Circuit Court for Baltimore City
Case No. 24-C-20-002773

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 758

September Term, 2021

RICHARD JAMISON

v.

ACCESS WORLD (USA), LLC

Wells, C.J.,
Leahy,
Eyler, Deborah S.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Wells, C.J.

Filed: June 7, 2022

This appeal arises from a contract dispute in which appellee, Access World (USA) LLC ("Access World"), terminated a consulting contract with appellant, Richard Jamison ("Jamison"), based on its belief Jamison had breached. Jamison disagreed and sought payment he believed he was owed under the contract. The parties submitted the dispute to binding arbitration and hearings were held in May and June 2020 before a three-member arbitration panel (the "Panel"). The Panel held that Jamison breached, but that Access World owed Jamison annual bonuses for 2016 and 2018. Jamison moved for modification of the award, submitting new evidence in support of his entitlement to a bonus for 2019. The Panel denied the motion. Jamison moved to vacate the Panel's award in the Circuit Court for Baltimore City. The circuit court affirmed the Panel's award and Jamison timely appealed, presenting the following issues which we have consolidated and rephrased for clarity[1]:

[1] Jamison's questions presented, verbatim, were:

I. Did the panel err by refusing to rule upon appellant's motion seeking a bonus payment for 2019 and did the trial court err by denying petitioner's claim for a $50,000 bonus payment for calendar year 2019, disregarding the arbitration panel's express deferral to it to consider the issue?

II. Did the panel err by enforcing a demand for an illegal contract performance relying on a hypothetical ability of appellee to render the illegality lawful?

III. Did the panel err by manifestly disregarding established law with respect to the requirement for legally sufficient evidence of the elements of breach of contract to support a verdict?

IV. Did the panel and trial court err by disregarding unambiguous contract provisions?

I. Did the Panel exceed its authority or manifestly disregard existing law in declining to reconsider whether Jamison was owed a bonus for 2019?

II. Did the Panel exceed its authority or manifestly disregard existing law in finding Jamison breached the contract with Access World?

For reasons we explain, we answer "no" to both questions and affirm.

PROCEDURAL AND FACTUAL BACKGROUND

On April 1, 2015, Jamison and Access World[2] entered into a contractual agreement ("the Agreement"), under which Jamison, through his company Ruxton Services, would provide consulting services to Access World. In exchange, Access World would pay Jamison a monthly salary and annual bonuses. The annual bonuses were to be $50,000 less the "adjusted net profit" Ruxton Services realized for that year. In February 2018, Access World terminated the Agreement based upon its belief that Jamison had competed with Access World in breach of the Agreement. Access World alleged Jamison had engaged in prohibited competition by not referring to Access World opportunities for a cargo of waelz oxide, a cargo of manganese, a sublease of Jamison's warehouse space, and a cargo of poultry vitamins. Jamison countered that he did not ultimately compete with Access World, and thus Access World's termination of the Agreement was itself a breach. Jamison also claimed he was still owed annual bonuses for the years of 2015 through 2019.

V. Did the trial court err by speculating on unstated rulings by the panel it found to be implied by other findings of the panel to uphold the panel's failure to rule on all issues presented to it?

[2] Access World is an international Logistics Service Provider. It transports commodities through its "global network of port and warehouse facilities." https://accessworld.com/.

The parties submitted the dispute to binding arbitration consistent with the terms of the Agreement. A panel of three arbitrators—the Honorable Judge Joseph F. Murphy (Retired), the Honorable Judge Richard Sothoron (Retired), and Nathanial Fick, Esquire—held hearings on the breach of contract issue over three days in May 2020. On May 20, the Panel issued an opinion concluding Jamison had breached the non-compete provision of the Agreement, but nonetheless awarded him $139,383.00. Jamison moved to modify and correct the Panel's award on May 26, and after a host of additional motions and responses were filed, the Panel held an additional full day hearing on August 4, 2020 on the issue of Jamison's entitlement to annual bonus payments.

