

Adam D.H. Grant Defeats Entire Counterclaim In Arbitration

(January 21, 2011)

Mr. Grant successfully convinced an arbitrator to prevent a respondent from pursuing any part of her extensive counterclaim against the petitioner, Mr. Grant's client.

The petitioner previously filed a claim with the American Arbitration Association (AAA) alleging the respondent breached her fiduciary duties and committed fraud in the dissolution of a corporation in which the petitioner and respondent were the only shareholders. The respondent did not file an answer to the arbitration demand. The arbitration proceeded and the respondent did not attend.

The petitioner prevailed at the arbitration and was awarded over \$100,000 in damages. The Superior Court granted the petitioner's motion to confirm the arbitration and the respondent filed bankruptcy to prevent collection. Mr. Grant's office filed an adversary proceeding in the bankruptcy court to determine the judgment received from the arbitration was non-dischargeable. In response to the adversary proceeding, the respondent filed a voluminous counterclaim alleging fraud, breach of fiduciary duty, interference with economic relations and conversion, all relating to events that transpired during the dissolution of the corporation.

The bankruptcy court referred the dispute to the original arbitrator to decide whether respondent's counterclaim was barred by the doctrine of *res judicata*. After extensive briefing and oral argument, the arbitrator deemed the respondent's entire counterclaim to be barred. As detailed in Mr. Grant's moving papers, even though the respondent did not file an answer, the arbitrator barred the respondent from pursuing any claim that could have been brought at the time of the arbitration that arose from the corporate dissolution dispute.

Mr. Grant argued that while the failure to file an answer would have prevented the application of *res judicata* in a court action, the result would be very different under AAA rules. Unlike the usual California Code of Civil Procedure, which require a defendant to file an answer to a complaint, AAA's rules deem that the respondent filed an answer to the demand. Additionally, unlike the Code of Civil Procedure, which permits a default to be taken when a party does not file an answer, AAA's rules specifically state that a default would not be entered, even if a party did not appear at the arbitration, provided the moving party proved its case. Accordingly, based on the relaxed AAA rules of procedure, the arbitrator ruled that the respondent should have brought her action during the arbitration and because she failed to assert the claim at that time, she is forever barred from pursuing those claims.