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A trial lawyer's guide to vacatur

OVERTURNING AN ARBITRATION AWARD: THE GROUNDS FOR VACATUR ARE STRICTLY CIRCUMSCRIBED

Despite your best efforts – and a sincere belief in your case – you have come out on the losing side of an arbitration. What are your options?

Unlike in litigation, you cannot simply appeal an arbitration award. Although it may seem counterintuitive, the absence of appellate review is one of the principal reasons parties choose arbitration in the first place. As the California Supreme Court explained in its seminal decision, *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1:

"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."

Court proceedings – including appeals – can take years. The average arbitration typically concludes in less than a year. At its best, arbitration offers efficiency and, importantly, finality, allowing parties to move forward with their businesses and lives. But final does not mean untouchable. There are limited avenues to overturn an arbitral award. This article provides a practical guide.

First, consider the odds

Before filing a petition to vacate, you – and your client – should realistically assess your chances of success. They are modest. Empirical studies of federal and state cases have found that, depending on the ground asserted, only between approximately 2.4% and 18% of vacatur petitions succeed. (See John Burritt McArthur, *The Reasoned Award in the United States: Its Promise, Preparation, Problems, and Preservation*, Ch. 7, pp. 4–5 (Juris 2022); Thomas J. Brewer, *Arbitrator Boundaries: Exploring the Evolving Limits on Arbitrator Authority*, 474 (AAA Yearbook on Arbitration and the Law – 24th ed.) (Juris 2012).)

The reason is straightforward: the grounds for vacatur are strictly circumscribed. Courts are not authorized to review the merits of an award. As the Ninth Circuit has explained, confirmation is *required* unless vacatur is warranted under 9 U.S.C. § 10 "even in the face of erroneous findings of fact or misinterpretations of the law." (*Lagstein v. Certain Underwriters at Lloyd's* (9th Cir. 2010) 607 F.3d 634, 640.)

A petition to vacate must therefore fit within one of the statutory grounds, or within a narrow judicially recognized doctrine.

Second, understand the statutory grounds – and judicial gloss

The Federal Arbitration Act (the "FAA") 9 U.S.C. §§ 1–16, provides four grounds for vacatur:

1. The award was procured by "corruption, fraud, or undue means;"
2. There was "evident partiality or corruption" in the arbitrators;
3. The arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, in refusing to hear material evidence, or engaged in other prejudicial misbehavior; or
4. The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award was not made.

(9 U.S.C. § 10(a).)

Because most disputes involve interstate commerce, the FAA governs the majority of vacatur petitions. However, even where there is interstate commerce, the parties may contract for the California Arbitration Act ("CAA") to apply, which provides substantially similar grounds for vacatur as the FAA.

The California Code of Civil Procedure section 1286.2, specifies the grounds for vacatur as follows:

1. The award was procured by corruption, fraud, or other undue means;
2. There was corruption in any arbitrator;
3. The rights of a party were substantially prejudiced by misconduct of a neutral arbitrator;
4. The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits;
5. The rights of a party were substantially prejudiced by the refusal of arbitrators to postpone the hearing upon sufficient cause shown, to hear evidence material to the controversy, or by other conduct contrary to the provisions of the CAA; or
6. An arbitrator making the award was subject to disqualification on grounds not known to the party at the time of the award, or the arbitrator failed to disclose within the time required a ground for disqualification of which the arbitrator was then aware.

Under the FAA, grounds for vacatur include "exceeding powers," the most frequently asserted – and most successful – ground for vacatur. A survey of cases from 2010 to 2017 found that approximately 17.4% of petitions invoking this ground resulted in vacatur. (*McArthur, supra*, at 7-4.)

Because arbitration is a creature of contract, courts examine whether the arbitrator strayed from the parties' agreement. In *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.* (2010) 559 U.S. 662, the Supreme Court vacated an award permitting class arbitration where the parties had stipulated that their agreement was silent on the issue. The Court found that the arbitrators imposed their own policy preference rather than interpreting the contract.

