

PROFESSIONAL LIABILITY UPDATE

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SANCTIONS

California Law

By Jennifer A. Becker

Rietveld v. Rosebud Storage Partners, L.P. (2004) 121 Cal.App.4th 250

The Third District holds that local rules, which include sanctions against counsel, do not conflict with state law and are enforceable.

Jon and Carole Rietveld sued their former employer, Rosebud Storage Partners, L.P. (Rosebud). The case was ordered to judicial arbitration and the arbitrator notified Lyle Havens, counsel for the Rietvelds, that he was required to provide copies of the complaint and answer and a short arbitration brief ten days prior to the hearing. Havens arrived at the arbitration late, and did not provide any documents. The Rietvelds did not attend the arbitration hearing and were not available by telephone. Havens did not present any evidence and stated that he agreed with the facts in Rosebud's arbitration brief.

After the arbitrator entered an award in favor of Rosebud Havens filed a request for trial de novo. Rosebud filed a motion requesting sanctions against Havens for willful failure to participate meaningfully in judicial arbitration. Havens's opposition stated that it was unnecessary to present evidence at the arbitration because judicial arbitration often proceeds in the form of a mediation or settlement conference. He

also stated that judicial arbitration is meaningless because of the option to file a trial de novo. The trial court awarded sanctions against Havens

On appeal Havens contended an award based on the willful failure to participate meaningfully in judicial arbitration is not permissible and that he did not participate meaningfully.

Sacramento County Local Rule 12.04 permits sanctions for the willful failure to meaningfully participate in arbitration proceedings. The trial court made specific findings that Havens violated the local rule and that Havens's excuses were after-the-fact rationalizations. The court concluded that Havens's decision not to produce evidence was based on his belief that mandatory judicial arbitration is a meaningless proceeding. Havens's conduct with respect to the judicial arbitration violated the local rules.

Code of Civil Procedure § 575.2(a) allows, as a penalty for violation of local

rules, striking of pleadings, dismissal of part or all of an action, or penalties of a lesser nature as otherwise provided by law. It also allows the moving party to recover fees and costs incurred in making the motion for sanctions.

Monetary sanctions are penalties of a lesser nature than dismissal. Thus, Code of Civil Procedure § 575.2 allows a court to impose sanctions for noncompliance with local rules.

The Court of Appeal rejected Havens's argument that the award was excessive. The amount was based Rosebud's fees and costs incurred in arbitration and in making the sanctions motion.

Comment: By providing for sanctions in local rules, courts have a powerful tool to achieve compliance. Historically sanctions, which can be substantial, have not been covered by errors and omissions insurance.