Filed 1/7/13 Zhao v. Ming Du International Trade CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

JIN GENG ZHAO, Plaintiff and Appellant, v. MING DU INTERNATIONAL TRADE, INC., Defendant and Respondent.	B236813 (Los Angeles County Super. Ct. No. GC038848)

APPEAL from an order of the Superior Court of Los Angeles County, Jan A. Pluim, Judge. Affirmed.

Law Offices of Shin P. Yang, Shin P. Yang and Frank Carleo, for Plaintiff and Appellant.

Cahill & Associates, Sean T. Cahill, Todd C. Samuels; and Lewis Brisbois Bisgaard & Smith LLP and Jeffrey A. Miller for Defendant and Respondent.

I. INTRODUCTION

Plaintiff, Jin Gang Zhao, appeals from the July 15, 2011 judgment confirming an arbitration award. The arbitrator awarded plaintiff $15,000 in damages against defendant, Ming Du International Trade, Inc. doing business as Champ America Travel and Tour. Dissatisfied with the arbitration award, plaintiff argues: it was error to confirm the arbitration award because the stipulation for binding arbitration was void; the stipulation is invalid because defendant never signed the stipulation document; and defendant's insurer never gave him any consideration when he signed the stipulation. In addition, plaintiff contends the arbitration award must be vacated. The basis of the argument for vacating the award is the arbitrator exceeded the scope of his power when he denied a motion for an uncontested arbitration. We disagree and affirm the judgment confirming the arbitration award.

II. BACKGROUND

A. Bus Accident

According to the award, on January 27, 2006, plaintiff boarded a bus owned and operated by defendant for a scheduled trip to a casino. Plaintiff and other passengers had taken the bus to the casino on previous occasions. The bus made a right turn onto Valley Boulevard from the parking lot. The left rear of the bus collided with the left side of a vehicle entering the parking lot. The bus driver was unaware of the collision until the other driver, Heping Meng, came running up to the side of the bus. This occurred as the bus driver was driving on Valley Boulevard. Plaintiff was in the last row of the bus next to the restroom, either lying down or partially sitting up. Plaintiff was leaning against the restroom wall when the incident occurred.

Another passenger, Laishun Li, who sat several rows in front of plaintiff, stated the bus stopped abruptly while exiting the parking lot. This caused Mr. Li and many

passengers to fall out of their seats and onto the floor. Mr. Li and another passenger helped pick up plaintiff from the bus floor. They placed plaintiff back into his seat. Plaintiff said his lower back and neck hurt. The award states neither Mr. Li nor plaintiff saw or heard anything concerning the bus collision.

Subsequently, the passengers were instructed to get off the bus. The passengers got off the bus. A new bus driver arrived. The passengers were instructed to get back on the bus. The passengers including plaintiff got back on the bus and the new driver drove them to the casino. After the accident, plaintiff had constant lower back pain, especially at night resulting in difficulty sleeping. Plaintiff was advised to drink alcohol to stop the pain and to help him sleep. So plaintiff started drinking "Red Sorghum," a very strong Chinese liquor about a year after the accident.

B. Trial Court Proceedings Prior To Arbitration

On April 12, 2007, plaintiff and five other passengers sued defendant for negligence and breach of common carrier duties. Four passengers settled with defendant by January 1, 2010. Another passenger's case was dismissed in March 2010.

On October 18, 2010, defendant's counsel notified the trial court that the parties had agreed to binding arbitration. The trial court stated that the arbitration stipulation had to be signed by the parties and their lawyers. Defense counsel replied: defendant was located in China; defendant was a dissolved corporation; and defendant's insurance company was defending the matter. Given defendant's absence from the United States, the trial court allowed an agent for the insurer to sign the arbitration stipulation on defendant's behalf. Plaintiff did not object to the insurance company representative signing the arbitration stipulation on behalf of defendant.

On November 10, 2010, the trial court denied plaintiff's ex-parte application for two orders. Plaintiff has failed to provide either motion as part of the record on appeal. First, defendant sought to notice the appearance of an unidentified person at the arbitration pursuant to subpoena. Second, plaintiff sought to compel defendant to comply

with the stipulation for binding arbitration or reset the case for jury trial. The trial court ruled, "The terms and conduct of the arbitration are to be determined by the arbitrator."

C. Stipulation For Binding Arbitration

On January 5, 2011, the parties entered into a stipulation for binding arbitration. The parties agreed to binding arbitration before Retired Judge Chris R. Conway. The stipulation was signed by plaintiff, all counsel, and a representative of defendant's insurance carrier.

