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Good Policy or Judicial Abdication: When Courts Uphold Arbitral Awards Which are in Excess of the Arbitrator's Jurisdiction

*Hall v. Superior Court*¹

I. INTRODUCTION

Legislatures and the court system have advanced a strong policy to encourage individuals to arbitrate disputes and avoid the traditional judicial system.² In order to promote this policy, it is vital that arbitrators' awards be respected and upheld if at all possible. Consequently, the grounds for review of arbitration awards are limited.³ One of the grounds available for vacating an arbitral decision arises when an arbitrator exceeds his or her jurisdiction by purporting to decide issues not submitted by the parties for arbitral determination.⁴ This Note discusses the potential consequences to the overall policy goals of encouraging arbitration when reviewing courts fail to vacate arbitration awards which purport to decide issues outside of the arbitrator's jurisdiction.

II. FACTS AND HOLDING

Jan and Martha Hall hired the real estate brokerage firm of Burgess Colon Robinson and Co., Inc. [hereinafter BCRC] to list their home for sale.⁵ Steven Trompas, a commercial broker for the firm and the Halls' neighbor, solicited the listing and shared the sales commission with Tom Proell.⁶ Proell was the listing agent in the BCRC office and the sole signator on the listing agreement with the Halls.⁷ Trompas and Proell both held open houses and showed the property to prospective buyers.⁸ Trompas was also involved in several telephone conversations with the various parties and monitored the transaction once the offer

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1. 22 Cal. Rptr. 2d 376 (Cal. Ct. App. 1993).
 2. *See, e.g.,* Moncharsh v. Heily & Blase, 832 P.2d 899 (Cal. 1992).
 3. *Cobler v. Stanley, Barber, Southard, Brown & Assocs.*, 265 Cal. Rptr. 868, 872 (Cal. Ct. App. 1990).
 4. *Hall*, 22 Cal. Rptr. 2d at 381.
 5. *Id.* at 377.
 6. *Id.*
 7. *Id.* at 378.
 8. *Id.*

came in.⁹ The joint efforts of Trompas and Proell eventually produced a buyer who purchased the property, but later defaulted.¹⁰

When the purchaser defaulted, the Halls, seeking damages, filed a complaint against Proell, Trompas, and BCRC alleging that the three defendants withheld information regarding the financial problems of the buyers.¹¹ The complaint alleged that Proell and Trompas acted as agents for one another, but it did not specifically allege that a partnership existed between the two.¹²

Proell, Trompas, and BCRC¹³ denied the allegations and each invoked the arbitration clause of the listing agreement in their answer.¹⁴ The parties eventually agreed to submit all issues to arbitration.¹⁵ Pursuant to this agreement, the superior court submitted the matter to arbitrator Stuart Safine for binding arbitration.¹⁶

Trompas appeared at the arbitration hearing *in propria persona*.¹⁷ He was advised by the arbitrator that one issue for determination was whether Trompas was a co-agent and partner of Proell based on his involvement in the transaction and his sharing of the commission with Proell.¹⁸ The arbitrator explained that Trompas could be held vicariously liable for Proell's conduct if an agency or partnership relationship was found to exist.¹⁹

At the close of the case, the arbitrator granted a request by Trompas to have an attorney file a closing brief on his behalf.²⁰ Subsequently, the attorney requested an extension of time to file the brief and moved to reopen the hearing to allow evidence on the partnership issue.²¹ The arbitrator granted the extension, but denied the request to reopen.²²

9. *Id.*

10. *Id.* at 377. The purchasers defaulted due to financial difficulties.

