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## **C.A. Allows Review of Arbitration Award Against Larry Flynt**

By SHERRI M. OKAMOTO, Staff Writer

This district's Court of Appeal ruled yesterday that Larry Flynt and his publishing company could seek judicial review of an arbitrator's award of nearly \$1 million in damages for a former employee's sexual harassment claim.

In an unpublished decision, Div. one reversed Los Angeles Superior Court Judge Kenneth R. Freeman's order upholding the \$925,000 award in favor of Elizabeth Raymond and remanded for consideration of the Flynt defendants' legal challenges to the award.

When Raymond was hired as an executive assistant for two L.F.P., Inc. executives in 2000, she signed an agreement to the terms of her employment as outlined in the employee handbook.

The handbook contained an arbitration provision in which

Raymond agreed that any dispute for sexual discrimination or harassment would be submitted for arbitration. The arbitration provision provided for judicial review of the arbitrator's ruling and findings of fact.

After L.F.P. fired Raymond in 2002, Raymond exhausted her administrative remedies and filed suit against Flynt and the company alleging sexual harassment in violation of the Fair Employment and Housing Act.

Freeman granted the defendants' motion to compel arbitration pursuant to the terms contained in the employee handbook, and the arbitrator found the defendants liable for creating and maintaining a hostile work environment.

The arbitrator also determined that the defendants

had acted with malice and oppression, and awarded Raymond \$175,000 in compensatory damages and punitive damages of \$500,000 against Flynt and \$250,000 against L.F.P.

Relying on *Crowell v. Downey Community Hospital Foundation* (2002) 95 Cal.App.4th 730, Freeman declined to enforce the judicial review provision contained in the employee handbook and denied the defendants' motion to vacate the award.

*Crowell* held that jurisdiction to conduct judicial review of arbitration decisions could not be expanded by contract to include a review on the merits.

On appeal, the defendants argued that the arbitrator's findings on their face and as a matter of law did not show that Raymond was subjected to a hostile work environment because of gender, and that the punitive damages were excessive.

While the appeal was pending, the California Supreme Court decided *Cable*

*Connection, Inc. v. DIRECTV, Inc.* (2008) 44 Cal.4th 1334.

In *Cable Connection*, the state high court disapproved *Crowell* and held that parties could limit an arbitrator's authority by providing for judicial review of arbitration awards for errors of law or legal reasoning in the arbitration agreement.

Writing for the appellate court, retired Los Angeles Superior Court Judge Stanley M. Weisberg, sitting on assignment, explained that following *Cable Connection*, the provision for judicial review of the arbitration award in this case was enforceable to the extent that it provided for review of the arbitrator's legal conclusions.

Weisberg also reasoned that the record was adequate for review of the defendants' legal challenges, even absent a transcript of the arbitration proceedings, because the defendants did not attack the sufficiency of the evidence itself, but only the arbitrator's findings that the evidence demonstrated sexual harassment.

Because the trial court did not reach any of the Flynt defendants' legal arguments regarding the merits of the arbitration award, the panel declined to reach those issues on appeal and remanded for the trial court to review for errors of law or legal reasoning in the first instance.

Barry R. Levy, Jeremy B. Rosen, Alicia A. Pell of Horvitz & Levy; Paul J. Cambria, and Jonathan W. Brown of Lipsitz Green Scime Cambria; and Mark S. Hoffman of Labowe, Labowe & Hoffman represented Flynt.

Marcus A. Mancini and Christopher Barnes of Mancini & Associates and Douglas G. Benedon and Gerald M. Serlin of Benedon & Serlin represented Raymond.

Presiding Justice Robert M. Mallano and Justice Frances Rothschild joined Weisberg in his opinion.

The case is *Raymond v. Flynt*, B195242