The stipulation provides: "Except as may be agreed between the parties, or their attorneys, or as otherwise provided by law, the Arbitrator, in his sole discretion, shall control the proceedings and regulate the order of proof. Following submission of this matter to binding arbitration, there shall be a Case Management Conference currently scheduled for November 9, 2010 at 8:30 a.m. at which time the Arbitrator shall establish time, evidentiary and any other parameters for the Arbitration. [¶] . . . Further, the parties agree that PLAINTIFF may present incurred damages subject to evidence code objections, occurring up and including November 9, 2010. Plaintiff agrees that he will not incur any additional surgical expenses after November 5, 2010. The Parties further stipulate and agree that due to necessity DEFENDANT shall be allowed to introduce into evidence the testimony of investigators Bruce Hanley and Edward Saucerman without hearsay objection; however, subject to standard evidence code objections including personal knowledge and foundation."

The stipulation also states: "The award shall be in writing and signed by the Arbitrator. It shall include a determination of all questions submitted to the Arbitrator the decision of which is necessary in order to determine the controversy. Nothing in this agreement is to be construed as a waiver of any reservation of rights to coverage that Lancer Insurance Company has or may acquire in this matter. Any party to the arbitration shall be entitled to have the award of the Arbitrator entered as a judgment in any court of competent jurisdiction in accordance with California Code of Civil

Procedure §1285 et seq. [¶] The decision of the arbitrator shall be final and binding. Each party hereto, and the attorney of record for each respective party, hereby waives any right which each may have to trial by judge, trial by jury, trial *de novo*, new trial, or appeal."

D. Arbitrator's Ruling On Plaintiff's Motions

Prior to the arbitration, plaintiff served notice on defendant to attend the arbitration on January 21, 2011. In addition, plaintiff filed two motions which were denied by the arbitrator on March 1, 2011. The arbitrator denied plaintiff's motion to have the arbitration hearing proceed as an uncontested matter under Code of Civil Procedure[1] section 594. The arbitrator ruled: "The Arbitrator notes that Plaintiff made an ex parte request back in November 2010, before Judge Jan A. Pluim, when the matter was still before him, to Notice the Appearance at trial or arbitration of a principal or driver of the Defendant, Champ America, and that said request was denied by Judge Pluim. In light of Judge Pluim's order, the Arbitrator believes it would be improper to now let the Plaintiff make a second attempt to accomplish what Judge Pluim would not let him do previously."

The arbitrator also denied plaintiff's motion to prevent two defense witnesses, Bruce Hanley and Edward D. Saticerman, from testifying at the arbitration or in the alternative, to take their depositions. The arbitrator explained: "Plaintiff contends that the testimony of these two witnesses lacks foundation and that they have no personal knowledge of any relevant facts in this matter. Defendant, Champ America, objects to Plaintiff's request and points out that the stipulation executed by the parties to submit this matter to binding arbitration specifically indicated that these two witnesses could testify at the arbitration hearing. The Arbitrator notes that the stipulation in question did specifically provide that these two investigators could testify at the arbitration hearing

[1] Future statutory references are to the Code of Civil Procedure.

'without hearsay objection, however, subject to standard evidence code objections including personal knowledge and foundation.' The Arbitrator further notes that as early as October, 2010, Plaintiff knew Defendant, Champ America, intended to call the two investigators as witnesses but still went ahead and stipulated that they could testify. While the Arbitrator believes that the language in the stipulation is somewhat ambiguous as to exactly what was intended by the parties concerning the testimony of the two witnesses in question, it is very clear that Plaintiff agreed the investigators could testify 'without hearsay objection.' The Arbitrator believes that to now try and prevent their testimony on what is really a 'hearsay' objection (i.e. not based on their own personal knowledge but based upon what others told them) is contrary to the parties['] stipulation."

E. Arbitration And Award

The arbitrator heard testimony from: plaintiff; Mr. Li; Dr. Chadwick F. Smith, an orthopedic surgeon who examined plaintiff; Mr. Hanley; a private investigator hired by defendant to investigate the bus incident; Dr. Anthony H. Alter, an orthopedic surgeon; John G. Perry, Ph.D.; and Dr. Stephen L. G. Rothman, a neuroradiologist. According to the award, plaintiff and Mr. Li testified they were on the bus when it stopped abruptly causing them to fall on the floor. Mr. Li and plaintiff believed the bus was not equipped with seat belts. Dr. Perry believed the bus had seat belts. The arbitrator found the bus sustained relatively minor damage in the collision after reviewing the exhibits. Defendant's investigator, Mr. Hanley, testified the bus driver said no one was hurt in the accident. Further, the bus driver said he had slowed the bus gradually when he pulled the bus over to the curb.

