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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

KAREN MEYER,

Plaintiffs and Respondents,

v.

DENNIS STOSCHER,

Defendant and Appellant.

H040510

(Santa Clara County

Super. Ct. No. 113CV246703)

I. INTRODUCTION

Defendant Dennis Stoscher appeals from a judgment entered after the trial court confirmed an arbitration award in favor of his siblings, plaintiffs Karen Meyer and John Stoscher. The three siblings are beneficiaries of a trust established by their parents, who are now deceased. Defendant is the successor trustee. After a dispute arose concerning trustee and caregiver fees, the parties signed an arbitration agreement and participated in arbitration. The arbitrator, Susan Howie Burriss, had been the trust and estate attorney for the parties' parents. The arbitrator concluded that defendant owed plaintiffs more than \$130,000. Plaintiffs petitioned the trial court to confirm the arbitration award and the court granted the petition.

On appeal, defendant contends that (1) there is no basis for an arbitration award against him individually, (2) the arbitration award must be vacated because the arbitrator

failed to disclose certain information, and (3) the arbitrator had no authority to arbitrate the dispute and the matter should be heard by the probate court in the county where defendant administers the trust.

For reasons that we will explain, we will affirm the judgment.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Trust

Carl and Corinne Stoscher, the parents of plaintiffs and defendant, executed a revocable trust in 1986, naming their three children as equal beneficiaries after they both had died.¹ Carl and Corinne were cotrustees of the trust.

In 2008, after Carl had died, Corinne resigned as trustee and, pursuant to a trust amendment, defendant became the successor trustee. Both the trust amendment and Corinne's written resignation were on paper that referred in the margin to the "Burriss Law Firm," the firm's location, and the firm's telephone number. Corinne died a few years later.

B. The Arbitration Agreement and Conflict Waiver

In November 2012, after a dispute arose between plaintiffs and defendant, they executed an "Arbitration Agreement, Waiver of Conflict and Fee Agreement," which had been provided to them by the prospective arbitrator, Susan Howie Burriss. The agreement, which is on letterhead of Burriss's law firm, states in part: "In keeping with the requirements of the California State Bar, I am writing this letter to document our role in the resolution of your dispute as well as our billing policy and fee arrangement for legal services: [¶] (a) Nature of Legal Services: Arbitration of disputes among beneficiaries of the Estate of Corinne Stoscher and/or Stoscher Family Trust." Each of the parties initialed a provision indicating that the arbitration would be binding.

¹ We will sometimes refer to Carl and Corinne Stoscher and their three children – plaintiff Karen Meyer, plaintiff John Stoscher, and defendant Dennis Stoscher – by their first names for clarity and convenience.

The agreement also states: “You have elected to proceed with arbitration in the above matter. Because of my prior role as attorney for Carl and Corinne Stoscher, I will not represent any one of you in resolving this matter. Each of you has an interest that may be in conflict with or adverse to the interest(s) of the others in the matter. Further, your interests may be in conflict with the goals and intents expressed by Carl and Corinne when establishing and administering the estate plan which is now the subject of the dispute. I will take those goals and intents into consideration as much as necessary in resolving the dispute. By choosing me as your arbitrator, you acknowledge the existence of actual or potential conflict and you affirmatively waive that conflict and agree to proceed with arbitration notwithstanding the actual or potential conflict.” Immediately following this paragraph, each of the parties initialed a provision indicating that they “understand and waive any actual or potential conflict.”

The agreement also provides that, “[i]n the event of any dispute or should enforcement of this agreement become necessary, you and our firm agree that California law will apply, California courts have exclusive jurisdiction, and Santa Clara County is the appropriate venue for any legal action.”

The agreement concludes with the sentence, “I have read the above letter and agree to its terms.” (Capitalization omitted.) Each party signed a separate copy of the agreement.

C. The Arbitration and the Amended Award

The arbitration was conducted at the Mountain View office of Burriss’s law firm in December 2012. The participants in the arbitration were plaintiffs, defendant, defendant’s wife, a bookkeeper employed by defendant and his wife, and the arbitrator Burriss.

The arbitrator issued a written decision and award in January 2013. According to the decision and award, “[d]uring the course of the arbitration, all parties stipulated that the sole issues to be resolved by the arbitrator were (1) the amount of Trustee fees

payable to [defendant] for services rendered to the Trust and (2) . . . the extent, if any, to which caretaker fees paid by the Trust to [defendant] and [his wife] for services rendered to or on behalf of Corinne Stoscher were excessive.” The arbitrator determined that (1) defendant should receive a certain amount of fees as trustee, and (2) he should receive a certain amount of fees for providing care to his mother. The arbitrator observed, however, that defendant had already been paid a sum for his mother’s care. Further, most of the trust’s assets had already been distributed, and the parties stipulated at the arbitration that defendant had to pay plaintiffs certain amounts to “equalize the disbursements previously made from” the trust. After taking into account these various amounts, the arbitrator concluded that defendant owed Karen more than \$53,000, and that he owed John more than \$46,000. The arbitration award also provided for interest if the amounts were not paid in full by a certain date.

