

AUG 04 2022

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**Superior Court of California  
County of Los Angeles**

MRC II DISTRIBUTION COMPANY,  
L.P., et al.;

Petitioners,

vs.

KEVIN SPACEY, et al.;

Respondents.

Case No.: 21STCP03831

DEPARTMENT 45

~~[TENTATIVE]~~ ORDER

Petition Filed: 11/22/21

Hearing date: August 4, 2022  
Moving Parties: Petitioners MRC II Distribution Company, L.P.; Knight Takes King  
Productions, LLC; and MRC II Holdings L.P.  
Responding Parties: Respondents Kevin Spacey, M. Proffitt Productions, Inc. and Trigger  
Street Productions, Inc.

**Petition to Confirm Arbitration Award**

The court considered the moving, opposition, and reply papers.

The court **GRANTS** petitioners MRC II Distribution Company, L.P.; Knight Takes King  
Productions, LLC; and MRC II Holdings L.P.'s petition to confirm arbitration award. The court  
hereby confirms the arbitration award issued in this matter and enter judgment in conformity  
therewith. (CCP § 1287.4)

**Background**

Petitioners MRC II Distribution Company, L.P.; Knight Takes King Productions, LLC;  
and MRC II Holdings L.P. filed this petition to confirm arbitration award on November 22, 2021



against respondents Kevin Spacey, M. Profitt Productions, Inc., and Trigger Street Productions, Inc.

The Petition alleges the following: Petitioners are the producer and distributor of the hit television series *House of Cards*, in which respondent Kevin Spacey starred for five seasons on Netflix. (Petitioner, ¶ 1.) Dozens of explosive allegations surfaced in the press beginning in October 2017 which accused Spacey of systematically preying upon, sexually harassing, and groping young men whom he worked with throughout his career in film, television, and theater projects. (*Id.*) A CNN.com article on November 2, 2017 accused Spacey of a pattern of sexually “predatory” behavior directed at young crew members on the set of *House of Cards*. (*Id.* at ¶ 2.) Once Petitioners became aware of the accusations, they immediately suspended Spacey’s performance, conducted a thorough months-long investigation with a preeminent workplace investigator, wrote Spacey out of the final season of *House of Cards*, and ultimately terminated Spacey’s acting and executive producing contracts. (*Id.*)

The parties litigated for years in a confidential arbitration proceeding in the Century City office of JAMS, engaged in extensive discovery that included more than 20 depositions, and had an eight-day evidentiary hearing. (Petition, ¶ 3.) The Arbitrator, in a Final Award dated October 19, 2020, found entirely in favor of Petitioners on the parties’ competing claims for breach of contract and ordered Spacey and his loan-out and producing entities to pay Petitioners more than \$30 million in compensatory damages, attorneys’ fees, and costs. (*Id.*) The Arbitrator found that Spacey’s conduct constituted a material breach of his acting and executive producing agreements with Petitioners and that Spacey’s breaches excused Petitioners’ obligations to pay him any further compensation in connection with *House of Cards*. (*Id.* at ¶ 4.) Spacey invoked the JAMS Optional Arbitration Appeal Procedure, but the three-arbitrator panel rejected each of Spacey’s claims of error and affirmed the Final Award in its entirety. (*Id.* at ¶ 5.)



Petitioners filed their moving papers on July 1, 2022. Respondents filed an opposition on July 13, 2022. Petitioners replied on July 19, 2022.

### **Legal Standard**

“Any party to an arbitration in which an award has been made may petition the court to confirm, correct or vacate the award.” (CCP § 1285.) The petition must set forth: (1) the substance of the agreement, if a complete copy is not attached; (2) the names of the arbitrators; and (3) the arbitration award and the arbitrator’s opinion, if complete copies are not attached. (*Id.*, § 1285.4.) “The petition shall name as respondents all parties to the arbitration and may name as respondents any other persons bound by the arbitration award.” (*Id.*) The petition must be filed and served no less than 10 days, but no more than 4 years, after the award is served on the party seeking confirmation. (*Id.*, §§ 1288, 1288.4.) If a petition is not opposed after being duly filed and served on respondent, its allegations are deemed admitted. (*Id.*, § 1290.)