Common "exceeding powers" scenarios include:

Non-signatories and the "Who decides?" question

In *Benaroya v. Willis* (2018) 23 Cal.App.5th 462, the court vacated an award where the arbitrator asserted jurisdiction over non-signatories. Although the agreement incorporated arbitral rules delegating jurisdictional questions to the arbitrator, the court held that whether non-signatories were bound was a gateway issue for judicial determination. That's because the very existence of a binding arbitration agreement (as to the non-signatory) was in dispute.

Where the dispute revolves around whether an arbitration agreement even exists, that's an issue for courts, not arbitrators, to decide, even if the purported arbitration agreement delegates jurisdictional issues to the arbitrator. (See, e.g., *Granite Rock Co. v. Teamsters* (2020) 561 U. S. 287, 300 [finding that disputes over "formation of the parties' arbitration agreement" and "its enforceability or applicability to the dispute" at issue are "matters . . . the court must resolve" (internal quotation marks omitted)].) California courts and the Ninth Circuit have explicitly held that "the *court* must determine whether the parties entered into an enforceable agreement to arbitrate that reaches the dispute in question," because "arbitration is fundamentally a matter of contract." (See, e.g., *Momot v. Mastro*, (9th Cir. 2011) 652 F.3d 982, 986; *Cal. Corr. Peace Officers Ass'n. v. State* (2006)142 Cal.App.4th 198, 204-05.)

Entertaining claims not submitted

An arbitrator exceeds her powers by awarding relief no party requested. In *Matter of 544 Bloomrest, LLC v. Harding* (1st Dept. 2022) 2022 N.Y. Slip Op. 00936, the court vacated the portion of an award granting damages that had not been sought.

Disregarding an unambiguous contractual provision

Vacatur may be warranted when an arbitrator ignores a clear contractual term. In *Aspic Engineering & Constr. Co. v. ECC Centcom Constructors LLC* (N.D. Cal. 2017) 268 F.Supp.3d 1053, the court found the arbitrator's interpretation directly conflicted with the contract's express provisions. The award reflected the arbitrator's view of fairness rather than a plausible interpretation of the agreement.

Awarding – or refusing to award – attorneys' fees

When an arbitrator refuses to award attorneys' fees to the prevailing party, which are mandated by a statute or the contract, vacatur may be appropriate. (See *Di Marco v. Chaney* (1995) 31 Cal.App.4th 1809.) Conversely, awarding fees absent any contractual or statutory basis may also exceed arbitral authority. (*Thompson v. Jespersen* (1990) 222 Cal.App.3d 964.)

Other grounds for seeking vacatur

Evident partiality or corruption

Arbitrators have an ongoing duty to disclose potential conflicts. They must conduct reasonable diligence; failure to recall a conflict is not a defense if nondisclosure would create an impression of possible bias.

In *Equicare Health Inc. v. Varian Medical Systems, Inc.*, (N.D. Cal. Apr. 19, 2023) No. 5:21-mc-80183-EJD, the court vacated an award where the arbitrator failed to disclose that an appearing attorney had been part of a team representing the arbitrator and his firm in previous malpractice litigation. Applying the Ninth Circuit's "impression of possible bias" standard, the court found the nondisclosure material – regardless of the arbitrator's memory lapse or the unanimity of the award.

Bias may also manifest during the hearing. In *FCM Investments, LLC v. Grove Pharm., Inc.* (2023) 96 Cal.App.5th 545, the court vacated an award where the arbitrator discounted a witness's credibility based on her use of an interpreter, characterizing it as a "ploy." The court held that linguistic and national-origin bias implicates the integrity of the judicial process, warranting vacatur.

Refusal to hear material evidence or grant a continuance

Arbitration does not contemplate the full procedural breadth of litigation. Courts generally defer to arbitrators' discovery and scheduling decisions. (See *Schlessinger v. Rosenfeld, Meyer & Susman* (1995) 40 Cal.App.4th 1096.)