Plaintiff, according to the award, testified his lower back constantly hurt, causing him great difficulty when he slept. Someone told him to drink alcohol to stop the pain and he started drinking about a year after the bus accident. Plaintiff stated before the bus incident, he did not drink except occasionally at "festival" time. Plaintiff no longer

drinks alcohol because of his liver disease. He admitted he had an industrial accident in Ohio in 1999 that resulted in a head injury and had not worked since that incident.

The award states that plaintiff first sought medical treatment for his back pain by seeing Grace Chen, a licensed acupuncturist. Ms. Chen diagnosed plaintiff as having "'[t]ension [c]ephalgia and [l]umbar sprain and strain'" and treated him from January 28, 2006, to July 19, 2009. Plaintiff was discharged with the following notation: "'[Plaintiff] showed improvement while obtaining progressive relief from symptoms: headache and low back pain. The range of motion of the low back was complete and painless, while no trigger points were found in the muscles involved.'" Dr. Smith was plaintiff's orthopedic surgeon. Dr. Smith examined plaintiff twice—once on January 7, 2008, and again on September 16, 2010. Based on the January 7, 2008 examination, Dr. Smith concluded: the bus accident caused plaintiff's lower back pain; the January 7, 2008 magnetic resonance imaging examinations showed plaintiff had a 5 millimeter disc protrusion at L5-S1; the disc protrusion was caused by the bus accident; and plaintiff need a partial discectomy and stabilization of L5-S1 and C5-C6 with exploration of L4-L5 and C4-C5. As of September 16, 2010, plaintiff had not undergone the surgery recommended by Dr. Smith. In response to an in limine motion, Dr. Smith was not permitted to offer any other opinions arising out of the September 16, 2010 medical examination. The arbitrator ruled, "[H]e had his deposition taken . . . on September 4, 2008, and offered . . . all the opinions he had concerning [p]laintiff's condition as of that date."

Dr. Alter, an orthopedic surgeon who testified on behalf of defendant, examined plaintiff on March 4, 2008. Dr. Alter testified: plaintiff suffered relatively minor back and neck strain and headaches as a result of the January 27, 2006 bus accident; none of plaintiff's present medical problems were the result of the accident; contrary to Dr. Smith's opinion, plaintiff was not a surgical candidate; and some of the acupuncture treatments plaintiff received were reasonable. Dr. Rothman, a neuroradiologist who testified on behalf of defendant, reviewed the magnetic resonance imaging films of plaintiff's neck, shoulder and back taken at Dr. Smith's request. Dr. Rothman testified

the neck and shoulder films were "normal," especially for a 50-year-old man. Dr. Rothman further testified the lumbar films showed some slightly bulging discs that were of a degenerative nature and not caused by any trauma. Dr. Perry testified the dynamics of the bus accident were such that plaintiff could not have been injured during the incident.

The arbitrator ruled plaintiff's alcohol use and subsequent liver disease were not caused by the 2006 bus accident. The arbitrator found: "One of the more interesting issues in this case is Plaintiff's apparent contention that his alcohol problems and subsequent liver disease are related to and caused by the accident in question. Unfortunately, the Arbitrator believes that Plaintiff suffers from some serious credibility issues as to this claim. [Plaintiff] testified, as stated above, that he did not drink prior to this accident but only started drinking approximately one year thereafter. Dr. Smith testified that when he examined the Plaintiff on January 7, 2008, (approximately two years post accident) the Plaintiff denied alcohol use when in fact it appears he had been drinking heavily for at least a year at that time. Further, Anthony Alter, M.D., who testified on behalf of the defense, stated that his examination of Plaintiff's medical records from Los Angeles County/USC Medical Center revealed a notation back on March 10, 2005, that [plaintiff] was a heavy alcohol user and was 'jaundice[d]' from the alcohol use. In light of the foregoing, the Arbitrator believes and finds that Plaintiff's alcohol use predated the accident in question and that the accident did not cause [plaintiff's] alcohol issues or his liver disease."

