



# MICHAEL P. CARBONE, ESQ.

## REPRESENTATIVE CASES AND ACCOMPLISHMENTS

Michael Carbone's legal career began in 1967 and has covered an extremely wide range of civil law, primarily including litigation, alternative dispute resolution, commercial real estate transactions and business law. Set forth below are some of his more significant achievements, first as a lawyer and then as an ADR neutral.

### I. LEGAL CAREER

#### A. Litigation

Michael handled numerous jury and bench trials, as well as appeals, in both state and federal court. As examples:

- He briefed and argued the appeal in *Transamerica Title Insurance Company, Inc. v. Green*, (1970) 11 Cal.App.3d 693, 89 Cal. Rptr. 915, 44 ALR3d 543, which established for the first time in California the duty of a notary public to obtain identification from the signatory to a document.
- He represented The Gypsum Association in the Gypsum Wallboard Antitrust cases, which resulted in the largest civil settlement up to that time in a price fixing case, obtaining a dismissal of the client on summary judgment.
- He successfully represented a private university in a wrongful termination lawsuit brought by a faculty member who failed to achieve tenure, resulting in a mediated settlement at a time when mediation was virtually unknown as a way of settling cases.
- He represented the same client in a breach of contract case brought by a student who failed to earn a law degree. Following adverse decisions in the Superior Court and the District Court of Appeal, the case was successfully appealed to the California Supreme Court.
- He successfully defended an architect against a claim for malpractice in the preparation of an estimate for major renovation of a downtown office building in San Francisco
- He successfully defended a major retail chain in a consumer fraud action brought by the purchaser of a diamond ring.

#### B. Commercial Real Estate

Michael has represented owners of commercial real estate in complex purchase, sale, financing and development transactions. Noted especially for his expertise in commercial leasing, he has represented both landlords and tenants in the negotiation of thousands of commercial leases over a period of more than thirty years, primarily involving complex shopping center and other retail leases, as well as ground leases.

### **C. Construction Law**

He has represented owners, contractors, subcontractors and design professionals in the negotiation of contracts and in the litigation and resolution of various kinds of claims, including claims for construction defects, money due on contracts, and enforcement of mechanics' liens.

## **II. DISPUTE RESOLUTION PRACTICE**

Michael has served as a mediator, arbitrator or referee in more than 400 cases in many different subject areas, including construction contract and defect claims, real estate, business disputes, condemnation, partnership and trust accountings, breach of contract, franchise cases, estate and trust matters, personal injury and property damage, professional negligence, insurance coverage, employment discrimination and wrongful termination, and elder abuse.

The following cases are representative of his work in these areas.

### **A. Business Cases**

As mediator facilitated a high six figure settlement of a claim by a group of physicians against their outside billing service for failure to bill and/or collect for services, including resolution of insurance coverage issues and involving a complex claim for damages.

Mediated the settlement of a claim by an investor against a mortgage broker for the loss of hundreds of thousands of dollars invested in deeds of trust.

Settled a lawsuit for mismanagement brought by the members of a church against their governing board.

Mediated and settled a dispute between competing franchisors regarding tortious interference.

Settled claims involving breach of warranty and misrepresentation in the sale of a radio station.

### **B. Construction and Construction Defect**

Mediated and settled dozens of cases involving construction defects and breach of contract claims in connection with the construction or remodeling of condominium buildings, luxury homes, and commercial and industrial properties, including complex multi-party litigation.

Settled a legal malpractice case against an attorney representing a homeowners' association in a construction defect case.

Settled claim by a hospital against an engineer for professional negligence.

Settled a legal malpractice case against an attorney representing a homeowners' association in a construction defect case.

Settled a claim by the trustees of a fringe benefit trust fund for a contractor's failure to pay contributions.

### **C. Employment**

Chaired an arbitration panel hearing a high value wrongful termination claim brought by an executive of a mortgage loan brokerage company.

Mediated and settled numerous other employment disputes, including discrimination, harassment, and termination.

### **D. Family, Estate and Personal Matters**

Mediated six figure settlement of a lawsuit by a domestic employee against a decedent's sole heir for breach of a contract to make a will.

Settled numerous family disputes over property, including two high value lawsuits between brothers over their fathers' estate.

Settled a claim by the daughter of a patient in a convalescent and rehabilitation center for elder abuse, negligence and wrongful death.

Arbitrated a legal malpractice case against an attorney representing a plaintiff in an auto accident case.

Settled numerous auto accident cases and other cases for personal injury and property damage.

### **E. Real Estate**

Mediation of numerous cases for nondisclosure of material information in sale of real estate, breach of contract of purchase and sale, breach of commercial lease, partition, land use, fraud, foreclosures, eminent domain, inverse condemnation, easements, condominium issues, and tenancies in common.

Settled a lawsuit for breach of a multi-million contract to purchase an office building in downtown San Francisco by facilitating a negotiated modification of the contract and the closing of the sale.

As court-appointed referee in two complex partition cases involving the same owners, heard and decided issues arising from contested accounting of income and expenses and breaches of fiduciary duty; determined values of two parcels of real estate (including a San Francisco apartment house and a residence and vineyard in Sonoma County), enabling the owners to buy each other's interests in the respective properties and thereby conclude partition by appraisal of both properties.

As court appointed referee in another complex partition case involving three parcels of investment real estate worth several million dollars, heard and settled accounting of income and expenses, oversaw a partition in kind of a condominium building and sold the other two parcels.

Settled a claim by a limited partner against the general partner for failure to maintain required reserves.

Mediated claims between a landlord and a tenant of office space in downtown San Francisco for failure to pay rent and for constructive eviction.

Settled a lawsuit by a real estate agent against his former employer for unpaid share of commissions.

Arbitrated a dispute arising from dissolution of a real estate limited partnership.