

**F I L E D**

March 31, 2004

Charles R. Fulbruge III  
Clerk

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 03-30614

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BERK-COHEN ASSOCIATES, L.L.C.,

Plaintiff-Appellant,

versus

ORKIN EXTERMINATING COMPANY, INC.,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
(94-CV-3090)

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Before KING, Chief Judge and BENAVIDES and CLEMENT, Circuit Judges.

PER CURIAM:\*

Appellant Berk-Cohen Associates, L.L.C. (“Berk-Cohen”) appeals the district court’s enforcement of an arbitration award on the grounds that the arbitrators acted with manifest disregard of the law. Assuming *arguendo* that the “manifest disregard of the law” standard is a valid basis for

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\* Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

vacating an arbitration award for a dispute arising under a commercial contract, we agree with the district court that Berk-Cohen nonetheless failed to meet this high standard of proof. We agree with the district court's conclusion that the arbitration panel did not commit manifest error in ruling that Berk-Cohen should have mitigated the damages caused by the negligence of Orkin Exterminating Company, Inc. AFFIRMED.