Subsequently, in an email to all parties in February 2013, the arbitrator stated that it had been called to her attention that defendant had already been “credited” for the full amount of trustee fees that he had claimed. After taking this credit into account, the arbitrator determined that the “amended amounts” payable by defendant to Karen was more than \$70,000, and by defendant to John was more than \$63,000. The arbitrator concluded her email by stating that she had been away from the office for several weeks, that she would not return until late March, and that she would provide a “formal document with the amended totals” upon her return unless a party needed it sooner.

The arbitrator thereafter issued an amended arbitration decision and award in May 2013. The amended decision and award is verbatim to the original January 2013 decision and award, except that the amended version refers to defendant having been credited for claimed trustee fees and it accordingly recalculates the amounts payable by defendant to Karen and John. Specifically, the amended award provides that defendant must pay \$70,206.97 to Karen, and that he must pay \$63,477 to John.

D. The Petition to Confirm the Amended Arbitration Award

In May 2013, plaintiffs filed a petition to confirm the amended arbitration award. They contended that the parties had an agreement to arbitrate based on the “Arbitration Agreement, Waiver of Conflict and Fee Agreement.” They also contended that the arbitration agreement covered the parties’ dispute, which involved a “determination of the propriety of the amount of trustee fees and caregiver fees . . . payable/reimbursable to [defendant] and/or his wife.”

In June 2013, defendant filed written opposition to the petition. First, defendant contended that the arbitration award reflected an adjudication in his capacity as trustee of the trust, but that he had executed the arbitration agreement in his individual capacity. He argued that the award should therefore be vacated because the trustee was not a party to the contract to arbitrate. Second, defendant contended that the proper venue for the underlying dispute between the parties was the probate court in Stanislaus County, rather than Santa Clara County Superior Court or an arbitral forum, because among other reasons defendant lived in and performed all trust functions in Stanislaus County. Third, defendant contended that the award should be vacated under Code of Civil Procedure sections 1281.9, 1281.91, and 1286.2² because the arbitrator failed to make the requisite disclosure concerning the grounds for disqualification and she was subject to disqualification but failed to disqualify herself. Defendant also contended that plaintiffs engaged in improper ex parte communications with the arbitrator which resulted in an amended arbitration award requiring defendant to pay over \$33,000 more to plaintiffs.

In reply, plaintiffs contended that a trustee may be personally liable under certain circumstances pursuant to Probate Code section 18001, and that the arbitration properly proceeded against defendant in his individual capacity. Plaintiffs also argued that trust

² All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

matters are arbitrable, and that the petition to confirm the arbitration award was properly filed in Santa Clara County Superior Court because the arbitration took place in Santa Clara County. Plaintiffs further contended that the arbitrator made the requisite disclosures in the “Arbitration Agreement, Waiver of Conflict and Fee Agreement,” and that defendant waived the right to object to Burriss as the arbitrator. Lastly, plaintiffs acknowledged that Karen emailed the arbitrator after the original arbitration award was issued. Plaintiffs provided copies of Karen’s two emails with their reply brief. In the emails, which Karen sent to the arbitrator and to John but not to defendant, Karen raised a calculation error based on defendant having already been paid nearly \$50,000 for his claimed trustee fees. Plaintiffs in their reply brief contended that the amended arbitration award was proper because the arbitrator corrected the miscalculation.

E. The Order Granting the Petition

The trial court held a hearing on the petition to confirm the arbitration award. By written order filed in August 2013, the court granted the petition. The court observed that the arbitrator’s decision “appears to be limited in scope to a determination of whether [defendant’s] trustee and/or caregiver fees for services rendered in connection with administration of the Trust were excessive, and making a monetary award and establishing a payment schedule on that basis.”

Regarding defendant’s contention that he was not a party to the arbitration in the appropriate capacity, the court determined that defendant “agreed to arbitrate the parties’ fee dispute concerning trustee and caregiver fees,” and that it was “disingenuous for him to now claim that he is not bound by those proceedings.” The court further observed that defendant did not cite any “controlling authority” on the issue. The court also determined that Santa Clara County was the proper venue for the petition to confirm the arbitration award because the arbitration had been held in that county. (§ 1292.2.)

