
PLAINTIFF WHO FAILS TO PARTICIPATE IN ARBITRATION WAIVES RIGHT TO APPEAL AWARD

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Romer-Pollis v. Ada

Ct. Appeals, Div. One, December 24, 2009

Authored By The [JSH Appellate Team](#)

Plaintiff was involved in an auto accident. The suit against Defendant was referred to arbitration. But Plaintiff failed to submit the required pre-hearing statement. Nor did she appear personally at the hearing, though her attorney appeared by phone. Her counsel offered no exhibits. Plaintiff was awarded \$4,000 at the hearing and appealed for a trial de novo. Defendant moved to dismiss the appeal for Plaintiff's failure to comply with Rule 75(h), Ariz. R. Civ. P. That rule says a party can waive the right to appeal an arbitration award if they "fail[] to appear at a hearing or to participate in good faith at a hearing..." Plaintiff argued that her "testimony would not have added or subtracted from the decision" and that "the parties submitted joint exhibits at the . . . hearing and the medical bills were stipulated to by counsel." Defendants had submitted all the evidence.

The trial court dismissed the appeal for Plaintiff's failure to participate in good faith, and the court of appeals affirmed, finding the dismissal within the trial court's discretion. While sometimes a defendant's appearance at an arbitration is unnecessary, here Plaintiff had the burden of proving her damages, and her testimony would have been helpful in that regard. In addition, Plaintiff failed to provide a prehearing statement and a list of witnesses and exhibits, and she offered no avowal, offer of proof, affidavit, or other testimony that she had a good reason for failing to comply. This supported the trial court's finding that she failed to participate in good faith, and thus waived any appeal from the arbitration award.