PROFESSIONAL LIABILITY UPDATE

MANDATORY FEE ARBITRATION

By Jennifer A. Becker

Schatz v. Allen Matkins Leck Gamble & Mallory LLP (2009) 45 Cal.4th 557

The Supreme Court holds that binding contractual arbitration can follow non-binding arbitration under the Mandatory Fee Arbitration Act.

Richard A. Schatz retained Allen Matkins Leck Gamble & Mallory (Allen Matkins) to represent him. The agreement contained a binding arbitration provision that included attorney fee disputes.

After a dispute arose Schatz invoked the Mandatory Fee Arbitration Act (MFAA). After the arbitrators found for Allan Matkins, Schatz filed a complaint seeking a trial *de novo*. Allan Matkins then petitioned for binding arbitration provided for in the fee agreement. The trial court agreed with Schatz that Allan Matkins was precluded from invoking the binding arbitration clause under the MFAA as construed by precedent. The Supreme Court reversed.

The California Arbitration Act (CAA) CAA is a comprehensive statutory scheme regulating private arbitration. There is a strong public policy in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution. The MFAA constitutes a separate and distinct arbitration scheme to address attorney-client fee disputes in a quick and inexpensive manner. The MFAA has its own rules and limitations: it is a closed system where the arbitration is conducted by a local bar association, not a private alternative resolution provider; it applies only to disputes concerning legal fees and costs; and it is inapplicable to claims for affirmative relief against the attorney for professional misconduct. An attorney's obligation to arbitrate under the MFAA is statutory; under the CAA, both parties must agree to arbitrate. An award under the MFAA can be challenged by either party unless the parties agree that it will be binding; under the CAA the parties typically expect that the arbitrator's award will be binding.

A Court of Appeal precedent had held that CAA binding arbitration contravened the letter and spirit of the MFAA as a consumer-oriented scheme in which the commitment to be bound by arbitration would follow only after the client had knowingly waived the right to judicial review.

A Supreme Court opinion held that a client who had waived his rights under the MFAA was obligated to comply with a binding contractual arbitration provision. In that case one justice noted that 1996 amendments to the MFAA referred to "any other proceeding" that may follow a non-binding MFAA arbitration. This justice saw no reason that "any other

proceeding" could not be binding arbitration under the CAA.

In *Schatz,* the Supreme Court agreed that the import of the phrase "any other proceeding" could include CAA arbitration. The statute does not foreclose the possibility that the post-MFAA arbitration resolution process could be binding arbitration. The "trial" after the MFAA arbitration is simply a trial in accordance with applicable law. All valid defenses continue to exist, including the defense of the existence of a contractual obligation to arbitrate.

There was no express repeal of CAA arbitration when the MFAA was enacted. Implied repeal is only appropriate when there is no rational basis for harmonizing the two potentially conflicting statutes. The MFAA and CAA may be rationally harmonized because they create two very different types of arbitration and both may be given effect. Once the arbitration under the MFAA has either been waived by the client or given effect the MFAA has played its role. Either party can pursue judicial action and if the parties had agreed to binding arbitration, the CAA would apply. This is consistent with the strong public policy in favor of binding arbitration as a means of resolving disputes.

A 1998 amendment to the MFAA clarified language regarding the ability of parties to make an MFAA arbitration binding only after a dispute has arisen. In doing so the Legislature impliedly recognized other possible forms of arbitration, thereby indicating that the MFAA and CAA may stand together.

An implied repeal of a portion of the CAA would also create two anomalies. One is that a client could evade his or her agreement to arbitrate if he or she demands and goes through with nonbinding arbitration under the MFAA. An attorney, however, could not unilaterally evade his or her agreement to arbitrate in the same way because an attorney cannot invoke arbitration under the MFAA. It would be illogical to permit attorneys to evade their agreement to arbitrate only if the client invokes the MFAA.

Comment: This case makes clear that binding arbitration is available for both disputes about attorney errors and omissions and fees. However, because privately conducted mediation can at times be even more costly than using the public court system, the wisdom of an arbitration provision in attorney-client fee contracts should be carefully considered.