Regarding the conflict of interest issue, the court found that defendant already knew about the arbitrator’s relationship with his parents “well in advance” of signing the

arbitration agreement, in view of the trust document pertaining to Corinne’s resignation and defendant’s appointment as successor trustee, which contained the name of and contact information for the arbitrator’s law firm. (Italics omitted.) The court also found that the arbitrator “clearly and conspicuously” disclosed in the “Arbitration Agreement, Waiver of Conflict and Fee Agreement” her potential or actual conflict based on her prior representation of the parents, and that defendant waived the conflict by initialing the conflict waiver provision and executing the document as a whole. The court stated that “it strains credibility to believe that [defendant] lacked advance notice of the Arbitrator’s circumstances relative to conflict of interest.” The court further determined that the arbitration did not involve any controversies concerning the drafting or interpretation of disputed trust provisions, and the arbitrator was not required to and did not act as a percipient witness for purposes of resolving the limited issues presented in the arbitration. Moreover, defendant never raised an issue about the arbitrator until after plaintiffs’ petition was filed.

Lastly, the court determined that, although defendant’s objection to Karen’s post-arbitration ex-parte communications was “well-founded,” it was not a basis for changing the outcome in the case. The court explained that the arbitrator responded by email to all parties and disclosed her adjusted award calculations, which were later incorporated into the amended arbitration award. The court further observed that defendant did not make any argument or showing that the adjustment in the amended award was erroneously calculated.

F. Defendant’s Motion for Reconsideration

Defendant filed a motion for reconsideration pursuant to section 1008, on the grounds that new facts and law existed and that the arbitration award should be vacated. Among other arguments, defendant contended that the arbitrator had not disclosed potential or actual conflicts between her and the parties, and that the arbitrator had failed to disclose matters pursuant to standard 7 of the California Rules of Court, Ethics

Standards for Neutral Arbitrators in Contractual Arbitration. Defendant also cited various provisions of the Probate Code in support of his argument that the proper venue for matters involving the trust was the superior court in Stanislaus County.

Plaintiffs opposed defendant's motion on the grounds that it failed to meet the requirements for reconsideration under section 1008. To the extent the court considered the substance of defendant's motion, plaintiffs argued that it should be denied for the same reasons that they had articulated in their reply brief in support of the motion to confirm the arbitration award.

In reply, defendant contended, among other arguments, that the trial court's order contained new facts which warranted his motion for reconsideration.

By written order after a hearing, the trial court denied defendant's motion for reconsideration. The court determined that defendant had failed to establish a basis for relief under section 1008, and that there otherwise were not grounds for modification of the order confirming the arbitration award.

G. The Judgment

On October 25, 2013, a judgment was filed in favor of plaintiffs. Defendant was ordered to pay Karen \$70,206.97 plus interest and to pay John \$63,477 plus interest.

III. DISCUSSION

We first set forth general legal principles regarding private arbitration and the standard of review before considering defendant's contentions.

A. General Legal Principles Regarding Arbitration and The Standard of Review

“Private arbitration . . . ‘is a procedure for resolving disputes which arises from contract; it only comes into play when the parties to the dispute have agreed to submit to it.’ [Citation.] Such arbitration is governed by the California Arbitration Act (§ 1280 et seq.) (Arbitration Act), ‘a comprehensive, all-inclusive statutory scheme applicable to all written agreements to arbitrate disputes.’ [Citation.] Contractual

arbitration awards, if valid, are presumed to be binding and final. [Citation.]” (*Toal v. Tardif* (2009) 178 Cal.App.4th 1208, 1218, fn. omitted (*Toal*).

“After arbitration has resulted in an award, the Arbitration Act permits a party to petition ‘the court to confirm, correct or vacate the award.’ (§ 1285.) The opposing party may respond to such a petition by requesting ‘the court to dismiss the petition or to confirm, correct or vacate the award.’ (§ 1285.2; see § 1287.2.) The proponent of the arbitration award (whether it be the petitioner or the respondent) must recite or attach a copy of the arbitration agreement. (§§ 1285.4, subd. (a), 1285.6.) A court presented with such a petition or response is empowered only to confirm, correct, or vacate the award or to dismiss the proceeding. (§ 1286.) If the court confirms the award, it shall enter judgment accordingly. (§ 1287.4.)” (*Toal, supra*, 178 Cal.App.4th at p. 1220.)