The Panel issued its ruling on October 1, 2020, rendering an award to Jamison in the reduced amount of $100,000.00 in damages for annual bonus payments: $50,000.00 for 2016 and $50,000.00 for 2018. The Panel denied Jamison award of bonus payments for 2015 and 2017. The Panel concluded that the determination of payment of a bonus under the parties' contract required a tax return, as the amount of each potential bonus payment was to be determined by subtracting Ruxton Services' net profit[3] for that year from $50,000.00. Jamison had not filed his 2019 tax return at the time of the August 4 hearing, nor by the time the October 1 opinion was issued.[4] Accordingly, the Panel did not rule on his entitlement to a bonus for 2019, but said that Jamison "has the right to *assert* a claim

[3] The Panel ruled that the term "net profit" meant "taxable income earned by Ruxton Services less taxes paid by Ruxton Services."

[4] As Jamison explained during the August 4 hearing, an extension to October 15, 2020 had been granted for filing his 2019 tax return.

for a bonus in the year 2019" and that whether he should be awarded a bonus, and the amount of that bonus, should be resolved by the same method the Panel used in making determinations for years 2015 through 2018. (Emphasis in original).

On October 20, 2020, five days after Jamison filed his 2019 tax return, he filed a motion for modification or clarification with the Panel on the matter of a 2019 bonus payment. Jamison reported that his 2019 tax return indicated a net profit of -$4,368.00, and thus he was entitled to a $50,000.00 bonus for that year. Jamison also advised that he had submitted a copy of the return to Access World and requested an agreement on the numbers therein but had not received a response. The Panel denied the motion without comment the next day.

Jamison filed a second amended petition to vacate the arbitration award[5] to the Circuit Court for Baltimore City on November 6, 2020. A hearing was held before the Honorable Judge Yvette Bryant on June 11, 2021, and on July 9, 2021, the circuit court issued its judgment confirming the panel's award of $100,000.00 to Jamison. Jamison timely appealed to this Court.

[5] The docket shows that Jamison filed a complaint with request for a jury trial on June 23, 2020, and then an amended complaint on June 24, 2020, with the Circuit Court for Baltimore City. Nothing resulted from either complaint; both were closed as "moot" on July 9, 2021, the day the circuit court issued its order affirming the Panel's award. In each of these previous complaints, Jamison's challenges were to the Panel's finding of breach and its failure to expressly address each of his defenses to breach. In Jamison's second amended petition, he raised for the first time the issue that the Panel did not determine and then refused to reconsider whether he was owed a bonus for 2019.

STANDARD OF REVIEW

While "[a]n appellate court reviews without deference a trial court's ruling on a petition to vacate an arbitration award," *Prince George's Cnty. Police Civilian Emps. Ass'n v. Prince George's Cnty. ex rel. Prince George's Cnty. Police Dep't,* 447 Md. 180, 192 (2016), "judicial review of an arbitration award is very narrowly limited." *Id.* (quoting *Downey v. Sharp*, 428 Md. 249, 268 (2012)). Essentially then, when as here, a trial court has affirmed an arbitration award, our review is focused on the arbitrator's decision itself, and that review is very deferential. "Courts generally defer to an arbitrator's findings of fact and applications of law. Mere errors of law and fact do not ordinarily furnish grounds for a court to vacate . . . an arbitration award." *Id.* Likewise, "[t]he fact that arbitrators may fail to follow strict legal rules of procedure and evidence is not a ground for vacating their award." *Chillum-Adelphi Volunteer Fire Dep't, Inc. v. Button & Goode, Inc.*, 242 Md. 509, 518 (1966). In the case of an arbitrator's contract interpretation, our Court of Appeals has quoted the Supreme Court in saying "the courts have no business overruling [the arbitration award] because their interpretation of the contract is different from [the arbitrator's]." *Prince George's Cnty. Police Civilian Emps. Ass'n,* 447 Md. at 193 (quoting *United Steelworkers of Am. v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 599 (1960)) (alterations in *Prince George's Cnty. Police Civilian Emps. Ass'n*). In short, "a party seeking to set [an arbitrator's decision] aside has a heavy burden," as "the standard of review of arbitral awards is among the narrowest known to the law." *Letke Sec. Contractors, Inc. v. United States Sur. Co.*, 191 Md. App. 462, 472 (2010) (internal quotation marks and citation omitted).