11. *Id.*

12. *Id.* During discovery, the Halls' attorney explained to Trompas' attorney that the Halls' theory was that Trompas was vicariously liable for Proell's omissions. The Halls' attorney also explained to Trompas that the Halls considered him a co-agent and partner of Proell, and thus, responsible for Proell's actions. However, no cause of action based on partnership was alleged in the complaint. *Id.*

13. BCRC filed for bankruptcy before the arbitrator's award and the matter was stayed against it. *Id.* at 378.

14. *Id.* at 377. The arbitration clause covered "(a)ny dispute or claim in law or equity arising out of this contract or any resulting transaction. . . ." *Id.* at 381.

15. *Id.* at 378.

16. *Id.*

17. *Id.* The definition of *in propria persona* is "in one's own proper person." It was formerly a rule in pleading wherein pleas as to the jurisdiction of the court had to be plead *in propria persona*, because if pleaded by an attorney, jurisdiction was admitted. BLACK'S LAW DICTIONARY 792 (6th ed. 1990).

18. *Hall*, 22 Cal. Rptr. 2d at 378.

19. *Id.* In his declaration to the California Court of Appeals, Trompas stated that he believed the issue was whether he had engaged in any wrongful conduct. *Id.* at 377-78.

20. *Id.* at 378.

21. *Id.*

22. *Id.*

The arbitrator awarded the Halls \$139,488.87 in damages against Proell and Trompas.²³ In making this award, the arbitrator identified several acts of misconduct by Proell, and found, as a matter of law, that Trompas was liable as a partner of Proell due to his joint participation in marketing the home and sharing the profits.²⁴

Subsequently, the Halls sought to confirm the award, while Trompas sought to vacate it.²⁵ The superior court found that the arbitrator had exceeded his jurisdiction by deciding the partnership issue which had not been raised in the pleadings, and as a result, vacated the award as to Trompas.²⁶ In addition, the superior court found that the arbitrator had erred by refusing to allow presentation of evidence on the partnership issue.²⁷ In reaching its decision, the superior court relied on the proposition in *Cobler v. Stanley, Barber, Southard, Brown & Associates*²⁸ that when an arbitrator acts in excess of his or her jurisdiction by attempting to determine matters not submitted for arbitration, the award should be vacated.²⁹ Thus, the superior court held that the actions of the arbitrator violated paragraphs (d) and (e) of Section 1286.2 of the California Code of Civil Procedure which details the grounds for vacating the arbitrator's award.³⁰ The Halls petitioned the California Court of Appeals for the First District to issue a writ of mandate to the superior court to confirm the arbitrator's award.³¹

On appeal, the California Court of Appeals held that the superior court overstepped its authority in vacating the arbitrator's award as being in excess of his jurisdiction, and as a result, issued the writ ordering the superior court to set

23. *Id.* Proell then filed for bankruptcy. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. 265 Cal. Rptr. 868 (Cal. Ct. App. 1990). For a criticism of *Cobler*, see Kevin L. Wibbenmeyer, Note, *Curtailing the Arbitrator's Power: Valid Withholding of Jurisdiction or Judicial Flaw?* 1991 J. DISP. RESOL. 183.

29. *Cobler*, 265 Cal. Rptr. at 875.

30. CAL. CIV. PROC. CODE § 1286.2 (West 1982). This section provides that the court shall vacate an award on any of five grounds:

- a. The award was procured by corruption, fraud or other undue means;
- b. There was corruption in any of the arbitrators;
- c. The rights of such party were substantially prejudiced by misconduct of a neutral arbitrator;
- d. The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted; or
- e. The rights of such party were substantially prejudiced by the refusal of the arbitrators to postpone the hearing upon sufficient cause being shown therefor or by the refusal of the arbitrators to hear evidence material to the controversy or by other conduct of the arbitrators contrary to the provisions of this title.

Id. § 1286.2.