The March 28, 2011 arbitration award states: "The Arbitrator finds: that the Plaintiff, Jingang Zhao, was involved in an accident on January 27, 2006, when he fell out of his seat on a bus owned and operated by the Defendant, Ming Du International Trade, Inc., doing business as Champ America Travel & Tour; that by a slight tipping of the scales, Plaintiff has met his burden to show that the Defendant was negligent and that such negligence caused the accident; and that as a result of the accident, Plaintiff suffered relatively minor 'soft tissue' injuries to his neck and lower back. The Arbitrator further finds that Plaintiff has not met his burden of proof relative to his claim of a need for

surgery to his back as a result of the accident, or as to any claims that his alcohol problems, subsequent liver disease and heart problems were caused by the accident in question. [¶] The Arbitrator finds that the Plaintiff, Jingang Zhao, is entitled to an award against the Defendant, Ming Du International Trade, Inc., doing business as Champ America Travel & Tour, as follows: for Special Damages in the sum of $5,000.00 (for the acupuncture and physical therapy treatments as testified by Dr. Alter) and General Damages in the sum of $10,000.00 for a total award of $15,000.00. The Arbitrator notes that Plaintiff did not make any claim for loss of earnings."

On May 3, 2011, the arbitrator denied plaintiff's application to correct the arbitration award. The arbitrator ruled: "The Application is DENIED. The Plaintiff in his Application makes a number of incorrect statements concerning the Arbitrator's actions in this matter. First, the Plaintiff contends . . . the Arbitrator excluded Plaintiff's medical records from Los Angeles County/USC Medical Center. This is incorrect; the record was received into evidence as Exhibit 4. Secondly, the Plaintiff contends the Arbitrator precluded the Plaintiff from claiming damages up to November 10, 2011, when he precluded Dr. Chadwick Smith from testifying about the Los Angeles County/USC Medical Center records. While this statement is true, the reason for the preclusion was because Dr. Smith testified during the arbitration hearing that he had never reviewed those records. The Arbitrator does not understand how Dr. Smith could have testified about something he never read, i.e., the Los Angeles County/USC Medical Center records. There was never any other evidence offered to prove the additional damages claimed by the Plaintiff up to November 10, 2011."

The arbitrator further explained: "The underlying thrust of Plaintiff's Application appears to be that the Arbitrator should have awarded Plaintiff additional damages for his care and treatment at Los Angeles/USC Medical Center (amounting to $680,000) and for future back surgery (in the sum of $250,000). The Arbitration award is very clear that the Arbitrator found the Plaintiff had not met the burden of proof to show these damages were caused by the bus accident . . . . In fact the overwhelming weight of the evidence was to the contrary, that is these damages were not caused by the bus accident in

question. Plaintiff further contends that Dr. Anthony Alter testified falsely concerning Plaintiff's prior use of alcohol (referring to a March 10, 2005, entry in Exhibit 4) and therefore the additional damages (i.e. the care and treatment at Los Angeles County/USC Medical Center) should be awarded. Irrespective of this contention, the evidence was clear that the Plaintiff had not been truthful with Dr. Smith concerning his alcohol consumption when he denied in January, 2008, use of alcohol, yet testified at the arbitration hearing that in fact he began drinking alcohol approximately one year before seeing Dr. Smith."

As for plaintiff's challenge of Mr. Hanley's testimony, the arbitrator ruled: "Plaintiff once again raises the contentions that either the testimony of Bruce Hanley should not have been allowed or at a minimum, Plaintiff should have been allowed to depose Mr. Hanley before the arbitration hearing. The Arbitrator notes that back in early October, 2010, Plaintiff knew the Defendant intended to call Mr. Hanley as a witness at the hearing, and yet made no effort to take his deposition until February 2011, which the Arbitrator found to be untimely since the discovery cut off had long since expired. The Arbitrator reaffirms that ruling in this ruling."

Also, the arbitrator rejected plaintiff's argument that the arbitration should have proceeded as an uncontested matter: "Plaintiff also, again raises the issue that the arbitration should have proceeded as 'uncontested' when Defendant, Xiang Shi, failed to appear for the hearing after Defendant had been served with a Notice pursuant to California Code of Civil Procedure, section 1987. This request was previously denied by the Arbitrator. Such request was clearly contrary to the spirit and intention of the Stipulation For Binding Arbitration entered into between the parties in January, 2011. To have granted Plaintiff's request would have, in essence, voided the stipulation, since it is clear that the very intention of the stipulation was to have the matter proceed to a contested binding arbitration, otherwise the stipulation itself makes no sense. The stipulation was apparently the subject of much negotiation and as far as the Arbitrator is concerned is binding on all the parties. . . ."

