



**BLOGS**  
Arbitration

## Ninth Circuit Vacates Arbitration Award Because of Arbitrator’s Failure to Disclose Ownership in Arbitral Forum

The Ninth Circuit has reversed an arbitration award because of the “evident partiality” of an arbitrator who failed to disclose an ownership interest in JAMS. *Monster Energy Co. v. City Beverages, LLC*, 940 F.3d 1130 (9th Cir. 2019). Monster Energy and a former distributor, Olympic Eagle, commenced an arbitration to resolve a dispute regarding Monster’s termination of Olympic Eagle’s distribution agreement. The parties’ agreement specified that arbitration would be conducted before JAMS Orange County. The parties selected an arbitrator from a list of seven neutrals, whose multi-page disclosure statement explained that, like all JAMS neutrals, he had an economic interest in the financial success of JAMS. It did not, however, disclose that the arbitrator was actually a co-owner of JAMS. After the arbitrator issued an award in favor of Monster, the parties cross-petitioned a federal district court to confirm or vacate the award.

In challenging the award, Olympic Eagle sought with difficulty to determine how many disputes Monster had arbitrated before JAMS, ultimately discovering that JAMS had administered 97 arbitrations for Monster over five years. Olympic Eagle argued that Monster’s status as a repeat player created at least an appearance of bias where the arbitrator held an ownership interest in JAMS. Monster countered that this objection was waived when Olympic Eagle learned of the arbitrator’s economic interest in the company but failed to challenge it on the grounds of evident partiality. The Ninth Circuit, however, concluded that there was a substantive difference between disclosing an economic interest shared by all JAMS arbitrators and an actual ownership interest, which only about a third of arbitrators held in JAMS. Although the court did not conclude that this interest necessarily required recusal of the arbitrator, disclosure was required to safeguard the parties’ right to be aware of relevant information to assess an arbitrator’s neutrality. Monster’s repeat business with JAMS, along with the arbitrator’s failure to disclose his full interest in JAMS, created a reasonable impression of bias, and the court therefore vacated the arbitration award.

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