31. *Hall*, 22 Cal. Rptr. 2d at 378.

aside its order vacating the award, thereby confirming the award of the arbitrator.³²

III. LEGAL BACKGROUND

The California Legislature [hereinafter Legislature] has expressed a strong public policy in favor of arbitration through the enactment of a comprehensive statutory scheme which regulates private arbitration.³³ As a result, California courts are determined to give effect to arbitration proceedings.³⁴ The policy behind providing statutory enforcement of arbitration proceedings is to encourage people who wish to avoid the time and expense of traditional civil actions to choose their own forum for settlements of disputes.³⁵

By agreeing that an arbitral decision be final, parties evince their intent to bypass the judicial system and avoid the potential costs and delays at the trial and appellate levels.³⁶ By ensuring that the arbitrator's decision is final, courts assure that the parties receive the benefit of their bargain.³⁷ These reasons, in part, supply the rationale for the general rule that an arbitrator's decision is, with limited exceptions, unreviewable on its merits.³⁸

Generally, arbitrators "may base their decisions on broad principles of justice and equity."³⁹ Further, the merits of the controversy are not subject to judicial review.⁴⁰ "It is not appropriate for a court to review the sufficiency of the evidence before the arbitrator or to pass upon the validity of the arbitrator's reasoning."⁴¹ Thus, the arbitrator's decision cannot usually be reviewed for errors of fact or law.⁴²

The risk that an arbitrator may make a mistake as to fact or law is deemed to be acceptable by the parties who have agreed to bear that risk in exchange for a quick, inexpensive, and final resolution of their grievance.⁴³ However, the aforementioned risk of mistake is reduced by legislative enactment of procedures

32. *Id.* at 381, 383. The Court of Appeals also held that Trompas was not substantially prejudiced by the arbitrator's refusal to reopen the hearing to hear evidence on the partnership issue. *Id.* at 383.

33. CAL. CIV. PROC. CODE §§ 1280-1288 (West 1982).

34. *Moncharsh*, 832 P.2d at 902.

35. *Id.* at 903.

36. *Id.*

37. *Id.*

38. *Id.* at 904.

39. *Id.*

40. *Id.*; *Cobler*, 265 Cal. Rptr. at 872.

41. *Ray Wilson Co. v. Anaheim Memorial Hosp. Ass'n*, 213 Cal. Rptr. 62, 68 (Cal. Ct. App. 1985).

42. *Id.*

43. *Moncharsh*, 832 P.2d at 904.

for judicial review when there is a serious problem with either the arbitral award or the fairness of the arbitration process.⁴⁴

In furtherance of the goal of encouraging arbitration, and to give binding effect to the proceedings, the Legislature has limited judicial review of arbitration awards to those grounds specified by statute.⁴⁵ Section 1286.2 of the Code of Civil Procedure specifies five grounds for vacating an arbitrator's award.⁴⁶

Prior to 1992, California courts had extended judicial review of arbitration awards to include situations where an error of law appearing on the face of an award caused substantial injustice.⁴⁷ However, the California Supreme Court in *Moncharsh v. Heily & Blase* rejected that ground, stating that "[t]hose decisions permitting review of an award where an error of law appears on the face of the award causing substantial injustice have perpetuated a point of view that is inconsistent with the modern view of arbitration and are therefore disapproved."⁴⁸ Thus, after *Moncharsh*, arbitration awards containing errors on the face of the record are no longer reviewable, regardless of whether they cause substantial injustice.⁴⁹ *Moncharsh* also held that arbitrators do not exceed their authority when they make errors of fact or law.⁵⁰

Arbitrators derive their authority solely from the agreement or the stipulation of submission to arbitration.⁵¹ Since arbitrators derive their power from the arbitration agreement, they have no power to decide issues which have not been submitted for resolution.⁵² However, an arbitrator is authorized to determine all questions necessary to resolve the controversy.⁵³ In addition, it is the arbitrator's function to interpret the petitioner's complaint, or the stipulation of submission by the parties, to determine which issues have been submitted for resolution.⁵⁴ Stipulations to arbitrate are broadly construed in order to quickly and economically settle disputes between parties.⁵⁵

Once the issues are determined, it is the arbitrator's duty to keep the proceedings confined to the issues submitted, even if the parties attempt to introduce evidence outside of those issues.⁵⁶ When an arbitration award purports

44. *Id.* at 905.

