

EXHIBIT 85

Kirk Notice of Appearance; ROA 94 and ROA 121 Confirmation Filings

J. Douglas Kirk, SBN 125808
KIRK & TOBERTY
Attorneys at Law
2201 Dupont Drive, Suite 820
Irvine, California 92612
(949) 851-0355 • Fax (949) 851-1250
E-Mail: jdkirk@kirkandtoberty.com

Attorney for Claimant
TopDevz, LLC

AMERICAN ARBITRATION ASSOCIATION
SAN DIEGO, CALIFORNIA

ASHKAN RAJAEI, an Individual; and
TOPDEVZ, LLC, a California Limited
Liability Company,

Claimants,

V.

TYLER B. DAVIS, an Individual,
Respondent.

AAA Case No.: 01-21-0001-9983

**NOTICE OF APPEARANCE ON BEHALF
OF CLAIMANT TOPDEVZ, LLC**

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1 **TO THE ARBITRATOR, ALL PARTIES AND THEIR ATTORNEYS OF**
2 **RECORD:**

3 **PLEASE TAKE NOTICE** that J. Douglas Kirk, Kirk & Toberty Attorneys At Law is
4 appearing as counsel of record on behalf of Claimant TopDevz, LLC.

5 DATED: December 2, 2022

KIRK & TOBERTY

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7
8 By:



J. Douglas Kirk, Esq.
Attorney for Claimant
TopDevz, LLC

CUMMINS & WHITE, LLP
Scott R. Carpenter (Bar No. 144259)
E-mail: scarpenter@cwlawyers.com
2424 S.E. Bristol Street, Suite 300
Newport Beach, CA 92660-0764
Telephone: (949) 852-1800
Fax: (949) 852-8510
Attorneys for Petitioner TYLER B.
DAVIS

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County of San Diego
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Clerk of the Superior Court
By Malka Manneh, Deputy Clerk

KIRK & TOBERTY, Attorneys at Law
J. Douglas Kirk (Bar No. 125808)
Email: jdkirk@kirkandtoberly.com
2201 Dupont Drive, Suite 620
Irvine, CA 92812
Telephone: (949) 416-2215
Attorneys for Petitioner TOPDEVZ,
LLC, a California limited liability
company

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

TYLER B. DAVIS, an Individual, and
TOPDEVZ, LLC, a California Limited
Liability Company,

Petitioners,

vs.

ASHKAN RAJAEI, an Individual,

Respondents.

CASE NO.: 37-2022-00026691-CU-PA-CTL

**JOINT MEMORANDUM OF POINTS
AND AUTHORITIES OF PETITIONERS
AND CROSS-RESPONDENTS TYLER B.
DAVIS AND TOPDEVZ, LLC
REGARDING:**

**DAVIS'S AND TOPDEVZ, LLC'S
PETITION TO CONFIRM FINAL
ARBITRATION AWARD**

AND

**RESPONDENT/CROSS-PETITIONER
ASHKAN RAJAEI'S PETITION TO
VACATE THE ARBITRATION AWARD**

**DATE: July 14, 2023
TIME: 9:00 a.m.
DEPT: C-73**

**ASSIGNED FOR ALL PURPOSES TO THE
HONORABLE JOEL R. WOHLFEIL,
DEPARTMENT C-73**

Petition Filed: July 7, 2022

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1 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

2 Petitioners/Cross-Respondents Tyler B. Davis and TopDevz, LLC herby submit their
3 Joint Memorandum of Points and Authorities in Support of their Petition to Confirm the
4 Arbitration Award and their response and opposition to Respondent and Cross-Petitioner Ashkan
5 Rajace's Petition to Vacate the Final Arbitration Award.

7 Dated: June 26, 2023

CUMMINS & WHITE, LLP

9 By: /s/ Scott R. Carpenter

10 Scott R. Carpenter

Attorneys for Petitioner/Cross-Respondent

11 TYLER B. DAVIS

12 Dated: June 26, 2023

KIRK & TOBERTY, Attorneys at Law

14 By: /s/ J. Douglas Kirk

15 J. Douglas Kirk

Attorneys for Petitioner/Cross-Respondent

16 TOPDEVZ, LLC

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - July 18, 2023

EVENT DATE: 07/20/2023

EVENT TIME: 02:30:00 PM

DEPT.: C-73

JUDICIAL OFFICER: Joel R. Wohlfeil

CASE NO.: 37-2022-00026691-CU-PA-CTL

CASE TITLE: DAVIS VS RAJAEI [IMAGED]

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Petition re: Arbitration Award

EVENT TYPE: Hearing on Petition

CAUSAL DOCUMENT/DATE FILED: Petition - Subsequent Other, 06/16/2023

The joint Petition (ROA # 80, 82, 111) of Petitioners TYLER B. DAVIS and TOPDEVZ, LLC for an order confirming the contractual arbitration award, is GRANTED.

