather than remote, uncertain, or speculative." "A weak link of indirect relationships purporting to tie the arbitrator to a claimant is insufficient to vacate the award; something more than a vague and rather remote business relationship is required." (21 Williston on Contracts (4th ed. 2019 update) Evident partiality, § 57:142.)

An arbitrator has a statutory duty to disclose to the parties any grounds for disqualification. Within 10 days of receiving notice of his or her nomination to serve as a neutral arbitrator, a proposed arbitrator must "disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial." (§ 1281.9, subd. (a).) Section 1281.9 enumerates the specific matters an arbitrator must disclose. These include "[a]ny professional or significant personal relationship the proposed neutral arbitrator or his or her spouse or minor child living in the household has or has had with any party to the arbitration proceeding or lawyer for a party." (§1281.9, subd. (a)(6).) An

arbitrator's failure to timely disclose a ground for disqualification of which the arbitrator was then aware is a ground for vacating the arbitration award. (1286.2, subd. (a)(6)(A); *Haworth, supra,* 50 Cal.4th at p. 381.)

Once an arbitrator has made the requisite disclosures, the parties may seek to disqualify him or her. (§1281.91, subds. (b), (d).) A party who is aware that an arbitrator's disclosure is incomplete or fails to satisfy the statutory disclosure requirements cannot passively reserve the issue for consideration after the arbitration has concluded. Instead, the party must disqualify the arbitrator on that basis before the arbitration begins. (*United Health Centers of San Joaquin Valley, Inc. v. Superior Court* (2014) 229 Cal.App.4th 63, 85 (*United Health*).)

B. Alleged bias

1. Allowing Castro to serve as IBU's expert and counsel

CTC contends the arbitrator's April 21, 2017 ruling allowing "[e]ach party" to argue at the hearing "through one or more attorneys, including the one who acted as expert witness," effectively granted IBU's request to have its Mexican law expert Castro appear as counsel at the arbitration hearing. That ruling, CTC claims, was biased and unfair, in light of the arbitrator's previous denial of CTC's request to allow its expert, Hansen, to testify as a rebuttal witness at the hearing.

The trial court determined that the arbitrator's April 21, 2017 ruling demonstrated bias. As the basis for that determination, the trial court relied on Castro's declaration in support of IBU's opposition to CTC's petition to vacate. The trial court noted that Castro "[did] not declare that, as an expert witness and as a lawyer for IBU, he had no financial stake in the

outcome of the arbitration proceeding" and that the California Rules of Professional Conduct prohibits members of the California Bar from compensating witnesses contingent upon the outcome of the case. The trial court further noted that "Castro's Declaration submitted in this matter is silent as to compensation. . . . It has not been disclosed to this court whether Castro's compensation is based upon the outcome of this case."

The absence of evidence as to whether Castro had a financial stake in the outcome of the arbitration, and was therefore not an impartial expert witness, is not a valid basis for the trial court's finding that the arbitrator was biased. (See *Roitz, supra,* 62 Cal.App.4th at p. 724.) To the extent that Castro's actions as an advocate at the arbitration hearing impacted his credibility as an expert witness, the weight to be accorded to Castro's testimony was a determination to be made by the arbitrator, not the trial court. (*Moncharsh, supra,* 3 Cal.4th at p. 11.)

The arbitrator's April 21, 2017 ruling on its face is neutral. It allows "[e]ach party" to present argument at the hearing "through one or more attorneys, including the one who acted as expert witness." CTC does not claim that the arbitrator precluded its expert, Hansen, a California attorney, from arguing (as opposed to testifying) at the hearing.

The arbitrator's decision to preclude Hansen from testifying at the arbitration hearing is not subject to review. (§ 1282.2, subd. (c); *California Faculty Assn. v. Superior Court* (1998) 63 Cal.App.4th 935, 943.) Even if that decision were reviewable, CTC has failed to establish any resulting prejudice. (*Roitz, supra,* 62 Cal.App.4th at p. 724 [both bias and prejudice must be clearly established by party seeking to vacate an award based on

arbitrator bias].) To do so, CTC was required to show how its rights were substantially prejudiced by the exclusion of specific evidence. (See *Hall v. Superior Court* (1993) 18 Cal.App.4th 427, 439; *Gonzales v. Interinsurance Exchange* (1978) 84 Cal.App.3d 58, 66-67.) It has failed to do so.

2. Alleged disclosures by the arbitrator

CTC waived any challenge to the arbitration award based on disclosures the arbitrator allegedly made at the outset of the arbitration hearing. Assuming those disclosures were made,[6] CTC raised no objection and did not seek to disqualify the arbitrator based on any of the alleged disclosures before the arbitration hearing commenced. It accordingly cannot seek to vacate the award based on those alleged disclosures. (*United Health, supra,* 229 Cal.App.4th at p. 85.)

DISPOSITION

The judgment is reversed. The trial court is directed to enter judgment in IBU's favor confirming the arbitration award. IBU shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
LUI

_____, J.
HOFFSTADT

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[6] As discussed, IBU disputes that the arbitrator made any of the alleged disclosures CTC claims were made at the outset of the arbitration hearing.