96871-3

Proposed reply not yet accepted
Motion is pending.

NO. 77543-0-I

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

THOMAS ANDERSON,

Plaintiff-Appellant

v.

JENNIFER JEAN BUKSH, DAVID OMAR BUKSH,

Defendants-Appellees.

REPLY TO PETITION FOR REVIEW BY THE SUPREME COURT BY THOMAS ANDERSON

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22 May. 2019

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REPLY TO PETITION FOR DISCRETIONARY REVIEW BY THE SUPREME COURT

This appeal fundamentally arises from the King County Superior Court's disregard for the legislative jurisdiction of mandatory arbitration – presenting a fundamental separation of power conflict, and a substantial deficiency in oversight by the State Supreme Court over Superior Court compliance with legislated law and the MAR which it promulgated.

Since the Washington Superior Courts and litigants therein have repeatedly demonstrated confusion in applying the MAR as promulgated by this court – both the public and the judicial branch's interest in speedy, effective, and efficient mandatory arbitration would be greatly served with bright line standards, resolution of conflicting MAR provisions and timing, as well as unambiguous redundant explanations with multiple examples.

A. NEW MATTER – RESPONDENT STATEMENT OF THE CASE

Respondent Buksh fails to make even one single citation to the record of the case, at any stage. At Response pp.2-3, ¶¶1-3, Buksh again tries to introduces inadmissible and uncertified hearsay evidence, wholly outside the record of the case. Buksh continues to do the same at pp.7-8 – describing *nunc pro tunc* intent, and misrepre-

senting substantive amendment of the arbitration award as mere "clarification."

With the exception of Appointment of Arbitrator, Arbitration Award, and Certificate of Mailing Award, all proceedings under the legislative arbitral jurisdiction are inadmissible hearsay. The lower courts lacked discretion and jurisdiction to rehear such evidence in a *de facto* appeal by Buksh. The legislature had the power to make mandatory arbitration a proceeding of record under Wash. Const. Art. IV, §11, and chose to not do so. Nonetheless, the lower courts ultimately decided that the unrecorded proceedings of mandatory arbitration may be reheard as a *de facto* appeal, in lieu of exhausting the explicitly legislated remedy of a trial de novo. The State Legislature did not extend arbitral jurisdiction to rehearing or *de facto* appeal from matters not of record.

This interposed complexity and impediment to the process of obtaining a judgment from a final arbitration award – to such a significant and substantial degree, that the procedural process due Arbitrant-Appellant Anderson was per se violated. The relevant intent is not that of the Arbitrator, after he lost jurisdiction and mandatory arbitration was closed, but instead is that of the legislature in effecting a plain and simple process of resolving conflict without burden-

ing the Superior Court, the Court of Appeals, and the Supreme Court as this case plainly demonstrates.

Lower court rehearing of facts behind mandatory arbitration infringes upon the legislative jurisdiction of the proceeding, and unconstitutionally violates the open court records provision of Wash. Const. Art. I §10 ("Justice in all cases shall be administered openly....") "Our constitution requires that justice be administered openly in courtrooms just as much as it must be reflected in open court records. Fidelity to the constitution requires some meaningful remedy..." *State v. Easterling*, 157 Wn.2d 167, 168, 137 P.3d 825 (2006). Particularly since the standards of evidence are substantially relaxed in mandatory arbitration, ER 1101(d), MAR 5.3, rehearing of the same matters under the same standards by the superior court judge unconstitutionally introduces secret or undisclosed elements of the mandatory arbitration proceedings solely within the purview of the arbitrator – off the record. "The open operation of our courts is of utmost public importance. Justice must be conducted openly to foster the public's understanding and trust in our judicial system and to give judges the check of public scrutiny. Secrecy fosters mistrust. This openness is a vital part of our constitution and our history." *Dreiling v. Jain*, 151 Wash. 2d 900, 903-04, 93 P.3d 861 (2004).

B. NEW MATTER – BUKSH CONCEDES

At Resp. p.9 ¶3, Buksh concedes that, "respondents do not disagree with [Anderson's] interpretation of the law..." Buksh then proceeds to explain how insubstantial procedural error preempts substantive relief, and effectively tolled the time to amend and demand a trial *de novo*.