The Petition (ROA # 86, 111) of Petitioner ASHKAN RAJAEI to vacate the contractual arbitration award, is DENIED.

The basis for the rulings on both Petitions is set forth below.

The Request (ROA # 90) of Respondent and Cross-Petitioner ASHKAN RAJAEI ("Respondent") for judicial notice is DENIED.

Petitioners' Request (ROA # 97) for judicial notice is GRANTED IN PART and DENIED IN PART. The Court takes judicial notice of Exh's "38 - 40 and 42" and the dates only on which Exh's "52 - 55" were filed with the Court; otherwise, the Request is DENIED.

"The award shall be in writing and signed by the arbitrators concurring therein. It shall include a determination of all the questions submitted to the arbitrators the decision of which is necessary in order to determine the controversy." Code Civ. Proc. 1283.4.

"Any party to an arbitration in which an award has been made may petition the court to confirm, correct or vacate the award." Code Civ. Proc. 1285.

"If a petition or response ... is duly served and filed, the court shall confirm the award as made ..., unless in accordance with this chapter it corrects the award and confirms it as corrected, vacates the award or dismisses the proceeding." Code Civ. Proc. 1286.

Section 1286.2(a) provides the following grounds for vacation of the award:

- (1) The award was procured by corruption, fraud or other undue means;
- (2) There was corruption in the arbitrator;
- (3) The rights of a party were substantially prejudiced by misconduct of a neutral arbitrator;
- (4) The arbitrator exceeded her powers and the award cannot be corrected without affecting the merits

Event ID: 2996838

TENTATIVE RULINGS

Calendar No.:

Page: 1

of the decision;

(5) The rights of a party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause, or by the refusal of the arbitrators to hear evidence material to the controversy;

(6) An arbitrator making the award either: (A) failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware; or (B) was subject to disqualification upon grounds specified in Section 1281.91 but failed upon receipt of timely demand to disqualify herself.

Disclosure / Disqualification Issue

A neutral arbitrator shall disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial, including whether or not the arbitrator "has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years, has participated in, discussions regarding such prospective employment or service with a party to the proceeding." Code Civ. Proc. 1281.9(a)(1).

If the arbitrator fails to disqualify himself or herself upon timely demand, there is a drastic remedy: vacation of the award. Azteca Construction, Inc. v. ADR Consulting, Inc. (2004) 121 Cal. App. 4th 1156, 1160 (citing Code Civ. Proc. 1286.2(a)(6)(B)).

"The arbitrator's refusal to disqualify himself following Azteca's timely demand rendered the award subject to vacatur." Id.

An arbitrator's violation of his or her disclosure obligations does not necessarily entitle a party challenging an arbitration award to an order vacating the award. Honeycutt v. JPMorgan Chase Bank, N.A. (2018) 25 Cal. App. 5th 909, 928.

Instead, the statute requires vacating an award only when an arbitrator fails to disclose a ground for disqualification of which he or she was actually aware. Id.

Section 1286.2(a)(6)(A) requires actual awareness, not inquiry or constructive awareness. Id.

The party challenging the arbitration award has the burden of proving actual awareness. Id. At 928, 929.

In Rajaei's response to the Petition to confirm the arbitration award, Rajaei argues that the final award should be vacated because the arbitrator failed to meet initial and continuing disclosure requirements, and refused to disqualify herself. Response (ROA # 89) at page 19, line 9 -- page 27, lines 5. This discussion cites and relies on the Declaration of Ethan J. Brown (ROA # 33 - 36) that was originally filed on September 29, 2022, and multiple exhibits attached to this declaration. Specifically, Rajaei relies on Exhibits 62 - 68. These exhibits demonstrate two potential interactions that were not disclosed by Arbitrator Callahan.

First, in the unrelated Hoffman matter, Arbitrator Callahan represented Hoffman in 2006. After she substituted out, the Cummins & White law firm represented Hoffman starting in 2007. There is no evidence that Arbitrator Callahan and the Cummins & White law firm interacted or communicated with respect to their prior and subsequent representations of Hoffman.

Second, in a March 15, 2022 supplemental disclosure, Arbitrator Callahan states: "On July 21, 2020, I received an email from Sabrina Pattas, Legal Assistant at Cummins & White, asking me for my availability to do a one-day mediation, to which I responded with dates. On July 28, 2020, I received an email from Mr. Carpenter advising that the parties had not selected me for the mediation engagement, and to not hold the dates I had provided to Ms. Pattas."