The court must confirm the award as made, unless it corrects or vacates the award, or dismisses the proceeding. (CCP § 1286; *Valsan Partners Limited Partnership v. Calcor Space Facility, Inc.* (1994) 25 Cal.App.4th 809, 818.)

The limited grounds for vacatur are:

- (1) The award was procured by corruption, fraud or other undue means.
- (2) There was corruption in any of the arbitrators.
- (3) The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator.
- (4) The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted.
- (5) The rights of the 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.
- (6) An arbitrator making the award either: (A) failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator



was then aware; or (B) was subject to disqualification upon grounds specified in Section 1281.91 but failed upon receipt of timely demand to disqualify himself or herself as required by that provision. However, this subdivision does not apply to arbitration proceedings conducted under a collective bargaining agreement between employers and employees or between their respective representatives.

(CCP § 1286.2(a).)

The grounds for correction are:

- (a) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;
- (b) The arbitrators exceeded their powers but the award may be corrected without affecting the merits of the decision upon the controversy submitted; or
- (c) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(CCP § 1286.6.)

Until it is either confirmed or vacated, an arbitration award “has the same force and effect as a contract in writing between the parties to the arbitration.” (CCP § 1287.6.) On the other hand, once confirmed, “judgment shall be entered ... [with] the same force and effect as ... judgment in a civil action of the same jurisdictional classification...” (*Id.*, § 1287.4.)

### **Discussion**

Petitioners MRC II Distribution Company, L.P.; Knight Takes King Productions, LLC; and MRC II Holdings L.P. move to confirm the arbitration award, issued on October 19, 2020, with respect to Petitioners’ claims against respondents Kevin Spacey, M. Proffitt Productions, Inc., and Trigger Street Productions, Inc. (Korn Decl., ¶ 1, Exh. 1.) A three-arbitrator panel affirmed the arbitration award on November 5, 2021 in a proceeding brought under the JAMS Optional Arbitration Appeal Procedure. (*Id.* at ¶ 2, Exh. 2.)



## **1. Requirements for Confirming Arbitration**

Here, Petitioners submit the parties' Agreement for Pilot and Series Options and the Executive Producing Agreement, both of which contain arbitration provisions. (Korn Decl., ¶¶ 4-5, Exhs. 3 [Executive Agreement, ¶ 21], 4 [Acting Agreement, ¶ h].)

The petition sets forth a copy of the arbitration award for JAMS Arbitration No. 1210036119, executed by the arbitrator, Bruce A. Friedman, on October 19, 2020. (Korn Decl., ¶ 2, Exh. 1 [Final Award, p. 47].) Evidentiary hearings were conducted in the matter from February 3 to 7, 2020 and from February 10-14, 2020. (*Id.* [Final Award, p. 3].) The parties presented their closing arguments on June 2, 2020 and the matter was submitted for decision on that date. (*Id.*) The arbitration award was served on the parties on October 19, 2020. (Korn Decl., ¶ 2, Exh. 1, p. 48.) The arbitration award was affirmed on November 5, 2021 in a proceeding brought under the JAMS Optional Arbitration Appeal Procedure. (*Id.* at ¶ 2, Exh. 2.) Thus, this petition is filed within the proper time—not less than 10 days and not more than 4 years after the award is served. (CCP §§ 1288, 1288.4.)

In addition, the records shows that Petitioners served the petition and moving papers on all interested parties in this matter. (December 21, 2021 Proof of Service; July 1, 2022 Proof of Service.) Respondents filed a response to petition on January 21, 2022 and an opposition on July 13, 2022. Respondents contend that the arbitration award should be vacated because the Arbitrator exceeded his authority by considering evidence extrinsic to the specific breach of contract at issue in the arbitration proceeding.