“Judicial intervention in the private arbitration process is strictly limited because the parties have agreed to ‘bypass the judicial system’ [citation] and submit their dispute to ‘nonjudicial resolution by an independent third person or persons’ [citation]. By agreeing to arbitration, parties anticipate a relatively speedy, inexpensive and final resolution, one that may be based on ‘“broad principles of justice,” ’ rather than strictly the rule of law. [Citation.] Consequently, ‘as a general rule courts will indulge every reasonable intendment to give effect to arbitration proceedings.’ [Citation.]” (*Toal, supra*, 178 Cal.App.4th at p. 1218.)

Further, “the scope of judicial review of arbitration awards is extremely narrow.” (*California Faculty Assn. v. Superior Court* (1998) 63 Cal.App.4th 935, 943 (*California Faculty*); see *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 10-11, 27-28, 33 (*Moncharsh*)). Courts may not review the merits of the dispute, the sufficiency of the evidence, or the reasoning in support of the arbitrator’s decision. (*Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 23 (*Pierotti*); *California Faculty, supra*, at p. 943.) “Because ‘arbitral finality is a core component of the parties’ agreement to submit to arbitration’ [citation] and because arbitrators are not required to make decisions according to the

rule of law, parties to an arbitration agreement accept the risk of arbitrator errors [citation], and arbitrator decisions cannot be judicially reviewed for errors of fact or law even if the error is apparent and causes substantial injustice [citations].” (*Berglund v. Arthroscopic & Laser Surgery Center of San Diego, L.P.* (2008) 44 Cal.4th 528, 534 (*Berglund*).

The exclusive grounds for vacating an arbitration award are specified in section 1286.2. (*Moncharsh, supra*, 3 Cal.4th at p. 33.) The circumstances under which an award may be vacated pursuant to this section are “very limited.” (*Delaney v. Dahl* (2002) 99 Cal.App.4th 647, 654.)

“ ‘On appeal from an order confirming an arbitration award, we review the trial court’s order (not the arbitration award) under a de novo standard. [Citations.]’ ” (*Toal, supra*, 178 Cal.App.4th at p. 1217; see *Haworth v. Superior Court* (2010) 50 Cal.4th 372, 383, 388 (*Haworth*)). With these general legal principles and the standard of review in mind, we turn to the issues raised by defendant in this appeal.

B. Defendant’s Individual Liability

Defendant first contends that there is “no basis for any award against [him] individually.” He argues that an “arbitration of internal [t]rust issues” was conducted, but that he was named in the arbitration agreement in his individual capacity only and not as trustee of the trust. Defendant also argues that the scope of the arbitration agreement is so vague that it is unenforceable.

Plaintiffs contend that an arbitration award may be vacated only on statutory grounds, that defendant has failed to identify a statutory basis for his contentions, and that his contentions are otherwise not a proper basis for vacating the arbitration award. Plaintiffs also contend that the arbitration award falls within the scope of the parties’ arbitration agreement. Plaintiffs further argue that defendant is estopped from claiming that he is not a proper party because he voluntarily joined in the arbitration proceeding.

A party seeking to confirm an arbitration award must prove the existence of a valid arbitration agreement. (*Toal, supra*, 178 Cal.App.4th at pp. 1220-1221.) “In California, ‘[g]eneral principles of contract law determine whether the parties have entered a binding agreement to arbitrate.’ [Citations.]” (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236.) “For any contract, the parties’ consent is a basic element. [Citation.] In addition, the parties’ consent must be communicated to one another. [Citation.] Thus, a party’s consent is essential to ‘the contractual underpinning of the arbitration procedure’ [Citation.] ‘[T]he asserted absence of contractual consent renders arbitration, by its very definition, inapplicable to resolve the issue.’ [Citation.]” (*Toal, supra*, at p. 1221.) “ ‘[T]he policy favoring arbitration cannot displace the necessity for a voluntary *agreement* to arbitrate.’ [Citations.]” (*Victoria v. Superior Court* (1985) 40 Cal.3d 734, 739; accord *Mission Viejo Emergency Medical Associates v. Beta Healthcare Group* (2011) 197 Cal.App.4th 1146, 1153.)

In this case, the parties’ “Arbitration Agreement, Waiver of Conflict and Fee Agreement” provides for binding “[a]rbitration of disputes among beneficiaries of the Estate of Corinne Stoscher and/or Stoscher Family Trust.” Defendant does not dispute that he signed the agreement. Further, defendant acknowledges that he was a beneficiary under the trust, and that the arbitration in which he participated involved issues concerning the trust. At the arbitration, the parties stipulated to two issues related to the trust that would be resolved by the arbitrator: (1) the amount of trustee fees payable to defendant for services rendered, and (2) the extent to which caretaker fees paid to defendant and his wife for services rendered were excessive. The arbitration award requires defendant to pay plaintiffs, the other beneficiaries of the trust, certain amounts based on the arbitrator’s factual and legal determinations about these issues related to the trust. Under the circumstances, where defendant signed the arbitration agreement and the dispute that was arbitrated was within the scope of the arbitration agreement, a valid

arbitration agreement exists and the trial court properly granted the petition to confirm the arbitration award.