However, exclusion of material evidence that prejudices a party may justify vacatur. In *Burlage v. Superior Court* (2009) 178 Cal.App.4th 524, the court upheld vacatur where the arbitrator excluded evidence directly relevant to damages, substantially impairing the losing party's ability to contest the award. Similarly, vacatur based on denial of a continuance requires both abuse of discretion and resulting prejudice. (*SWAB Financial, LLC v. ETrade Securities, LLC* (2007) 150 Cal.App.4th 1181, 1198.)

Corruption, fraud, or undue means

These grounds are reportedly the least successful grounds, but they may apply in egregious cases. For example, in *France v. Bernstein* (3d Cir. 2022) 43 F.4th 367, vacatur was granted where post-award discovery revealed a party's (unbeknownst to the arbitrator) material document suppression and false testimony. And in *NuVasive, Inc. v. Absolute Medical, LLC* (11th Cir. June 23, 2023) No. 22-10214, the court vacated an award after discovering that a party had covertly coached a witness testifying by videoconference.

Manifest disregard of the law

Recognized in the Ninth, Second, and Fourth Circuits, this doctrine is frequently misunderstood. It does not authorize vacatur for mere legal error. Even clear legal mistakes are ordinarily insulated from review. (See *Moncharsh*, 3 Cal.4th at 25.) Instead, vacatur requires proof that:

1. The governing legal principle was well defined and not subject to reasonable debate; and
2. The arbitrator was aware of it and deliberately refused to apply it.

(See *EHM Prod. v. Starline Tours of Hollywood* (9th Cir. 2021) 1 F.4th 1164.)

In *HayDay Farms v. FeedDX Holdings, Inc.* (9th Cir. 2022) 55 F.4th 1232, the court emphasized that only a knowing disregard or a "completely irrational" interpretation warrants relief.

Even factual errors rarely suffice. In *VIP Mortgage Inc. v. Gates* (9th Cir. Dec. 22, 2025) No. 24-7624, the court explained that vacatur based on a "legally dispositive fact" requires the fact to be so critical and obvious that the arbitrator must have known it and ignored it. Although the arbitrator awarded fees inconsistent with a prior agreement, the court found no manifest disregard because the fact was not so obvious as to compel that conclusion.

Award contrary to public policy

A court may vacate an award that violates explicit, well-defined public policy. In *Honchariw v. FJM Private Mortgage Fund, LLC* (2022) 83 Cal.App.5th 893, the court vacated an award enforcing a late fee it deemed an unlawful penalty under California law. Because the remedy contravened statutory public policy, review escaped the usual prohibition against merits review.

Confirmation or vacatur under the CAA: A summary proceeding with hard deadlines:

Under the CAA, California Code of Civil Procedure sevtion 1280 et seq., post-award proceedings move quickly and decisively. Here are the key provisions for filing a petition to confirm or vacate an arbitration award:

CCP § 1285 – Petition to confirm, correct, or vacate: This is the gateway provision. It authorizes any party to an arbitration to file a petition with the court to confirm, correct, or vacate an arbitration award. It establishes that the superior court has jurisdiction to act on an award and sets the proceeding in motion.

CCP § 1285.8 – Contents of petition: This section specifies what a petition to confirm, correct, or vacate must contain. The petition must set out the substance of or attach the arbitration agreement, the name of the arbitrator, and a copy of the award. It ensures that the court has the basic documentation needed to evaluate the petition.

CCP § 1286.4 – Limitation on vacatur; remand: This section limits what a court may do after finding grounds for vacatur. The court may not vacate the award *solely* on the ground that a legal or factual issue was erroneously decided. Instead, where grounds for vacatur exist but the error is correctable, the court may *remand* the matter to the arbitrator for further proceedings. This reflects the strong California policy of finality in arbitration and the limited scope of judicial review.