## **2. Respondents' Opposition**

Respondents argue that the Arbitrator's authority to calculate damages allowed him to consider only evidence that flowed from those identified breach, i.e., evidence "intrinsic" to the breaches. Respondents maintain that the Arbitrator considered and relied on evidence—



specifically, an October 29, 2017 *BuzzFeed* article and a November 2, 2017 CNN article—which could not flow from the breaches that he identified. Respondents contend that the Arbitrator found that respondent Kevin Spacey breached the parties’ acting and producing agreements through his interactions with five crewmembers, who only came forward as part of Petitioners’ solicitation of allegations against Spacey. Respondents maintain that the solicitation included an internal investigation initiated only after Netflix excluded Spacey from the final season of *House of Cards*.

Thus, Respondents assert that Netflix’s decision to cut ties with Spacey and its agreement to rework the final season could not have flowed from the identified breaches. Respondents argue that the Arbitrator’s consideration of this extrinsic evidence in deciding damages was outside the scope of his authority. As such, Respondents contend that the Arbitrator committed procedural error that justifies vacating the arbitration award. Respondents cite *Advanced Micro Devices, Inc. v. Intel Corp.* (1994) 9 Cal.4th 362 (“*Advanced Micro*”) to support their arguments.

Petitioners contend that Respondents’ arguments have nothing to do with the holding in *Advanced Micro*, which concerns the remedies granted by an arbitrator. Petitioners argue that *Advanced Micro* does not apply to this matter and that Respondents are only using the decision to improperly argue the merits of their position in the underlying case. Petitioners assert that the actual holding of *Advanced Micro* only supports confirming the arbitration award because the Arbitrator’s remedy is rationally related to his findings of breach, causation, and harm. Petitioners maintain that this court must accept the Arbitrator’s factual and legal findings in the underlying case.

“[C]onsistent with our arbitration statutes and subject to the limited exceptions . . . , it is within the ‘powers’ of the arbitrator to resolve the entire ‘merits’ of the ‘controversy submitted’ by the parties.” (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 28.) “Obviously, the ‘merits’ include all the contested issues of law and fact submitted to the arbitrator for decision. The



arbitrator's resolution of these issues is what the parties bargained for in the arbitration agreement.” (*Id.*) “[A]n award generally may not be vacated or corrected, under California law, for errors of fact or law.” (*Advanced Micro, supra*, 9 Cal.4th at 377, fn. 10.)

“[I]n the absence of more specific restrictions in the arbitration agreement, the submission or the rules of arbitration, the remedy an arbitrator fashions does not exceed his or her powers if it bears a rational relationship to the underlying contract as interpreted, expressly or impliedly, by the arbitrator and to the breach of contract found, expressly or impliedly, by the arbitrator.” (*Advanced Micro, supra*, 9 Cal.4th at 367.) “The award is rationally related to the breach if it is aimed at compensating for or alleviating the effects of the breach.” (*Id.* at 381, fn. 12.) “[I]n many cases the required rational relationship between breach and award may be found in the fact the arbitrator has awarded the injured party relief of the same general type as that a jury or court could have provided had the claim been litigated, even if the quantity, extent or parameters of the award differ in some respects from that to which the party was legally entitled.” (*Id.* 384-85.) “ ‘Generally, a decision exceeds the arbitrator’s powers only if it is so utterly irrational that it amounts to an arbitrary remaking of the contract between the parties.’ ” (*Id.* at 377.) “[I]n doubtful cases the arbitrator’s choice of remedies must stand.” (*Id.* at 386.)

“The choice of remedy, then, may at times call on any decision maker's flexibility, creativity and sense of fairness. In private arbitrations, the parties have bargained for the relatively free exercise of those faculties. Arbitrators, unless specifically restricted by the agreement to following legal rules, ‘ ‘may base their decision upon broad principles of justice and equity....’ ” [Citations.]’ ” (*Advanced Micro, supra*, 9 Cal.4th at 374-75.) “A reviewing court is thus not in a favorable position to substitute its judgment for that of the arbitrators as to what relief is most just and equitable under all the circumstances. Further, independent review of remedies, no less than of other arbitrated questions, would tend to increase the cost and delay involved.” (*Id.* at 375.) “ ‘If the courts were free to intervene on these grounds [disagreement



with the arbitrators' "honest judgment" as to remedy] the speedy resolution of grievances by private mechanisms would be greatly undermined.' [Citation.]" (*Id.*, quoting *United Paperworkers v. Misco* (1987) 484 U.S. 29, 38.)