Moreover, defendant, a party to the binding arbitration agreement, stipulated to the two issues to be decided by the arbitrator, participated in the arbitration, and never contested the arbitrator's authority to decide the issues until plaintiffs sought confirmation of the arbitration award. It has long been established that "[a] claimant may not voluntarily submit his [or her] claim to arbitration, await the outcome, and if the decision is unfavorable, challenge the authority of the arbitrator to act." (*University of San Francisco Faculty Assn. v. University of San Francisco* (1983) 142 Cal.App.3d 942, 954; accord, *O'Malley v. Petroleum Maintenance Co.* (1957) 48 Cal.2d 107, 110-111; *Porter v. Golden Eagle Ins. Co.* (1996) 43 Cal.App.4th 1282, 1291.)

To the extent defendant is contending that he may not be held individually liable for actions he took as a trustee, he fails to provide legal authority to support this contention. (See *Haskett v. Villas at Desert Falls* (2001) 90 Cal.App.4th 864, 877-879 [discussing the circumstances under which a trustee may be held personally liable].) Further, even assuming the arbitrator made a factual or legal error in concluding that defendant may be held individually liable for actions he took as trustee, defendant fails to provide legal authority to support the contention that such error by the arbitrator is subject to judicial review and is a basis for vacating the award. (See *Berglund, supra*, 44 Cal.4th at p. 534; *Pierotti, supra*, 81 Cal.App.4th at p. 23; *California Faculty, supra*, 63 Cal.App.4th at p. 943; *Moncharsh, supra*, 3 Cal.4th at p. 33.)

We therefore determine that the trial court did not err in confirming the arbitration award which requires defendant to pay certain sums to plaintiffs.

C. Arbitrator's Disclosure

Defendant next contends that the arbitrator failed to comply with an ethic standard requiring certain disclosures, and that her failure to do so mandates the vacation of the arbitration award. Defendant argues that the arbitrator "did not disclose in writing facts

which she knew from her confidential relationship as an attorney for the Stoschers (Trustors) in the creation of their Trust that she would rely upon in making her decision, only that these facts would influence the ultimate result.” Defendant argues that the arbitrator should have disclosed the trustors’ “goals and intents” of which she was aware.

Plaintiffs contend that the arbitrator adequately disclosed her prior relationship with the trustors and that, even if the disclosure was incomplete, vacation of the arbitration award is not warranted.

As we have set forth above, the arbitrator stated the following in the “Arbitration Agreement, Waiver of Conflict and Fee Agreement” regarding her potential or actual conflict of interest: “You have elected to proceed with arbitration in the above matter. Because of my prior role as attorney for Carl and Corinne Stoscher, I will not represent any one of you in resolving this matter. Each of you has an interest that may be in conflict with or adverse to the interest(s) of the others in the matter. Further, your interests may be in conflict with the goals and intents expressed by Carl and Corinne when establishing and administering the estate plan which is now the subject of the dispute. I will take those *goals and intents* into consideration as much as necessary in resolving the dispute. By choosing me as your arbitrator, you acknowledge the existence of actual or potential conflict and you affirmatively waive that conflict and agree to proceed with arbitration notwithstanding the actual or potential conflict.” (Italics added.) Immediately following this paragraph, each of the parties initialed a provision indicating that they “understand and waive any actual or potential conflict.”

The Arbitration Act, “in seeking to ensure that a neutral arbitrator serves as an impartial decision maker, requires the arbitrator to disclose to the parties any grounds for disqualification. Within 10 days of receiving notice of his or her nomination to serve as a neutral arbitrator, the proposed arbitrator is required, generally, to ‘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.’ (§ 1281.9, subd. (a).) Based

upon these disclosures, the parties are afforded an opportunity to disqualify the proposed neutral arbitrator. [Citation.]” (*Haworth, supra*, 50 Cal.4th at p. 381, fn. omitted; see § 1281.9, subd. (b).)³

“If an arbitrator ‘failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware,’ the trial court must vacate the arbitration award. (§ 1286.2, subd. (a)(6)(A).)” (*Haworth, supra*, 50 Cal.4th at p. 381.) The party seeking vacation of the arbitration award is not required to show prejudice from the arbitrator’s nondisclosure. (*Id.* at pp. 383, 394.)

