

When Statutory Rights Are At Issue: Court of Appeal Rules That Award of Arbitrator  
May Be Overturned by Court Where Statutory Rights Are Impinged On By Arbitrator

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In a case which may have significant implications for matters subject to arbitration, the California Court of Appeal, 4<sup>th</sup> Appellate District, ruled in Richard Hale Brown v. TGS Management Company, LLC (2020) Westlaw WL 6634990 ("Brown case"), that an arbitrator exceeded his power in issuing an award enforcing provisions of an employment agreement which illegally restricted an employee's right to work.

The facts of the Brown case are as follows: TGS Management Company, LLC ("TGS") is a private limited liability company which engages in a highly computerized form of equity trading known as statistical arbitrage. Richard Hale Brown ("Brown") worked for TGS commencing in 2005 and worked there for about ten years. The majority of Brown's compensation, on an annual basis, would be bonuses that would be paid the following calendar year in which Brown had worked (known as "deferred bonuses").

Brown was terminated by TGS in February 2016. At the time that Brown was terminated, he was owed a deferred bonus from 2014 of \$652,243 and a deferred bonus from 2015 of \$300,000. In October 2016, Brown filed a complaint against TGS stating claims for declaratory relief, injunctive relief, and reformation of the arbitrator-selection process in his Employment Agreement. The matter was then submitted to binding arbitration. TGS moved for summary disposition, which the arbitrator granted to a large extent. The arbitrator dismissed all but one of Brown's whistleblower claims and wrongful termination claims. Just four of Brown's claims remained before the arbitrator for hearing: Declaratory Relief ("to invalidate, clarify, or reform" portions of Brown's employment agreement to comport with § 16600 of the California Business and Professions Code, among other things). In brief, California Business and Professions Code § 16600 provides that a non-compete provision, except in very limited circumstances, is illegal and against public policy in California. TGS prevailed at the arbitration and was awarded, among other things, over \$2 million in attorneys' fees. Brown appealed, arguing that the arbitrator had improperly ruled against him on the Declaratory Relief cause of action involving Business and Professions Code § 16600.

The trial court confirmed the award of arbitrator.

On appeal, Brown argued that several provisions in his Employment Agreement with TGS illegally restrained him from working in a statistical arbitrage setting after leaving TGS, rendering the arbitration contract void ab initio and unenforceable under Business and Professions Code § 16600. Brown asserted that the arbitration award, which

denied Brown's Declaratory Relief claim, left illegal, anticompetitive provisions in effect, and exceeded the arbitrator's powers, citing the California Supreme Court decision in Moncharsh v. Heily & Blase (1992) 3 Cal.4<sup>th</sup> 1.

On appeal, and noting that Brown had mounted a facial challenge to the confidentiality provisions, and arguing the provisions were so broad to prevent him from ever working again in his chosen profession, the Court of Appeal ruled that the arbitrator had indeed exceeded his powers. The Court of Appeal ruled that the arbitrator should have declared the anticompetitive provisions of the Brown Employment Agreement void under Business and Professions Code § 16600. The Court of Appeal remanded much of the matter back to the court.<sup>1</sup>

The Brown case is important in that it affirms that, if a contract is void, in this case for containing a confidentiality clause that was overly broad and in violation of public policy, the award of an arbitrator can be set aside. When arbitrating any matter, it will be incumbent on a litigant to raise a facial challenge before the arbitrator if it perceives that a statute applies to the proceeding and there is a question as to whether the statute has been complied with.

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<sup>1</sup> The court also ruled that the arbitrator erred in finding Brown had forfeited the deferred bonuses.