"[W]here an arbitrator is authorized to determine remedies for contract violations, 'courts have no authority to disagree with his honest judgment in that respect.... [A]s long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision.' [Citation.]" (*Advanced Micro, supra*, 9 Cal.4th at 378, quoting *United Paperworkers, supra*, 484 U.S. at 38.) "Arbitrators are not obliged to read contracts literally, and an award may not be vacated merely because the court is unable to find the relief granted was authorized by a specific term of the contract. [Citation.] The remedy awarded, however, must bear some rational relationship to the contract and the breach." (*Id.* at 381.) "The award will be upheld so long as it was even arguably based on the contract; it may be vacated only if the reviewing court is *compelled* to infer the award was based on an extrinsic source. [Citations.] In close cases the arbitrator's decision must stand." (*Id.*, italics in original.)

The court finds that Petitioners' response to Respondents' opposition has merit. While Respondents' arguments are couched in terms and phrases from *Advanced Micro*, it appears that the arguments have little or nothing to do with the actual holding in that case. *Advanced Micro* concerns the remedies that an arbitrator may fashion. *Advanced Micro* involved a dispute between AMD and Intel over their technology exchange agreement. (See *Advanced Micro, supra*, 9 Cal.4th at 370.) The arbitrator there awarded AMD a permanent, nonexclusive and royalty-free license to specified Intel intellectual property to compensate for an "immeasurable" amount of lost profits and good will. (*Id.* at 370-71.) The Supreme Court upheld the arbitration award because it was rationally related to the effect of Intel's breach and, therefore, was within the scope of the parties' agreement. (See *id.* at 386.) The Supreme Court found that the relief was



proper despite it providing benefits that would not have been available in court and are different from the obtainable benefits had the contract been fully performed. (See *id.* [“[A] valid award for breach of contract does not require exact correspondence with the particular benefits the injured party would have received had the contract been fully *performed.*”] [“The dissent, while accepting the principle an award must be rationally linked to the contract or breach, would hold in addition that ‘the potential remedies available to an arbitrator are limited to those that a court could award on the same claim.’ . . . . [¶] We believe this approach is inconsistent with the principles of contractual arbitration and with the agreement of the parties in this case.”].)

Here, Respondents makes a distinction between evidence “extrinsic” from the Arbitrator’s identified breaches and “evidence that flowed from those identified breaches”, i.e., “evidence ‘intrinsic’ to the breaches.” (Opposition, 4:12-14.) The court is perplexed by this distinction that Respondents draw in evidence, since this concept is completely absent in *Advanced Micro*. The *Advanced Micro* Court only indicated that an arbitration award “may be vacated only if the reviewing court is *compelled* to infer the award was based on an extrinsic source”, i.e., an arbitration award may be vacated if the award cannot arguably be based on the contract. (See *Advanced Micro, supra*, 9 Cal.4th at 381, italics in original [“The award will be upheld so long as it was even arguably based on the contract; it may be vacated only if the reviewing court is *compelled* to infer the award was based on an extrinsic source.”].) It appears that Respondents creatively read this language in *Advanced Micro* to mean that the court may perform a judicial review of what evidence the Arbitrator reviewed in arriving at his findings and whether such evidence supports his findings.

*Advanced Micro* has no discussion of the distinction between evidence “extrinsic” or “intrinsic” to a contract breach. Respondents cite no other authority establishing this concept or that this is a viable legal distinction. It appears what Respondents refer to as evidence “extrinsic” to the breach of contract is actually circumstantial evidence, as opposed to direct evidence.