³ Regarding a party’s right to disqualify a proposed arbitrator, section 1281.91 provides:

“(a) A proposed neutral arbitrator shall be disqualified if he or she fails to comply with Section 1281.9 and any party entitled to receive the disclosure serves a notice of disqualification within 15 calendar days after the proposed nominee or appointee fails to comply with Section 1281.9.

“(b) (1) If the proposed neutral arbitrator complies with Section 1281.9, the proposed neutral arbitrator shall be disqualified on the basis of the disclosure statement after any party entitled to receive the disclosure serves a notice of disqualification within 15 calendar days after service of the disclosure statement.

“(2) A party shall have the right to disqualify one court-appointed arbitrator without cause in any single arbitration, and may petition the court to disqualify a subsequent appointee only upon a showing of cause.

“(c) The right of a party to disqualify a proposed neutral arbitrator pursuant to this section shall be waived if the party fails to serve the notice pursuant to the times set forth in this section, unless the proposed nominee or appointee makes a material omission or material misrepresentation in his or her disclosure. Except as provided in subdivision (d), in no event may a notice of disqualification be given after a hearing of any contested issue of fact relating to the merits of the claim or after any ruling by the arbitrator regarding any contested matter. Nothing in this subdivision shall limit the right of a party to vacate an award pursuant to Section 1286.2, or to disqualify an arbitrator pursuant to any other law or statute.

“(d) If any ground specified in Section 170.1 exists, a neutral arbitrator shall disqualify himself or herself upon the demand of any party made before the conclusion of the arbitration proceeding. However, this subdivision does not apply to arbitration proceedings conducted under a collective bargaining agreement between employers and employees or their respective representatives.”

“The applicable statute and standards enumerate specific matters that must be disclosed.” (*Haworth, supra*, 50 Cal.4th at p. 381.) Among other matters, the arbitrator must disclose “[a]ny matters required to be disclosed by the ethics standards for neutral arbitrators adopted by the Judicial Council.” (§ 1281.9, subd. (a)(2); see Cal. Rules of Court, Ethics Stds. for Neutral Arbitrators in Contractual Arbitration (Ethics Standards).) The purposes of the Ethics Standards are “to guide the conduct of arbitrators, to inform and protect participants in arbitration, and to promote public confidence in the arbitration process.” (Ethics Stds., std. 1(a).) “The Ethics Standards require the disclosure of ‘specific interests, relationships, or affiliations’ and other ‘common matters that could cause a person aware of the facts to reasonably entertain a doubt that the arbitrator would be able to be impartial.’ (Ethics Stds., com. to std. 7.)” (*Haworth, supra*, at p. 381.)

Ethics Standards, former standard 7, which was in effect at all relevant times in this case, provided: “(d) Required disclosures [¶] A person who is nominated or appointed as an arbitrator must disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed arbitrator would be able to be impartial, including all of the following: [¶] . . . [¶] (12) *Knowledge of disputed facts* [¶] The arbitrator . . . has personal knowledge of disputed evidentiary facts relevant to the arbitration. A person who is likely to be a material witness in the proceeding is deemed to have personal knowledge of disputed evidentiary facts concerning the proceeding.” (Ethics Stds., former std. 7(d)(12) [now std. 7(d)(13)].)

“Courts have . . . held that if the arbitrator disclosed information or a party had actual knowledge of information putting the party on notice of a ground for disqualification, yet the party failed to inquire further, the arbitrator’s failure to provide additional information regarding the same matter does not justify vacating the award. [Citations.]” (*Mt. Holyoke Homes, L.P. v. Jeffer Mangels Butler & Mitchell, LLP* (2013) 219 Cal.App.4th 1299, 1313-1314; see *United Health Centers of San Joaquin Valley, Inc. v. Superior Court* (2014) 229 Cal.App.4th 63, 68.)

For example, in *Dornbirer v. Kaiser Foundation Health Plan, Inc.* (2008) 166 Cal.App.4th 831 (*Dornbirer*), a patient pursued an arbitration claim against Kaiser Foundation Health Plan, Inc. (Kaiser). Prior to arbitration, the arbitrator disclosed that he was presiding over and had presided over several matters involving Kaiser and/or its counsel. (*Id.* at pp. 836-837.) After Kaiser prevailed in the arbitration, the plaintiff contended that the arbitrator had failed to sufficiently disclose how many times he had served as an arbitrator in Kaiser matters, and that for those Kaiser matters that he did disclose, he had failed to provide the dates of those arbitrations, the results of the arbitrations, and the names of other attorneys who were involved in those arbitrations as required by section 1281.9. (*Dornbirer, supra*, at p. 836.)