F. Post-Arbitration Proceedings

On June 22, 2011, the trial court granted defendant's petition to confirm the arbitration award. Also, the trial court denied plaintiff's petition to vacate the award. On July 15, 2011, the trial court entered judgment awarding plaintiff $15,000.00 in damages against defendant. However, defendant was awarded $26,268.03 in costs. On October 14, 2011, plaintiff filed his notice of appeal.

III. DISCUSSION

A. Standards Of Review

An arbitration award may be vacated on the grounds specified in section 1286.2, subdivision (a). (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 33 ["[A]n award reached by an arbitrator pursuant to a contractual agreement to arbitrate is not subject to judicial review except on the grounds set forth in sections 1286.2 (to vacate) and 1286.6 (for correction)."]; *Oaktree Capital Management, L.P. v. Bernard* (2010) 182 Cal.App.4th 60, 68 ["[G]rounds for vacating an arbitrator's award are statutory and limited."].) In addition, an award may be vacated where an arbitrator commits clear legal error which denies a litigant a hearing on an unwaivable important statutory right. (*Pearson Dental Supplies, Inc. v. Superior Court* (2010) 48 Cal.4th 665, 669-670, 675-680; see *Comerica Bank v. Howsam* (2012) 208 Cal.App.4th 790, 817.)

In determining whether the arbitrator exceeded his powers, we engage in the following review: "Section 1286.2, subdivision (a)(4) permits a trial court to vacate an award where the arbitrator exceeds his or her powers: '[T]he court shall vacate the award if the court determines . . . : [¶] . . . [¶] (4) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.' Our Supreme Court has delineated the scope of the excess of powers justification for vacatur. (*Pearson Dental Supplies, Inc. v. Superior Court, supra,*

48 Cal.4th at p. 680 [‘an arbitrator whose legal error has barred an employee subject to a mandatory arbitration agreement from obtaining a hearing on the merits of a claim based on such right has exceeded his or her powers’]; *Cable Connection, Inc. v. DIRECTV, Inc.* (2008) 44 Cal.4th 1334, 1354-1364 [parties may restrict arbitrator’s powers by agreeing to expanded merit-based judicial review of an award]; *Gueyffier v. Ann Summers, Ltd.* (2008) 43 Cal.4th 1179, 1182 [‘Absent an express and unambiguous limitation in the contract or the submission to arbitration, an arbitrator has the authority to find the facts, interpret the contract, and award any relief rationally related to his or her factual findings and contractual interpretation.’]; *Morris v. Zuckerman* (1968) 69 Cal.2d 686, 691 [‘Although the court may vacate an award if it determines that “[the] arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted” . . . , it may not substitute its judgment for that of the arbitrators.’].)” (*Comerica Bank v. Howsam, supra*, 208 Cal.App.4th at pp. 830-831.) We independently review an order denying a petition to vacate an arbitration award. (*Haworth v. Superior Court* (2010) 50 Cal.4th 372, 385; *Nemecek & Cole v. Horn* (2012) 208 Cal.App.4th 641, 646.)

B. Arbitration Stipulation

Plaintiff argues the arbitration stipulation is void because defendant neither signed nor consented to the stipulation. Plaintiff also contends the stipulation is invalid because defendant never waived its right to a jury trial. In addition, plaintiff reasons the stipulation is void because defendant’s insurer signed the stipulation without any consideration given to plaintiff. Plaintiff’s arguments are without merit.

Plaintiff, who was represented by counsel, consented to binding arbitration and waived the right to a jury trial. Plaintiff signed the stipulation. Also, plaintiff’s counsel signed the stipulation. Plaintiff’s reliance on *Blanton v. Womancare, Inc.* (1985) 38 Cal.3d 396, 407, has no merit. There, the plaintiff never consented to the binding arbitration. Only her lawyer agreed to arbitrate. Here, there is no evidence the insurer

nor defense counsel was unauthorized to agree to arbitrate the dispute. Defendant could be bound by an arbitration agreement entered into by an agent. (*DMS Services, Inc. v. Superior Court* (2012) 205 Cal.App.4th 1346, 1353; *Tutti Mangia Italian Grill, Inc. v. American Textile Maintenance Co.* (2011) 197 Cal.App.4th 733, 743.) And defendant has made no effort to disaffirm its counsel's agreement to arbitrate. (*NORCAL Mutual Ins. Co. v. Newton* (2000) 84 Cal.App.4th 64, 78; *Gaine v. Austin* (1943) 58 Cal.App.2d 250, 259.) The present case is materially unlike *Blanton*. Moreover, plaintiff signed the arbitration stipulation fully aware defendant and its principal had relocated to China. Further, plaintiff knew defendant's insurance carrier would sign the stipulation. Although defendant never signed the arbitration, it is not seeking to repudiate the arbitration stipulation and award. In addition, defendant's insurance carrier agreed to arbitration after acknowledging its duty to defend defendant.