45. CAL. CIV. PROC. CODE § 1286.2(a)-(e) (West 1982).

46. *See supra* note 30.

47. *See generally* *Cobler*, 265 Cal. Rptr. 868; *Ray Wilson*, 213 Cal. Rptr. 62; *Delta Lines, Inc. v. International Bhd. of Teamsters*, 136 Cal. Rptr. 345 (Cal. Ct. App. 1977).

48. *Moncharsh*, 832 P.2d at 916. For a criticism of *Moncharsh*, see Michael J. Smith, Note, *Efficient Injustice: The Demise of the "Substantial Injustice" Exception to Arbitral Finality*, 1993 J. DISP. RESOL. 209.

49. *Moncharsh*, 832 P.2d at 916.

50. *Id.*

51. *Cobler*, 265 Cal. Rptr. at 875; *Delta Lines*, 136 Cal. Rptr. at 349.

52. *Ray Wilson*, 213 Cal. Rptr. at 69.

53. *Felner v. Meritplan Ins. Co.*, 86 Cal. Rptr. 178, 182 (Cal. Ct. App. 1970).

54. *Id.*

55. *Id.*

56. *See Cobler*, 265 Cal. Rptr. at 876.

to decide unsubmitted issues, the award is to be vacated as being in excess of the arbitrator's jurisdiction within the meaning of Section 1286.2(d).⁵⁷ However, when an arbitrator has exceeded his or her jurisdiction, the reviewing court may uphold that part of the award that is valid, while vacating that part which is outside of the arbitrator's jurisdiction to determine.⁵⁸

The policy behind restricting the arbitrator to determining issues submitted by the parties is that arbitrators gain their power from the contract; therefore, they must give effect to the contractual rights and obligations of the parties to the arbitration agreement.⁵⁹ There is no policy requiring individuals to accept arbitration of issues to which they have not agreed to arbitrate.⁶⁰ Hence, to give effect to an award that was in excess of the arbitrator's jurisdiction would be contrary to the policy of encouraging the settlement of disputes by the voluntary agreement of the parties.⁶¹ As a result, the California Legislature has ensured that the contractual intentions of the parties are satisfied by providing judicial review of arbitration awards in the event that an arbitrator exceeds the jurisdiction authorized by the agreement or stipulation of submission entered into by the parties.⁶²

IV. THE INSTANT DECISION

The California Court of Appeals began its analysis by stating that the superior court's reliance on *Cobler* was erroneous for several reasons.⁶³ First, the court asserted that *Cobler* was decided before *Moncharsh*,⁶⁴ and further, the *Cobler* court had relied heavily on *Ray Wilson Co. v. Anaheim Memorial Hospital Ass'n*,⁶⁵ a decision that *Moncharsh* had rejected.⁶⁶ The court also explained that the *Cobler* court had devoted attention to the legal question of whether professional negligence principles could be used to support an award against a career consulting business, an area that *Moncharsh* has since foreclosed.⁶⁷

57. *Delta Lines*, 136 Cal. Rptr. at 349. Section 1286.2(d) provides for vacation of an arbitral award if the arbitrator exceeds his or her powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted. CAL. CIV. PROC. CODE § 1286.2(d) (West 1982).

58. *Cobler*, 265 Cal. Rptr. at 875.

59. *Delta Lines*, 136 Cal. Rptr. at 348-49.

60. *Id.* at 349.

61. *Cobler*, 265 Cal. Rptr. at 876 (quoting *William B. Logan & Assocs. v. Monogram Precision Indus.*, 7 Cal. Rptr. 212 (Cal. Ct. App. 1960)).

62. CAL. CIV. PROC. CODE § 1286.2(d) (West 1982).

63. *Hall*, 22 Cal. Rptr. 2d at 380.

