

(SBN)
(SBN)

Telephone:
Facsimile:

Attorneys for Respondents.

, and

IN THE MATTER OF THE ARBITRATION OF

ARBITRATION NO. 14058

ORDER GRANTING RESPONDENTS'
MOTION FOR JUDGMENT ON THE
PLEADINGS AND JUDGMENT OF
DISMISSAL

Date: December 9, 2016
Time: 9:00 a.m.
Dial-In: 800-861-4084
Code: 6947361585

Arbitrator: B. Scott Levine, Esq.

Arbitration Date: February 14, 2017

Claimant,

v.

and

Respondents.

The motion of Respondents

, and

, for an Order Granting Judgment on the Pleadings

and Judgment of Dismissal came on regularly for hearing at the above date and time.

Claimant did not oppose the motion. Claimant's Demand for Arbitration was filed on March 21, 2016. Claimant states in the Demand for Arbitration that she was aware of the alleged injury in 2014. The claim is, therefore, barred by the statute of limitations set forth in Code of Civil Procedure Section 340.5.

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS ORDERED that the Motion be and hereby is Granted and the Action be, and hereby is, Dismissed.

Nothing in this Arbitration Decision prohibits or restricts the enrollee from discussing or reporting the underlying facts, results, terms and conditions of this decision to the Department of Managed Health Care.

Date: January 3, 2017


Arbitrator, B. Scott Levine, Esq.

BSL

Arbitration Award

Instructions: The Neutral Arbitrator must serve the Award form on the parties and the within fifteen business days of the date of the closing of most arbitration hearings. (If there are three arbitrators, this Award must be signed by at least two of them.) See Rules 37 - 39

Arbitration Name: _____

Arbitration Number: 15066

The Arbitrator(s) selected to determine the dispute between the Parties in the above referenced action, find(s):

An arbitration hearing was held on April 5, 2019. (~~Motion for Summary Judgment~~).

It is the decision of the Arbitrator(s) that the prevailing Party in this Arbitration is (check one):

_____ The Claimant(s) is entitled to _____

Or:

The Respondent(s) is entitled to dismissal of the action.

The hearing was conducted (check one):

_____ in person by telephone _____ video conference _____ by documents only

Were attorney's fees awarded? _____ yes no

If yes, how much and to whom? _____


The reasons for this decision are attached.

(Rule 38 requires that the Award provide findings of fact and conclusions of law, consistent with California Code of Civil Procedure Section 437c(g) or Section 632.) *See attached Order Granting Motion for Summary Judgment.*

Nothing in this arbitration decision prohibits or restricts the enrollee from discussing or reporting the underlying facts, results, terms and conditions of this decision to the Department of Managed Health Care.



B. Scott Levine Esq.


Date 04/12/2019

Signature of Party Arbitrator

Date

Signature of Party Arbitrator

Date

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE MATTER OF ARBITRATION)
BETWEEN:)**

ARBITRATION No. 15066

**ORDER GRANTING RESPONDENTS'
MOTION FOR SUMMARY JUDGMENT**

Claimant,

vs.

**Date: 04/05/2019
Time: 11:00 a.m.**

California non-profit public benefit corporation, and
, a

**Arbitration
Hearing Dates: 05/07/2019 -05/08/2019**

Respondents.

The Motion of Respondents, a California non-profit public benefit corporation, and, came on regularly for telephonic hearing on April 5, 2019, at 11:00 a.m., before the undersigned arbitrator.

Claimant in pro persona appeared telephonically on her own behalf, and attorney, Esq., of, appeared telephonically on behalf of Respondents.

After full consideration of the evidence submitted by the parties, as well as the oral arguments of Claimant and Respondents, the undersigned arbitrator finds that there is no

1 triable issue of material fact and that Respondents are entitled to an award in their favor for
2 the following reasons:

3
4 1. **“A cause of action has no merit if either of the following exists:**

5 **(1) One or more of the elements of the cause of action cannot be**
6 **separately established, even if that element is separately pleaded; or**

7 **(2) A defendant establishes an affirmative defense to that cause of**
8 **action.”**

9 Cal Code Civ. Proc. §437c (o).

10 2. Respondents have met their burden of showing that one or more elements of
11 Claimant’s cause of action against them for premises liability cannot be
12 established. Respondents submitted evidence which was referenced in their
13 Separate Statement of Undisputed Facts sufficient to shift the burden to
14 Claimant to proffer evidence that she was injured as a result of a hazardous or
15 dangerous condition that existed on February 11, 2015, at approximately 10:15
16 a.m., in stairway # 1, at _____ and that
17 Respondents had actual or constructive notice of the condition in time to correct
18 it or that Respondents could have discovered such condition by the exercise of
19 ordinary care in time to correct it.

20
21
22 Cal Code Civ. Proc. §437c (o).

23
24 3. Claimant submitted no written opposition to Respondents’ Motion for Summary
25 Judgment. Claimant was required to submit a Separate Statement that (a)
26 indicates whether she agrees or disagrees with Respondents’ assertion that
27 specific material facts are undisputed; (b) sets forth any other material facts that
28

1 she contends are disputed; and (c) refers to supporting evidence for each
2 contention. Cal Code Civ. Proc §. 437(b)(3). Failure to comply may constitute
3 sufficient grounds for granting the motion. Id. Although Claimant stated at the
4 hearing that she was not aware of the requirement to file a written opposition to
5 Respondents' Motion, she did not request additional time to do so nor
6 does it appear that Claimant would be able to produce evidence to show that her
7 injuries were a result of Respondents' negligence even if she were given
8 additional time to do so.

- 9
- 10 4. The undersigned arbitrator does not doubt that the Claimant fell or that she was
11 injured. However, without any evidence to establish that Claimant was injured
12 as a result of Respondents' negligence, Claimant's cause of action against
13 Respondents for premises liability has no merit.

14

15

16 IT IS HEREBY ORDERED that Respondents' Motion for Summary Judgment is
17 granted per California Code of Civil Procedure Section 437c; and an award shall be issued
18 in favor of Respondents and against Claimant.

19

20 **NOTHING IN THIS ARBITRATION DECISION PROHIBITS OR RESTRICTS THE**
21 **ENROLLEE FROM DISCUSSING OR REPORTING THE UNDERLYING FACTS,**
22 **RESULTS, TERMS AND CONDITIONS OF THIS DECISION TO THE**
23 **DEPARTMENT OF MANAGED HEALTH CARE.**

24


25

26

27

28

Dated: April 12, 2019.


B. Scott Levine,
Arbitrator

1 It is **HEREBY ORDERED** that Respondents , a
2 California non-profit public benefit corporation, and
3 .’s Motion for Terminating Sanctions is Granted.
4

5 It is **FURTHER ORDERED** that Claimant’s claim against Respondents is dismissed
6 pursuant to California Code of Civil Procedure section 2023.030(d)(3), and an award shall issue
7 in favor of Respondents.

8
9 Dated: 04/12/2019

10 
11 _____
12 B. Scott Levine
13 Arbitrator
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28