Respondents fail to show that the Arbitrator cannot consider circumstantial evidence in arriving at his arbitration award. Such a proposition would seem completely at odds with the Arbitrator's authority. Indeed, the Supreme Court in *Advanced Micro* indicates that "the scope-of-available-remedies analysis . . . does not seek to reexamine the factual or legal sufficiency of the arbitrator's decision, either on its face or in light of the evidence supporting it." (*Advanced Micro, supra*, 9 Cal.4th at 381, fn. 12.) Further, "an award generally may not be vacated or corrected, under California law, for errors of fact or law." (*Id.* at 377, fn. 10.) Thus, it appears that Respondents' extrinsic/intrinsic evidence argument is completely at odds with the decision in *Advanced Micro*.

The court rejects Respondents' interpretation of *Advanced Micro*, as Respondents' assertions are unsupported by the context, findings, and holding in that case. Respondents do not even discuss the remedies that the Arbitrator decided on in the underlying case. Respondents discusses none of the specific damages that the Arbitrator awarded to Petitioners for Respondents' breach of the acting and producing agreements. Respondents only assert in conclusory fashion that the damages awarded to Petitioner are not rationally related to the Arbitrator's identified breaches. The court ultimately finds that Respondents are simply arguing the merits of their positions in the underlying case. Respondents is using *Advanced Micro* only as a means to have this court review whether the evidence considered by the Arbitrator was sufficient to establish causation, i.e., if Respondents' breach caused Petitioners' damages. This goes to the merits of the Arbitrator's decision and finding of facts, which the court cannot review.

In applying the holding in *Advanced Micro*, the court finds that the Arbitrator's choice of remedies is rationally related to the breach of the parties' agreements. An arbitration award "is rationally related to the breach if it is aimed at compensating for or alleviating the effects of the breach." (*Advanced Micro, supra*, 9 Cal.4th at 381, fn. 12.) The Arbitrator found that



Respondents breached the parties' agreements by violating the Harassment Policy under the agreements. (See Korn Decl., ¶ 2, Exh. 1 [Final Award, pp. 33, 37-38].) The Arbitrator found that Spacey's actions were a cause of the show's shortened final season and Petitioners' resulting losses. (*Id.* [Final Award, pp. 41-42].) Due to Respondents' breach, the Arbitrator found that Petitioners were excused from performance. (*Id.* [Final Award, pp. 33, 37-38].) The Arbitrator awarded Petitioners \$29,527,586 in damages based on costs and lost revenues caused by the show's shortened final season. (*Id.* [Final Award, pp. 45-46].)

The Arbitrator's Final Award shows that the damages awarded were rationally related to Respondents' breach, as the award was aimed at compensating for or alleviating the effects of the breach. The Arbitrator found that the breach was Spacey's violation of the Harassment Policy under the agreements, which excused Petitioners' performance and caused the shortened final season of *House of Cards*. Petitioners' suffered costs and lost revenues due to the show's shortened final season. Thus, the effects of the breach were the costs and lost revenues that Petitioners sustained due to having to rework the final season. The Arbitrator awarded \$29,527,586 in damages to compensate Petitioners for these costs and lost revenues.

The Arbitrator discusses the calculations and computations that went into the damages, which were presented by Petitioners' experts. (See Korn Decl., ¶ 2, Exh. 1 [Final Award, pp. 45-46].) The Arbitrator noted that Petitioners' expert "presented a straightforward damages claim based on concrete numbers" and that the "calculations of MRC's damages were appropriately conservative and relied almost entirely on MRC's actual costs and contracted-for revenues." (*Id.* [Final Award, p. 46].) There is little question that the damages the Arbitrator awarded are aimed at compensating Petitioners for or alleviating them of the effects of Respondents' breach. The Arbitrator found that the breach caused show's shortened season, which resulted in Petitioners' costs and lost revenues. The damages were calculated and computed to compensate Petitioners for these costs and lost revenues. The damages awarded are fairly typical compensatory damages



in a breach of contract case, which can be awarded in court. The Supreme Court in *Advanced Micro* pointed out that relief of the same general type that a jury or court could have provided is often an indication of the required rational relationship between breach and award. (See *Advanced Micro, supra*, 9 Cal.4th at 384-85 [“Indeed, in many cases the required rational relationship between breach and award may be found in the fact the arbitrator has awarded the injured party relief of the same general type as that a jury or court could have provided had the claim been litigated, even if the quantity, extent or parameters of the award differ in some respects from that to which the party was legally entitled.”].)