64. 832 P.2d 899 (Cal. 1992).

65. 213 Cal. Rptr. 62 (Cal. Ct. App. 1985).

66. *Hall*, 22 Cal. Rptr. 2d at 380.

67. *Id.*

Second, the court stated that even if *Cobler* is not inconsistent with *Moncharsh*, it is distinguishable because the arbitration clause in *Cobler* covered only disputes "arising from" the agreement, whereas the arbitration clause in the instant case encompasses "any dispute or claim in law or equity arising out of the contract or any resulting transaction."⁶⁸ Third, and more significantly, *Cobler* did not address the central question in this case: whether the Halls' civil complaint, not the arbitration clause or stipulation of submission by the parties, defines the scope of arbitration.⁶⁹ The court explained that there was no civil complaint in *Cobler*, and that the *Cobler* court looked first to the arbitration clause, and then to the demand and cross-demand for arbitration, to determine the scope of the arbitration.⁷⁰

Citing *Delta Lines, Inc. v. International Brotherhood of Teamsters*,⁷¹ the *Hall* court argued that arbitrators derive their power solely from the arbitration agreement, and that they cannot exceed those powers.⁷² The court stated that neither *Delta*, nor any other decision, supports the view that a civil complaint filed before invocation of an arbitration clause limits the scope of arbitration.⁷³ Furthermore, the court explained that even though Trompas did not sign the arbitration agreement as an agent of BCRC, he was entitled to its benefits, and thus, subject to its burdens as well.⁷⁴

After completing this analysis, the court stated that it could not determine from the record presented whether the parties had stipulated to arbitrate "any dispute or claim in law or equity arising out of the contract or any resulting transaction," as the arbitration agreement stated, or only the issues raised in the civil complaint.⁷⁵ Taking into account that the demand for arbitration was in response to the Halls' civil complaint, and because the same superior court judge had sent the matter to arbitration and vacated the arbitration award, the court held that it would accept the possibility that the parties stipulated to arbitrate only the issues raised in the complaint.⁷⁶

Next, the *Hall* court concluded that even if the parties had agreed to arbitrate only those issues raised in the complaint, the superior court had, nevertheless, overstepped its authority by vacating the award.⁷⁷ The *Hall* court held that the arbitrator had properly concluded that partnership was among the issues that the complaint raised.⁷⁸ In making this determination, the court cited *Felner v.*

68. *Id.* at 381.

69. *Id.*

70. *Id.*

71. 136 Cal. Rptr. 345 (Cal. Ct. App. 1977).

72. *Hall*, 22 Cal. Rptr. 2d at 381.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

*Meritplan Insurance Co.*⁷⁹ for the proposition that it is the arbitrator's role to determine which issues are "necessary" to the ultimate decisions.⁸⁰ The *Hall* court also relied on *Felner* to support its position that any doubts regarding the meaning or extent of an arbitration agreement are for the arbitrators, not the courts, to resolve.⁸¹ The *Hall* court held that since the partnership issue was properly before the arbitrator, the only questions for the superior court to consider were whether there had been corruption or misconduct by the arbitrator and whether the arbitrator had improperly conducted the hearing or exceeded his powers in making the award.⁸²

The court found that there was no misconduct or corruption.⁸³ In addition, the court held that the arbitrator had rightfully concluded that the partnership issue was among the items to be submitted for arbitral resolution.⁸⁴ The court explained that the arbitrator could have reached that decision in one of two ways.⁸⁵ First, he could have reached that decision by reading the agency allegations in the complaint broadly to include partnership.⁸⁶ On the other hand, the arbitrator could have determined that by submitting all issues in the complaint, which incorporated the listing agreement, the parties had agreed to submit all issues, including partnership, between them.⁸⁷

Finally, the *Hall* court concluded that the superior court had usurped the arbitrator's primary role by interpreting the complaint.⁸⁸ Accordingly, the court held that the superior court had erred in deciding that the arbitrator exceeded his powers within the meaning of Section 1286.2(d) of the California Code of Civil Procedure.⁸⁹

V. COMMENT

A cursory reading of *Hall* would lead one to believe that the court was simply promoting the strong policy of upholding arbitration awards by limiting a reviewing court's authority to vacate awards to those grounds outlined by statute. While the *Hall* court should be commended for its commitment to upholding arbitration awards and restricting review of arbitration proceedings, the court did so on questionable grounds.

