

PROFESSIONAL LIABILITY UPDATE

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FEE ARBITRATION

California Law

By Ann L. Strayer

Corell v. The Law Firm of Fox & Fox (2005) 129 Cal.App.4th 531

The Second Appellate District, in line with established authority, holds that abandonment of a request for trial de novo renders a prior arbitration award final and binding.

Corell retained Fox & Fox (“Fox”) to represent her in a marital dissolution. Fox’s retainer agreement provided for arbitration of disputes with regard to services and attorney fees. The agreement recognized that Corell was entitled to elect either binding or non-binding fee dispute arbitration pursuant to the Mandatory Fee Arbitration Act. In the event non-binding arbitration was chosen and either party rejected the award, the matter would proceed to binding arbitration. The arbitration provisions were clear that the parties agreed to waive their right to have disputes resolved in a court of law.

The retainer agreement allowed Fox a security lien and Fox recorded a deed of trust against Corell’s home to secure a note for its fees.

When a fee dispute arose, Corell requested non-binding arbitration. The arbitrators rendered their award in an amount far below that sought by Fox. Rather than proceed with binding arbitration pursuant to the terms of the

retainer agreement, Fox commenced an action against Corell. Fox refused to stay the action and proceed with binding arbitration and Corell filed a petition to compel arbitration. The court granted Corell’s petition but the arbitration never took place over a dispute as to who was responsible for initiating the proceeding.

After Fox voluntarily dismissed the fee action without prejudice Corell commenced an action seeking declaratory and other relief. Fox filed a cross-complaint for fees. The court struck all pleadings because Fox had failed to timely request a trial de novo, dismissed before trial, and therefore was bound by the dismissal.

The Court of Appeal reversed the dismissal of Corell’s suit because the arbitration no longer existed. However, the Court affirmed the dismissal of Fox’s cross-complaint for fees agreeing with the trial court that Fox’s dismissal of the fee action and its conduct thereafter reflected an attempted evasion of both the mandatory fee arbitration award and

the arbitral process as a whole. By dismissing its action Fox repudiated its request for a trial de novo and the arbitration award became final and binding.

Comment. Courts will not countenance procedural maneuvers to avoid fee arbitration proceedings or their results.