The Maryland Uniform Arbitration Act ("MUAA") is set forth in Maryland Code (2006 Repl. Vol., 2011 Supp.), §§ 3–201 et seq. of the Courts and Judicial Proceedings Article ("CJP"), and "expresses the legislative policy favoring enforcement of agreements to arbitrate." *Walther v. Sovereign Bank*, 386 Md. 412, 424 (2005) (quoting *Cheek v. United Healthcare of the Mid-Atlantic, Inc.*, 378 Md. 139, 146 (2003)). "When parties to an arbitration agreement have not established rules of procedure to govern the arbitration, the procedural provisions of the MUAA control." *Mandl v. Bailey*, 159 Md. App. 64, 87 (2004).[6] Section 3-224(b) outlines the limited grounds for vacation of arbitration awards:

> The court shall vacate an award if:
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> (1) An award was procured by corruption, fraud, or other undue means;
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> (2) There was evident partiality by an arbitrator appointed as a neutral, corruption in any arbitrator, or misconduct prejudicing the rights of any party;
>
> (3) The arbitrators exceeded their powers;
>
> (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown for the postponement, refused to hear evidence material to the controversy, or otherwise so conducted the hearing, contrary to the provisions of § 3-213 of this subtitle, as to prejudice substantially the rights of a party; or
>
> (5) There was no arbitration agreement as described in § 3-206 of this subtitle, the issue was not adversely determined in proceedings under § 3-208 of this subtitle, and the party did not participate in the arbitration hearing without raising the objection.

[6] The MUAA applies in the instant case, as the Agreement only says that disputes will be resolved "by arbitration in accordance with Maryland law." Moreover, both parties in their briefs concede the MUAA applies to their dispute.

Md. Code Ann., CJP § 3-224(b). Jamison avers vacation of the Panel's award is required because the Panel "exceeded its powers" under § 3-224(b)(3). Unlike the merits of an arbitrator's award, which are accorded great deference by the reviewing court, "when the arbitrators' very authority to adjudicate the dispute is challenged, such obedience to the arbitrators' assertion of jurisdiction is clearly inapt." *Stephen L. Messersmith, Inc. v. Barclay Townhouse Assocs.*, 313 Md. 652, 660 (1988).

I. The Panel did not "exceed its powers" in declining to reconsider whether Access World owed Jamison a $50,000.00 bonus for 2019.

A. Parties' Contentions

Jamison contends that prior to the Panel's issuance of its October 1, 2020 award, there "was no requirement for consideration of information set forth in [Jamison's] tax return as the contract did not mention it." And because Jamison's tax return was not due until October 15, and he was not aware he would need it to prove he was owed a bonus for 2019, he had no opportunity to provide the required information prior to the Panel's award. Thus, he asserts, the Panel "exceeded its power," or manifestly disregarded the law[7], when it denied his October 20 motion to modify the award once he had his 2019 tax return. In his view, the Agreement required the Panel to resolve all disputes before it. Further, Jamison asserts it was clear error for the trial court to refuse to consider the issue when the Panel clearly deferred to the court.

[7] "Manifest disregard of existing law" is a recognized common law ground for vacation of an arbitration award, *WSC/2005 LLC v. Trio Ventures Assocs.*, 460 Md. 244, 260 (2018), which we shall address later in this discussion.

Access World does not address each of Jamison's arguments individually, but avers that Jamison claims the Panel "exceeded its powers" because "that is the only conceivable ground" on which he can "assault . . . the unanimous findings of the arbitration panel" under CJP § 3-224(b). Access World disputes Jamison's use of this ground for vacation of the award, asserting that, in actuality, each of Jamison's challenges go "to the heart" of the Panel's findings of fact or conclusions of law, rather than pointing out where the Panel issued a ruling on an issue that was not properly before it.