The appellate court concluded that “although the arbitrator’s disclosure was incomplete, the arbitrator sufficiently disclosed existing grounds for disqualification by acknowledging a prior relationship with both Kaiser and Kaiser’s counsel . . . , and disclosing that he had served as an arbitrator in a number of prior arbitrations involving Kaiser and [its counsel]. The information that the arbitrator disclosed was sufficient to put [the plaintiff] on notice of any potential bias on the arbitrator’s part.” (*Dornbirer, supra*, 166 Cal.App.4th at p. 834.)

The appellate court reasoned that, although the disclosure may have been ambiguous as to the precise number of Kaiser arbitrations the arbitrator had previously been involved in, “the disclosure was sufficient to put [the plaintiff] on notice that [the arbitrator] had served as an arbitrator in a large number of such cases. If [the plaintiff] was concerned about the number of times [the arbitrator] had served as an arbitrator for Kaiser, she had the opportunity to ask for clarification. However, she did not do so.” (*Dornbirer, supra*, 166 Cal.App.4th at p. 841.) Because the arbitrator’s disclosure “clearly put [the plaintiff] on notice that [the arbitrator] had a significant history of serving as an arbitrator in cases in which Kaiser was a party,” the plaintiff “was thus

‘aware of facts’ that might cause her ‘to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial.’ (§ 1281.9, subd. (a).)” (*Ibid.*)

The appellate court further determined that section 1286.2, subdivision (a)(6)(A), which provides for the vacation of an arbitration award if the arbitrator failed to disclose “a ground for disqualification of which the arbitrator was then aware,” could not be interpreted to nullify every arbitration award where the arbitrator failed to disclose every item of information required to be disclosed under section 1281.9, particularly where the parties were aware the disclosure was incomplete yet failed to challenge the arbitrator. (*Dornbirer, supra*, 166 Cal.App.4th at p. 842.) The court stated that “the most reasonable interpretation of the statutory scheme is that the words ‘failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware’ in section 1286.2 refer to a failure to disclose the existence and nature of any relationship between the arbitrator and the parties or the parties’ attorneys, not the specifics of each such relationship.” (*Ibid.*)

The appellate court explained: “When a party has been informed of the existence of a prior relationship between the arbitrator and another party or an attorney, that party is aware of facts that would put the party on notice of the potential for bias. If the arbitrator does not include additional information regarding such a relationship in the disclosure, a party has sufficient information to inquire of the arbitrator concerning that information. It is only when the arbitrator fails to acknowledge the existence of such a relationship that a party is without sufficient information to question the impartiality of the arbitrator.” (*Dornbirer, supra*, 166 Cal.App.4th at p. 842.) Further, the statutory scheme would be “undermine[d]” if “a party could simply hold off on raising the issue of the completeness of the arbitrator’s disclosure, wait to see if he or she is pleased with the arbitration award, and, if unhappy with the award, challenge the award on the basis that the arbitrator failed to disclose information that the party could have easily requested prior to the arbitration.” (*Id.* at p. 843.)

The appellate court observed that its interpretation gave effect to subdivision (c) of section 1281.91, which provides that a party waives the right to disqualify a proposed arbitrator if the party fails to give notice of disqualification within the required time period prior to the arbitration hearing, unless the proposed arbitrator made a material omission or material misrepresentation in his or her disclosure. (*Dornbirer, supra*, 166 Cal.App.4th at pp. 845-846; see § 1281.91.) As the appellate court explained, “Interpreting section 1286.2 to permit a party to vacate an arbitration award at the conclusion of the arbitration based on an arbitrator’s failure to disclose details such as the dates of prior arbitrations or the awards in prior arbitrations when that party *knew* about those prior arbitrations and did not request additional information or move to disqualify the arbitrator would undermine the purpose of the time limitations imposed in subdivision (c) of section 1281.91. The waiver provision would have no effect because a party could simply wait until the arbitration was over and then move to vacate the award, despite having failed to move to disqualify the proposed arbitrator before the arbitration commenced.” (*Dornbirer, supra*, at p. 846.) The appellate court thus concluded that the plaintiff was not entitled to vacation of the arbitration award in her opponent’s favor on the basis that the arbitrator failed to make a complete disclosure under section 1281.9 by omitting certain details relating to prior arbitrations that he did not disclose. (*Dornbirer, supra*, at p. 846.)

