SUPREME COURT CASE: S 167169

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

PEARSON DENTAL SUPPLIES, INC, a California Corporation
aka PEARSON DENTAL SUPPLY COMPANY
Petitioner

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT
Respondent,

LUIS TURCIOS
Real Party in Interest

ANSWER TO LUIS TURCIOS' PETITION FOR REVIEW

FROM THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA,
SECOND APPELLANT DISTRICT, DIVISION 4
APPELLATE COURT CASE B 206740
GRANTING WRIT OF MANDATE, DIRECTED TO THE
SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES
CENTRAL DISTRICT COURTHOUSE
HONORABLE ALAN S. ROSENFIELD, JUDGE, PRESIDING
SUPERIOR COURT CASE NUMBER: BC 359 605

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COMES NOW, petitioner PEARSON DENTAL SUPPLIES, INC, a California Corporation aka PEARSON DENTAL SUPPLY COMPANY, {hereinafter "PEARSON"} and ANSWERS the Petition for Review of Real Party in Interest LUIS TURCIOS {hereinafter "TURCIOS"}.

Real party in interest TURCIOS, phrases its application to this court as a petition seeking:

> "....the judicial review permitted by a trial court to ensure an employee's anti-discrimination claim brought under the Fair Employment and Housing Act".

In reality, what TURCIOS seeks is an opportunity to effect the repudiation by this court of **California Civil Code § 1280 et seq.**, which

mandates and directs, among other things, that the trial court must affirm, and not review an Arbitrator's decision, even where such decision exhibits error on its face, and results in substantial injustice. TURCIOS further seeks to have this court turn a "blind-eye" to its previous decisions affirming this general rule prohibiting such review. Other courts of appeals, as did the appellate court that rendered the decision from which TURCIOS seeks review, have fully complied with the directives of this Supreme Court. **Jones vs. Humanscale Corporation [2005]** 130 Cal.App.4th 401, provides in very relevant support:

> Generally when faced with a petition to confirm or vacate an arbitration award, a COURT MAY NOT REVIEW THE MERITS OF THE PARTIES' CONTROVERSY OR CLAIMS THAT THE ARBITRATOR'S DECISION IS EITHER LEGALLY OR FACTUALLY ERRONEOUS. **[Moncharsh vs. Heily & Blase [1992]** 3 Cal.4th at p. 11.] "'[A]rbitrators do not exceed their powers merely [by] assign[ing] an erroneous reason for their decision.' [Citations]" (Id. At p.28.) Nor can an award be vacated because the arbitrator reached an erroneous decision. (Ibid.) {Emphasis Addes}

TURCIOS in the presentation of his theme that this court is compelled to undermine Legislatively enacted statutes and permit the review of every decision related in any manner to a Fair Employment and Housing Act {hereinafter "FEHA"} claim, aggrandizes and exaggerates the effect and result of the decision of the Court of Appeals to refuse to permit the disturbing of an arbitrator's decision that did no more than arise to the degree of being a decision that constituted substantial injustice.

For this honorable court to review this issue it must harbor some belief of the contention that an FEHA claim, is entitled to more consideration and absolute preference to all other statutes, including other statutes that relate and pertain to potential discriminatory conduct. Moreover, a review of this decision would signal that there exists an opportunity for "employee" attorneys to indiscriminately acquire judicial review of any decision regarding an FEHA based claim. Such a dilution of the general rule is not only not a proper subject for review, it would undermine the very reason and purpose for any employer to seek Arbitration of an employment matter.

After all, why should an employer seek arbitration where the only benefit to him is the mere circumstance of having to pay an arbitrator an hourly fee which averages four hundred and fifty dollars [$450.00]. Such would be the case if this Supreme Court determined that review of its already long standing directives pertaining to trial court interference with arbitration decisions is pressed to review.

This honorable court in **Armendariz vs. Foundation Health**

Psychare Services, Inc., [2000] 24 Cal.4th 83, established conclusively that FEHA claims are subject to employer-employee arbitration agreements. This determination was neither equivocal nor predicated upon any exceptions, whatsoever. **Armendariz** set out minimum requirements for an employer to comply with in order for his Arbitration Agreement to be effective, with the caveat that an employee should have the opportunity to vindicate his FEHA rights. This particularizing of the minimum standards of employer conduct did not, nor was it ever intended to, undermine reasonable arbitration processes, including a statute of limitations that was more than adequate, to allow the employee to vindicate his FEHA rights, had he timely submitted his claim to arbitration.

A perusal of the Court of Appeals decision, reveals that it explicitly and precisely presents reasoning and explanation for it decision that enlightens every reader to the nature and kind of circumstances in which a statute of limitations is applicable in relation to FEHA claims. This very articulate appellate court decision falls precisely within the mandates and directives of this very court, AND NEEDS NO REVIEW in order for this honorable court to restate its content.