B. Analysis

The Court of Appeals has explained that an arbitrator "exceeds [his or her] power" when "the arbitrator, under the arbitration agreement . . . had no power or authority to resolve the particular issue" it resolved by making an award. *Downey v. Sharp*, 428 Md. 249, 263 (2012). This Court has also recognized that "arbitrators exceed their powers . . . if, though having full power to consider the subject matter of a dispute, they issue an award which cannot be supported by any rational construction of the parties' *substantive contractual provisions.*" *Snyder v. Berliner Const. Co.*, 79 Md. App. 29, 37 (1989) (emphasis in original) (citing *O.S. Corp. v. Samuel A. Kroll, Inc.*, 29 Md. App. 406, 410 (1975)). Most relevant to Jamison's contention is a third category of exceeding powers identified by this Court in *McKinney Drilling Co. v. Mach I Ltd. Partnership*, 32 Md. App. 205, 211 (1976), where we held "that arbitrators exceed their jurisdiction by refusing to consider all claims that are properly before them." *Snyder*, 79 Md. App. at 37–38.

In *McKinney*, the arbitrator refused to consider a party's counterclaim for damages on his belief "it was outside the scope of the arbitration." *McKinney*, 32 Md. App. at 208.

This Court affirmed the trial court's vacation of the award to the other party, based on three key observations:

> We note (1) that . . . the contract between McKinney and Mach provides that '(a)ll claims . . . shall be decided by arbitration . . .', (2) the claim and counterclaim arise from the same factual dispute; and (3) the arbitrator's award purports to settle all claims submitted to him.
>
> It is manifest from the questions asked of the arbitrator that the counterclaim was presented, but that he failed to consider it under the mistaken belief that it was outside the scope of the arbitration. Patently, such belief i[s] inconsistent with the statement in the arbitration award that the '. . . award is in full settlement of all claims submitted to the arbitration.'

Id. at 210–11.

Here, the relevant portion of the Agreement provides: "In the event a dispute arises in connection with this Agreement, which cannot be resolved amicably, such dispute shall be finally resolved by arbitration in accordance with Maryland law." Neither party challenges the Panel's authority to arbitrate their dispute over the issues of breach or Jamison's entitlement to annual bonus payments. Likewise, it is clear the Panel had the authority to determine, specifically, whether Jamison was entitled to an annual bonus for 2019. This issue was presented to the Panel at the August 4 hearing when Jamison expressly stated he was raising claims for an annual bonus for each year from 2015 through 2019. And on the Panel's instruction for the parties to submit proposed findings of fact at the conclusion of taking evidence on August 4, Jamison submitted his adjusted net profits for each contemplated year, including 2019, and proposed a finding that he was entitled to a bonus payment of $50,000 for each year.

During the August 4 hearing, in support of his claim for bonuses for 2015 through 2018, Jamison read to the Panel the taxable income reported to the IRS from the corresponding Ruxton Services' annual financial statement. When Jamison got to 2019, however, he explained that it

> has not yet been prepared. There's an extension request then for the tax return, which is not yet due and those numbers have not been completed. So that remains to be seen. And that is net of cost of goods sold, direct costs and general administrative expenses.

Upon reviewing his records moments later though, he clarified that the financial statement for 2019 was prepared and showed a loss of $4,368.20 but confirmed the 2019 tax return had not yet been filed.

In its October 1, 2020 opinion and award, the Panel held that "net profit" under the Agreement means "taxable income earned by Ruxton Services less taxes paid by Ruxton Services," and thus Ruxton Services' filed annual tax returns were necessary for determining whether Jamison was entitled to an annual bonus in any given year. The Panel also concluded that the "audit" of Jamison's records which Access World was permitted to perform before paying out such a bonus under the terms of the Agreement means an "informal 'inspection' of relevant records." Because the Panel did not have a tax return for 2019 at the time of issuing its October 1, 2020 decision—and thus, Access World could not have 'audited' the relevant record even in the informal sense—it was not possible (or permissible) for the Panel to answer definitively whether Jamison was entitled to a bonus for that year. However, the Panel's opinion made clear the method by which the issue should be resolved, once a tax return was available. It provided, in relevant part,