Also, plaintiff cites no authority for the proposition that an arbitration stipulation requires payment of consideration. In any event, the exchange of promises to arbitrate constitutes consideration to support the arbitration stipulation. (*Papdakos v. Soares* (1918) 177 Cal. 411, 412 [mutual promises are concurrent consideration which will support each other]; *United Farmers Assn. of Cal. v. Klein* (1940) 41 Cal.App.2d 766, 770 [agreement to arbitrate constitutes consideration].) Plaintiff's absence of consideration argument has no merit.

Plaintiff also asserts the carrier could employ its reservation of rights in the stipulation to avoid paying the arbitration award and judgment. Thus, plaintiff asserts the agreement to arbitrate was illusory. To begin with, plaintiff has forfeited this issue because he failed to raise it before participating in the arbitration hearing. (*Moncharsh v. Heily & Blase, supra,* 3 Cal.4th at pp. 30-31; *Caro v. Smith* (1997) 59 Cal.App.4th 725, 731-732.) In any event, no evidence in the record supports this contention.

C. Arbitration Award

Prior to the arbitration hearing, plaintiff served defendant with a notice to attend under section 1987, subdivision (b). Plaintiff then moved to have the matter proceed as uncontested under section 594. Plaintiff's motion was denied by the arbitrator. The arbitrator did not exceed his powers in this regard by allowing the arbitration to proceed as a contested matter as required by sections 594 and 1987. As noted, the arbitrator first denied plaintiff's motion on March 1, 2011, ruling: "The Arbitrator notes that Plaintiff made an ex parte request back in November 2010, before Judge Jan A. Pluim, when the matter was still before him, to Notice the Appearance at trial or arbitration of a principal or driver of the Defendant, Champ America, and that said request was denied by Judge Pluim. In light of Judge Pluim's order, the Arbitrator believes it would be improper to now let the Plaintiff make a second attempt to accomplish what Judge Pluim would not let him do previously." Later, in ruling on plaintiff's motion to correct the award, the arbitrator ruled: "Plaintiff also, again raises the issue that the arbitration should have proceeded as 'uncontested' when Defendant, Xiang Shi, failed to appear for the hearing after Defendant had been served with a Notice pursuant to California Code of Civil Procedure, section 1987. This request was previously denied by the Arbitrator. Such request was clearly contrary to the spirit and intention of the Stipulation For Binding Arbitration entered into between the parties in January, 2011. To have granted Plaintiff's request would have, in essence, voided the stipulation, since it is clear that the very intention of the stipulation was to have the matter proceed to a contested binding arbitration, otherwise the stipulation itself makes no sense. The stipulation was apparently the subject of much negotiation and as far as the Arbitrator is concerned is binding on all the parties. . . ."

Pursuant to the stipulation for binding arbitration, the parties agreed the arbitrator, "[i]n his sole discretion" would control the proceedings and regulate the order of proof. In addition, the stipulation provides: "The award shall be in writing and signed by the Arbitrator. It shall include a determination of all questions submitted to the Arbitrator the

decision of which is necessary in order to determine the controversy. . . . [¶] The decision of the arbitrator shall be final and binding. Each party hereto, and the attorney of record for each respective party, hereby waives any right which each may have to trial by judge, trial by jury, trial *de novo*, new trial, or appeal." The arbitrator acted well within the scope of his powers. (*Moshonov v. Walsh* (2000) 22 Cal.4th 771, 775 ["arbitrators do not 'exceed[] their powers' within the meaning of section 1286.2, subdivision (d) and section 1286.6, subdivision (b) merely by rendering an erroneous decision on a legal or factual issue, so long as the issue was within the scope of the controversy submitted to the arbitrators"]; *Moncharsh v. Heily & Blase, supra,* 3 Cal.4th at p. 28.) The trial court did not err in denying plaintiff's motion to vacate the arbitration award.

IV. DISPOSTION

The July 15, 2011 judgment confirming the arbitration award is affirmed. Defendant, Ming Du International Trade, Inc., shall recover its appeal costs from plaintiff, Jin Gang Zhao.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

We concur:

KRIEGLER, J. FERNS, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.