What is also very certain is that TURCIOS cannot expect nor compel review of this matter predicated on its continued and chronic vilification of every person and company that employs an individual, and as a cost savings device requires a bilateral arbitration agreement. While it is true that a host of indecorous employers have created arbitration agreements with the intent

to advantage themselves and disadvantage an employee, this has never been the case here, and has never been shown to be the case.

TURCIOS raises as his only other issue for possible review, an absolutely erroneous claim that:

> ...the Court of Appeal states in its published decision an employer can prohibit an employee from seeking an administrative remedy before DFEH as term of a mandatory employment arbitration agreement." [See page 11, Section II., Second paragraph."]

No such statement was ever made by the Court of Appeal, and TURCIOS and his counsel should be admonished for such an erroneous and misleading characterization of the opinion of the Court of Appeals. The Court of Appeals, stated, quite accurately and precisely as follows:

> Of course, by signing the DRA, the parties in this case explicitly eliminated an administrative proceeding or lawsuit as a dispute resolution vehicle. [Opinion Pg 16, ¶ 2.]

This statement did not prohibit TURCIOS from seeking any administrative remedy. What it did, as the Court of Appeals pointed out, was eliminate any necessity or use for administrative process. This meant that TURCIOS could have brought his arbitration without first seeking a right-to-sue letter from the Department of Fair Employment and Housing.

Moreover, the only function of the administrative processes that an employee may seek from the DFEH is to acquire a letter that would have permitted him to seek resolve for his claim against his employer. The DFEH provides no remedial function, whatsoever. It just issues a letter granting an employee the right to act, which PEARSON and TURCIOS had, as mention before, eliminated such a requirement by eliminating administrative and lawsuit as alternatives to resolve any employment suit between them. Patently, TURCIOS could have acted, forthwith, in arbitration to effect resolve of his FEHA injury, without first having to comply with any administrative processes.

Patently, there is no confusion as to what was stated by the Court of Appeals, and if an employee and his employer has waived administrative and lawsuit processes in favor of arbitration, the employee can move immediately in arbitration to vindicate his FEHA rights. This well stated determination by the Court of Appeals also does not provide reason, cause or grounds for review by this honorable Supreme Court.

Petitioner PEARSON for all of the foregoing reasons, respectfully requests that this honorable Supreme Court deny TURCIOS petition for review.

DATED: October 20, 2008

Respectfully Submitted,

By: _____
RUSSELL BEHJATNIA, ESQ.
Attorney for Petitioner
PEARSON DENTAL SUPPLIES, INC.

CERTIFICATE OF WORD COUNT

I, RUSSELL F. BEHJATNIA, declare as follows:

1. I am an attorney licensed to practice law in all of the courts of the State of California. My law office is located at 14401 Gilmore Street, Suite 100, Van Nuys, California 91401. I am the attorney of record for Real Party-In-Interest, PEARSON DENTAL SUPPLIES, INC, in this instant matter. If called upon to do so, I could and would testify competently and completely to the following facts which are of my own personal knowledge.

2. The, ANSWER TO PETITION FOR REVIEW, was prepared on a "Word Perfect" computer program. The word count number determined by the computer program, and upon which I rely for this present certificate, totaled the number of words in the subject document to be one thousand five hundred and forty one [1,543] words.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed this 20th day of October, 2008, at Van Nuys, California,

By _____

Declarant Russell Behjatnia, Esq.

PROOF OF SERVICE
CCP §1013A(3)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party of the within action; my business address is 14401 Gilmore Street, Suite 100, Van Nuys, California 91401.

On 10/20/08 I served the foregoing:

ANSWER TO LUIS TURCIOS' PETITION FOR REVIEW

on the interested parties in this action

[X] by placing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United Stated mail at Los Angeles, California addressed as follows:

California Supreme Court 300 S. Spring Street, 2nd Floor Los Angeles, CA 90013	Original and 13 Copies
Second Appellate District California Court of Appeals 300 S. Spring Street, Room 2217 Los Angeles, CA 90013	1 Copy
Hon. Alan S. Rosenfield 111 North Hill Street, Dept. 31 Los Angeles, CA 90012	S.C.L.A. Respondent 1 Copy
Frederick Bennett, Esq. S.C.L.A. 111 North Hill Street, Room 546 Los Angeles, CA 90012	S.C.L.A. Respondent 1 Copy
N. Nick Ebrahimian, Esq. 8383 Wilshire Blvd., Suite 840 Beverly Hills, CA 90211 FAX NO.: 323-653-0081	Attorney for Turcios, Luis Real Party in Interest 1 Copy

[X] I deposited such envelope with postage thereon fully prepaid, in the mail at Los Angeles, California.

[ ] I am readily familiar with this firm's practice for correspondence for mailing. Under that

practice it would be deposited with the United State Postal Service on the same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[ ] **BY FACSIMILE:** I forwarded a copy of the said document by Facsimile (telecopier) to the party whose name and Facsimile number appears above.

[X] **(State)** I declare under penalty of perjury under the laws of the State Of California, that the above is true and correct.

[ ] **(Federal)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

DATED: 10/20/08

Russell F. Behjatnia