79. 86 Cal. Rptr. 178 (Cal. Ct. App. 1970).

80. *Hall*, 22 Cal. Rptr. 2d at 381.

81. *Id.*

82. *Id.* at 381-82.

83. *Id.* at 382.

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.* at 381.

89. *Id.* at 382.

A major part of the *Hall* court's holding was based on its determination that the superior court had erroneously relied on the holding in *Cobler*.⁹⁰ However, the superior court's reliance on a proposition espoused by the *Cobler* court was appropriate in this case. In its decision to vacate the arbitrator's award, the superior court relied on the holding in *Cobler* that arbitrators must restrict themselves to the issues raised by the pleadings in making awards.⁹¹ That part of the *Cobler* holding is still valid law after *Moncharsh*.

In *Cobler*, the reviewing court had overturned an arbitrator's award of emotional distress damages, stating that the arbitrator lacked jurisdiction to award them.⁹² In determining that the arbitrator had lacked jurisdiction to award emotional distress damages, the reviewing court noted that the only issues decided by the arbitrator were contract claims, and that emotional distress damages are generally not available on contract claims.⁹³ The reviewing court in *Cobler* could only make this determination by finding that the arbitrator had made an error of law. The Supreme Court of California in *Moncharsh* criticized holdings like *Cobler* for creating another ground in which to vacate arbitration awards: when an error of law appears on the face of the award and causes substantial injustice.⁹⁴ The *Moncharsh* court held that California courts would no longer vacate an arbitration award on that ground.⁹⁵

In *Hall*, the superior court did not vacate the arbitrator's award because of an error of substantive law; the court vacated the arbitral award because the arbitrator did not have jurisdiction to decide the issue.⁹⁶ The analogy between the actions of the *Cobler* court and the *Hall* court is misplaced. The *Cobler* court found that the arbitrator had made an error of law by awarding emotional distress damages in a contract dispute; since emotional distress damages are not available in a contract dispute, the *Cobler* court found that the arbitrator had exceeded his jurisdiction by awarding them. In the present case, the superior court did not determine that the arbitrator had made an error of law in deciding that Trompas and Proell were partners where no partnership actually existed. Instead, the superior court ruled that the arbitrator should never have decided the partnership issue because the partnership issue was never submitted for his determination. These are clearly two different issues. The appellate court is correct in this sense: if the superior court had determined that the arbitrator made an error of law in

90. *Id.* at 380.

91. *Id.* at 379.

92. *Cobler*, 265 Cal. Rptr. at 876.

93. *Id.* at 875. In *Cobler*, the demand and cross-demand for arbitration originally raised only contract issues, and a later demand for punitive damages did not identify an alleged tort. The briefs had raised a theory of fraud, but the arbitrator had made no findings on the fraud issue. Because emotional distress damages generally do not arise from breach of contract, and the arbitrator did not decide the only tort issue submitted, the *Cobler* court found that the arbitrator had no jurisdiction to award emotional distress damages and vacated the award. *Id.*

94. *Moncharsh*, 832 P.2d at 916.

95. *Id.*

96. *Hall*, 22 Cal. Rptr. 2d at 379-80.

finding that Trompas and Proell were partners, and vacated the award on that ground, the court would have been treading in an area that *Moncharsh* had foreclosed. However, the superior court made no such determination. The superior court did not determine that the arbitrator erred in finding that a partnership existed. Rather, it said only that the arbitrator erred in determining the partnership issue at all.