CCP § 1288 – Time to file petition: This section sets the statute of limitations for filing a petition to confirm or vacate an award. A petition to confirm must be filed no later than four years after service of the award. A petition to correct or vacate must be filed no later than 100 days after service of the signed award on the petitioner. However, in *Law Finance v. Key* (2023) 14 Cal.5th 932, the California Supreme Court held that the 100-day deadline is not jurisdictional. Instead, the Court held that the statutory deadline is a statute of limitations subject to the full range of equitable doctrines, including equitable tolling and equitable estoppel, that may operate to excuse a late filing. In *Law Finance*, Key filed her vacatur motion outside of the 100-day deadline. Despite the late filing, the trial court vacated the award. The Court of Appeal reversed the trial court, concluding that the 100-day deadline was jurisdictional and cannot be waived, extended by agreement, or overcome by equitable doctrines. Reversing, the Supreme Court remanded to the Court of Appeal to determine whether Key was entitled to equitable relief from the deadline.

CCP § 1288.4 – Earliest date to file petition: This section establishes the earliest date on which a petition may be filed. A petition to confirm, correct, or vacate may not be filed until at least 10 days after service of the signed copy of the award on the petitioner. This waiting period ensures that parties have the opportunity to seek correction from the arbitrator before rushing to court.

CCP § 1290.6 – Time to file response: This section governs the response to a petition. Any party served with a petition must file and serve a response within 10 days after service of the petition. The response may request that the court confirm, correct, or vacate the award. If a party fails to file a timely response, that party may be deemed to have waived any objection to the relief requested in the petition.

Confirmation or vacatur under the FAA: Even tighter, with jurisdictional hurdles

The FAA follows the philosophy – streamlined enforcement, minimal judicial interference – and adds a jurisdictional trap for the unwary. A party may apply to confirm within one year after the award is made. (9 U.S.C. § 9.) The court "must grant" confirmation unless the award is vacated, modified, or corrected under sections 10 or 11 of the FAA. (*Ibid.*)

A motion to vacate must be served within three months after the award is filed or delivered. (9 U.S.C. § 12.) The deadline is strictly enforced. Let it lapse, and the challenge is almost certainly gone.

Endorsing a streamlined process to enforce arbitral awards, the U.S. Supreme Court recently held that when a federal district court compels arbitration and stays the case pending completion of the arbitration under section 3 of the FAA, the district court retains jurisdiction to later confirm or vacate the resulting arbitration award, even if the motion to conform or vacate does not independently establish federal jurisdiction. (*Jules v. Andre Balazs Properties*, No. 25-83 (May 14, 2026).)

Modification is limited to evident material miscalculations, descriptive mistakes, decisions on matters not submitted, or purely formal defects. (*Id.*, § 11.) Error – factual or legal – is not enough. Federal courts apply what is often described as one of the narrowest standards of judicial review in American law.

Unlike the CAA, the FAA does not supply subject matter jurisdiction. A party must independently establish diversity or federal question jurisdiction to bring a petition to confirm or vacate in federal court. (28 U.S.C. §§ 1331, 1332.) No jurisdiction, no federal forum – no matter how strong the challenge.

When both the FAA and CAA could apply, choose carefully, move fast

When interstate commerce is involved, the FAA governs. But parties can contract for California arbitration law to shape judicial review, and courts will honor that choice if clearly expressed. (See *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University* (1989) 489 U.S. 468.) The governing-law clause matters. So does the forum.

Strategy begins with three questions: (1) What statute governs review? (2) Is federal jurisdiction available? (3) When does the clock start – and when does it run out? The CAA's 100-day deadline and the FAA's three-month deadline are similar, but not identical. Precision in calculating service and delivery dates is essential.

In practice, post-award litigation is less about creative argument and more about statutory compliance. The framework is rigid. The timelines are short. The review is deferential. If you intend to vacate, move immediately. If you intend to confirm, enforce promptly. Arbitration promises finality – and both the CAA and FAA are built to deliver it.

Conclusion

Remember that the grounds for vacatur are narrow and exclusive, as discussed above. Courts do not reweigh evidence. They do not correct legal error. They enforce the bargain.

Think twice – then think again – before filing a petition to vacate. The standard is exacting, and the statistics are unforgiving. But the hill is not insurmountable.

When an award reflects undisclosed bias, procedural unfairness, contractual overreach, fraud, manifest disregard, or a remedy that violates public policy, vacatur remains a vital safeguard – one that protects not only the parties, but the integrity of the arbitral process itself.

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