As discussed above, the Arbitrator’s conclusion that Respondents’ breach caused the aforesaid damages is a factual finding which the court generally cannot review for error. Further, the court cannot review the sufficiency of the evidence supporting the arbitration award. A three-arbitrator panel also affirmed the Arbitrator’s Final Award in proceedings under the JAMS Optional Arbitration Appeal Procedure. Given the Arbitrator’s finding of breach and awarded damages, the court finds that there is little question that the Arbitrator’s choice of remedies is rationally related to the breach of the parties’ agreements. The court is not *compelled* to infer that the Arbitrator’s award was not based on the breach of the parties’ agreements or that it was based on an extrinsic source.

Indeed, Respondents’ burden is high. The Supreme Court in *Advanced Micro* indicated that “a decision exceeds the arbitrator’s powers only if it is **so utterly irrational** that it amounts to an arbitrary remaking of the contract between the parties.” (*Advanced Micro, supra*, 9 Cal.4th at 377, emphasis added.) Even in a close case, the Arbitrator’s award must stand. (*Id.* at 381, 386.) Here, Respondents fail to demonstrate that this is even a close case. Respondents do not demonstrate that the damages award was so utterly irrational that it amounts to an arbitrary remaking of the parties’ contracts. As discussed above, the damages award to compensate for

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costs and lost revenues is a fairly typical compensatory damages award and is directly relevant to compensating Petitioners and alleviating the effects of the breach.

Finally, the court notes that Respondents fail to establish that the Arbitrator's awarded damages were beyond the scope of the parties' arbitration agreements. "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." (*Gueyffier v. Ann Summers, Ltd.* (2008) 43 Cal.4th 1179, 1182.)

Respondents do not show that the Arbitrator's chosen remedies were excluded or that the Arbitrator was limited in choice of remedies by the arbitration agreements. Neither the executive producing agreement nor the acting agreement between the parties appear to expressly exclude any remedies the Arbitrator may choose. (See Korn Decl., ¶¶ 4-5, Exhs. 3-4.) Indeed, the acting agreement's "Studio's Remedies" provision states, in relevant part: "Studio will have maximum rights available at law, equity and under AFTRA for Player's incapacity, default or material breach subject to Studio's Standard Terms and Conditions (subject to good faith negotiations as set forth below)." (*Id.* at 5, Exh. 4 [Acting Agreement, § i].) Thus, given Respondents' failure to establish that an express and unambiguous limitation on the Arbitrator's choice of remedies exists in the parties' arbitration agreements, this is further ground to confirm the arbitration award.

### **3. Conclusion**

Based on the foregoing, the court finds that Petitioners establish that they meet the requirements to confirm arbitration under CCP §§ 1285, *et seq.* The court finds that Respondents' arguments for vacating the arbitration award, including their reading of *Advanced*



*Micro*, are without merit. Respondents do not show that the Arbitrator acted beyond his authority under the scope of the parties' arbitration agreements.


The court finds that the Arbitrator's chosen remedies are rationally related to the effects of Respondents' breach of the parties' acting and executive producing contracts. The Arbitrator's awarded damages is at least aimed at compensating or alleviating Petitioners' for their costs and lost revenues due to the shortened season of *House of Cards*. The court is not *compelled* to infer that arbitration award was not based on the breach of the parties' agreement or that it was based on an extrinsic source. The Final Award was not so utterly irrational that it amounts to an arbitrary remaking of the parties' contracts.

Respondents do not show that Petitioners fail to meet the other requirements for confirming the arbitration award.

The court therefore GRANTS Petitioners' petition to confirm arbitration award. The court hereby confirms the arbitration award issued in this matter and enter judgment in conformity therewith. (CCP § 1287.4)

It is so ordered.

Dated: August 4, 2022

  
MEL RED RECANA  
Judge of the Superior Court

08/05/2022