The lower courts have decided that submission to the assigned judge, to substantively render final judgment, is not presentation to the court. Rendering judgment on a mandatory arbitration award is a substantive matter governed by statute. Entry of judgment on a mandatory arbitration award is a ministerial function of the court, which the clerk may perform, like entry of default. "If no appeal has been filed at the expiration of twenty days following filing of the arbitrator's decision and award, a judgment shall be entered and may be presented to the court by any party, on notice..." RCW 7.06.050(2).

At Resp. p.10, Buksh explains that judgment can be rendered only upon personal appearance at the requisite show cause hearing, before an ex-parte commissioner. And, as this case actually demonstrates, King County Superior Court is adverse to mandatory arbitration to such an extent that under a secret set of rules – it expressly enjoined Anderson from obtaining any judgment in this case. See. Resp. pp.13-15.

That substantively infringed the legislative arbitral jurisdiction by interposing a summary rehearing of matters not authorized by statute. While that might have been appropriate before the advent of the U.S. Postal Service and the telephone, it is now an unconstitutional violation of equal access to the courts, the open courts clause, the final decision clause at Wash. Const. Art. IV §20, and the First Amendment to the U.S. Constitution -- whereby the assigned trial judge received a proposed judgment, but refused to comply with the substantive provision of RCW 7.06.050(2): "If no appeal has been filed at the expiration of twenty days following filing of the arbitrator's decision and award, a judgment shall be entered and may be presented to the court..."

At Resp. p.9 ¶b., Buksh reiterates the misrepresentation of MAR 6.2 by the Court of Appeals and the Superior Court, that substantive amendment may be "allowed by the court" at any time an amendment is filed. In reality, the Arbitrator must explicitly make "application to the superior court to amend" [Pet. at p.5 ¶1], and such application cannot be filed after divestiture of arbitral jurisdiction – 20 days after filing the award [Pet. at pp. 5-11].

The lower courts' decisions abrogate the distinction expressed in the rule – between filing an amendment and filing an application for amendment. Moreover, once the time to demand a trial *de novo* has

expired, the arbitrator has lost all jurisdiction to act in any manner, just as the parties have lost jurisdiction to demand a constitutionally allowed jury trial *de novo*. Lack of jurisdiction is like fraud on the court, which vitiates every decision it touches.

The ultimate legal question presented by Buksh -- as demonstrated by their success at obtaining a restraining order barring entry of judgment on both the original and amended arbitration awards – is whether equity preempts law. "That wherever the rights or the situation of the parties are clearly defined and established by law, equity has no power to change or unsettle those rights or that situation, but in all such instances the maxim *equitas sequitur legem* is strictly applicable." *Magniac v. Thomson*, 56 U.S. 281, 299 (1853); *J. E. Pinkham Lumber Co. v. Woodland State Bank*, 156 Wash. 117, 133 (1930) ("we will not give relief on equitable grounds in contravention of a statutory requirement")

C. NEW MATTER – MISREPRESENTATION OF LOCAL RULES

At Resp. p.11, Buksh misrepresents that judgment must be made in the ex parte department, following a show cause rehearing on the merits. In reality–

(a) Judge Galvan was assigned to the case at Sub# 10, 19 Dec. 2016.

(b) LCR 40.1 expressly provides that it is contingent upon the Clerk's "Motions and Hearings Manual."

(c) LCR 40.1(b)(2) applies _only_ to cases _not assigned to a judge.

(d) LCR 40.1(b)(5) is inapplicable because the case was assigned to a judge – who was required to comply with RCW 7.06.050(2).

This plainly demonstrates that even an attorney is thoroughly confused and unable to properly navigate the procedure for obtaining a judgment on a mandatory arbitration award – which is contrary to the point of it.

D. CONCLUSION

For the foregoing reasons and the reasons set forth in the petition, Appellant Anderson's petition should be granted.

CERTIFICATION OF SERVICE
I certify that on this date the foregoing papers were served on the following persons via the Washington State appellate courts' secure portal electronic filing system:
• Mark Dynan, mdynan@dynanassociates.com;
• Samuel Behar, sbehar@dynanassociates.com.

Dated: 22 May. 2019
Harris Co., TX

Signed: ss\\ThomasAnderson\\
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THOMAS ANDERSON - FILING PRO SE

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