

'Evident Partiality' Will Lead to Vacating the Arbitration Award



Increasingly, attention has been directed at the issue of arbitrator impartiality and the duties of participants in the process. A recent federal case from California involved the failure of both an arbitrator and the American Arbitration Association (AAA) to comply with their respective obligations in this regard. See *Equicare Health v. Varian Medical Systems*, (USDC, N.D. CA, 2023).

Equicare had entered into an agreement with Varian under which Varian had agreed to make a “reasonable commercial effort” to promote and sell Equicare products while Varian was developing a competitive product. Thereafter, Varian’s sales of Equicare products dropped until there were virtually none. Equicare claimed that Varian had breached the agreement by failing to use reasonable commercial efforts to sell Equicare products while promoting its own.

Eventually, Equicare submitted the dispute to the AAA.

The AAA provided the parties with a list of potential arbitrators and requested that the parties strike and rank their preferred arbitrators until three arbitrators were selected. Each was required to complete the arbitrator oath form, which included 31 conflicts questions including “Do you have or have you had any attorney-client relationship with a party or lawyer for a party.” Harry Dosker, one of the arbitrators, responded “no” to all conflicts questions.

Actually, the negative response was untrue. In fact, Varian’s counsel, Quyen Ta, had submitted a conflicts disclosure response disclosing her prior representation of Dosker and his law firm in a legal malpractice claim. The AAA, however, failed to share this information with Equicare or its counsel. [READ MORE..](#)

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