In its second point, the *Hall* court stated that even if *Cobler* is not inconsistent with *Moncharsh*, the two cases are distinguishable because the arbitration clauses differ. However, the *Hall* court later determined that the civil complaint, not the arbitration clause, controlled.⁹⁷ In addition, while the *Hall* court cited the difference between the arbitration clauses, the court never said why the difference was significant.⁹⁸

After accepting, *arguendo*, that the civil complaint, and not the arbitration clause, governed the arbitration, the *Hall* court nevertheless concluded that the superior court erred in determining that the arbitrator exceeded his jurisdiction.⁹⁹ The court held that the arbitrator had properly concluded that partnership was among the issues raised in the complaint.¹⁰⁰ However, the court had earlier acknowledged that the complaint did not state a cause of action based on partnership.¹⁰¹ Nonetheless, the *Hall* court concluded that the arbitrator could have reached that determination by: 1) reading the agency allegations in the complaint broadly to include partnership; or 2) finding that in agreeing to submit all of the disputed issues in the complaint, which incorporated the listing agreement, the parties impliedly agreed to submit all issues between them.¹⁰²

Regardless of the court's justification, there are several problems with this analysis. First, in concluding that the arbitrator could have read the agency allegation broadly to include partnership, the court ignored the fact that agency and partnership impose different liabilities upon Trompas.¹⁰³ Second, even if the arbitrator could have determined that the parties agreed to submit all issues between them, Trompas received no notice in the complaint, the arbitration agreement, or the agreement of submission that he might have been liable on a partnership theory.¹⁰⁴

Citing *Felner*, the *Hall* court held that it is the arbitrator's role to determine which issues are actually "necessary" to the ultimate decision.¹⁰⁵ This argument would be of merit if it had, in fact, been necessary for the arbitrator in this case

97. *Id.* at 381.

98. *Id.*

99. *Id.*

100. *Id.* at 382.

101. *Id.* at 377.

102. *Id.* at 382.

103. See CAL. PARTNERSHIP ACT, §§ 15006-15008 (West 1982).

104. While the arbitrator informed Trompas that he might be liable on a partnership theory, partnership was not put forth in the complaint, the arbitration agreement, or the stipulation of submission by the parties.

105. *Hall*, 22 Cal. Rptr. 2d at 381.

to determine the partnership issue in order to dispose of the controversy. However, the partnership issue was not necessary to the ultimate decision. The arbitrator could have disposed of the controversy by finding Proell liable for his misconduct without attaching liability to Trompas. Instead, the arbitrator determined as a matter of law that Trompas and Proell were partners, thus making Trompas liable for the actions of Proell.

It is clear that California courts are committed to upholding arbitration awards and limiting review of these awards to those grounds specified by statute. *Hall* is a case in which the court could have, and arguably should have, vacated the arbitrator's award as being in excess of his jurisdiction. In their eagerness to give effect to and uphold arbitration awards, the *Hall* court reinstated an arbitral award which should have been vacated. In doing so, the court undermined its ultimate goal of encouraging individuals to avoid the traditional judicial system in settling their disputes.

VI. CONCLUSION

Decisions like *Hall* may serve to dissuade individuals from entering into arbitration agreements. While individuals evince their intent to bypass the judicial system by agreeing to arbitrate disputes, they also expect that the arbitrators will decide only those issues submitted for resolution. When arbitrators exceed their jurisdiction by determining issues not submitted by the parties, the parties should feel confident that the courts will intervene on their behalf. The decision reached by the appellate court in *Hall v. Superior Court* not only serves to dissuade individuals from entering into arbitration agreements out of fear that the court will not intervene, but also forces them to accept an arbitral decision which purports to decide issues that were never within the mutually bargained-for contract to arbitrate.

SHARON E. SCHULTE