In the instant case, even assuming that the arbitrator’s disclosure may have been incomplete or otherwise inadequate, we determine that, based on *Dornbirer*, defendant is not entitled to vacation of the arbitration award. The parties’ dispute in arbitration involved issues related to their parents’ trust, including the amount of trustee fees and caretaker fees that defendant was entitled to. Defendant admits that he knew the “[a]rbitrator was the attorney involved in drafting” his parents’ trust document and the documents pertaining to Corinne’s resignation and his succession as trustee, and that he knew the arbitrator had been his parents’ attorney “in other estate matters.” Moreover,

the arbitrator informed the parties in writing prior to the arbitration that she had been the attorney for their parents, that the parties' "interests may be in conflict with the goals and intents expressed by Carl and Corinne when establishing and administering the estate plan which is now the subject of the dispute," and that the arbitrator would "take those goals and intents into consideration as much as necessary in resolving the dispute."⁴

Defendant thus knew prior to the arbitration that (1) the arbitrator had been his parents' attorney; (2) the arbitrator as his parents' attorney had handled trust and estate matters for them; (3) the arbitrator was going to rely on her knowledge of his parents' estate plan "goals and intents" as much as necessary in resolving the parties' dispute; and (4) defendant's interests might be in conflict with the goals and intent of his parents. Based on the arbitrator's written disclosure and the information that defendant otherwise knew, defendant was on notice that the arbitrator had personal knowledge relating to his parent's trust, and defendant was thus "aware of facts" that might cause him "to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial" with respect to the disputed issues arising under that trust. (§ 1281.9, subd. (a).) As the trial court observed, "it strains credibility to believe that [defendant] lacked advance notice of the Arbitrator's circumstances relative to conflict of interest."

If defendant was concerned about the particular "goals and intents" of his parents that the arbitrator might or would consider in resolving the parties' dispute, he had the opportunity to seek clarification from the arbitrator before the arbitration. In this case, as in *Dornbirer*, the statutory scheme would be "undermine[d]" if defendant "could simply hold off on raising the issue of the completeness of the arbitrator's disclosure, wait to see if he . . . is pleased with the arbitration award, and, if unhappy with the award, challenge

⁴ It is not clear from the record whether the arbitrator knew prior to the arbitration which "goals and intents expressed by Carl and Corinne" were going to be relevant to the issues in the arbitration, which ultimately involved a determination of the amount of trustee fees and caretaker fees that defendant was entitled to.

the award on the basis that the arbitrator failed to disclose information that the party could have easily requested prior to the arbitration.” (*Dornbirer, supra*, 166 Cal.App.4th at p. 843.)

Accordingly, we determine that vacation of the arbitration is not warranted based on the purported inadequacy of the arbitrator’s disclosure.

D. Jurisdiction

Defendant lastly contends that the issues in this case, concerning the payment of trust expenses and the distribution of trust assets, are internal affairs of the trust. Citing various Probate Code sections, defendant argues that such issues pertaining to a trust “are within the exclusive jurisdiction of the Stanislaus County Superior Court Probate Division,” and that the arbitrator “had no authority to determine matters, particularly where the Agreement was silent as to the scope of the arbitration.”

Plaintiffs contend that the parties’ agreement to arbitrate is enforceable, and that defendant fails to provide legal authority for the proposition that parties may not agree to arbitrate trust disputes. Plaintiffs also contend that defendant’s argument is not a proper basis for appellate review.

We are not persuaded by defendant’s argument that the arbitrator was without authority to conduct an arbitration in this case, or that the matter should have been heard by the probate court in Stanislaus County. The issue before the trial court in this case was whether the arbitration award should be confirmed under the Arbitration Act. (§§ 1285, 1286; *Toal, supra*, 178 Cal.App.4th at p. 1220.) As we have explained, a valid agreement to arbitrate existed between the parties; the issues arbitrated were within the scope of the agreement; and defendant stipulated to the issues to be decided by the arbitrator, participated in the arbitration, and never contested the arbitrator’s authority to decide the issues until plaintiffs sought confirmation of the arbitration award. Defendant failed to establish a proper basis for vacating the arbitration award. (§ 1286.2, subd. (a).) The trial court therefore properly granted the petition to confirm the arbitration award

under the Arbitration Act. The Probate Code sections now cited by defendant on appeal, regarding remedies for a trustee's breach of trust (Prob. Code, §§ 16420, subd. (a)(3), 16421), superior court jurisdiction (*id.*, § 17000, subd. (a)), and venue (*id.*, § 17005), do not compel a different conclusion. We therefore conclude that the arbitrator had the authority to conduct the arbitration, and that the trial court properly confirmed the arbitration award.

IV. DISPOSITION

The October 25, 2013 judgment confirming the arbitration award is affirmed.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

MÁRQUEZ, J.