> This Opinion addresses all of the remaining issues that were not resolved in the Panel's May 20, 2020 Opinion.
>
> …
>
> The Panel also declares that, while Ruxton Services has the right to *assert* a claim for a bonus in the year 2019, the merits of that claim must be resolved in conformity with the principles applied by the Panel in determining its entitlement to bonuses for the years 2015-2018.
>
> …
>
> The Panel declares that the issue of whether Ruxton Services is entitled to receive any bonus for the year 2019 is to be determined by an application of the principles applied by the Panel in determining its right to a bonus for the years 2015-2018. While the parties have the right to obtain judicial review of the Panel's decision, in the event that they are unwilling and/or unable to reach an agreement on the limited issue of whether Ruxton Services is or is not entitled to a bonus for the year 2019, and it becomes necessary to litigate only that issue, the Panel's findings of fact and conclusions of law shall constitute "the law of the case," and in any subsequent proceeding limited to that issue, neither party shall be entitled to relitigate findings of fact and conclusions of law set forth in the above Arbitration Proceedings Opinion and Award.

(Emphasis in original). By its terms, and because it resolves completely the matter of bonuses for years 2015 through 2018, and the matter of a bonus for 2019 to the fullest extent possible based on the evidence the Panel had at the time, this constitutes a final decision from the Panel. The Panel did not "exceed its power" or manifestly disregard existing law in issuing this decision.

Whether the Panel "exceeded its powers" in declining to address whether Jamison was owed a bonus for 2019 upon receipt of his motion to modify the award and his 2019 tax return, after the Panel had issued its final decision, turns upon its ability to grant such a motion. An arbitrator may modify or correct an award on any ground stated in CJP § 3–

223(b)(1),(2), or (3), or for the purpose of clarity. *Mandl v. Bailey*, 159 Md. App. 64, 87 (2004) (citing CJP § 3–222(c)). Section 3-223(b) requires modification or correction of an award if:

> (1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;
>
> (2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
>
> (3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

CJP § 3-223(b). None of these grounds apply to the instant case, where more specific facts were produced after the award was made, but where those facts did not affect or otherwise prove incorrect a calculation that had been made, and there was no contention the original award was unclear as to how the matter of a 2019 bonus should be resolved. Thus, the Panel's denial of Jamison's motion to modify the award did not "exceed its power."[8]

[8] We are likewise unpersuaded by Jamison's argument that the Panel's refusal to reconsider his entitlement to a 2019 bonus should be vacated on grounds that he provided the necessary evidence for his 2019 bonus as soon as he possibly could, since there was no reason for him to know prior to the Panel's award that a 2019 tax return would be necessary.

Both Counsel for Jamison and Access World examined Jamison and his accountant Matthew Hempey on his annual financial statements. Many questions focused on discrepancies between figures in the financial statements and the reported taxable income for a given year. Notably, neither Jamison nor Access World focused any of their questioning on the 2019 figures; both parties raised questions only as to the 2015, 2016, 2017, and 2018 statements. Similarly, at one point during these examinations, Judge Murphy asked Hempey: "And then what is the number for purposes of calculating [Jamison's] right to a bonus for 2015? Then we do it again for 2016, again with 2017 and again for 2018." Finally, neither party mentioned the matter of a 2019 bonus in its closing argument. Despite the significant focus on tax returns, Jamison did not request that the

Jamison also alleges the Panel manifestly disregarded the law—a recognized common law ground for vacation of an arbitration award. *WSC/2005 LLC v. Trio Ventures Assocs.*, 460 Md. 244, 260 (2018). Our Court of Appeals has explained that manifest disregard of the law is "more than a mere error of law or failure by the arbitrator to understand and apply the law." *Id.* at 262. Rather, it occurs when the arbitrator "made a palpable mistake of law or fact appearing on the face of the award"; "an error that is readily perceived or obvious; an error that is clear or unquestionable." *Id.* at 263. Considering our analysis above, we also do not find any unquestionable error apparent on the face of the Panel's award or its refusal to grant Jamison's motion to modify.

Finally, we find no error in the trial court's declination to award Jamison a bonus for 2019. In Jamison's second amended petition to vacate the arbitration award to the Circuit Court for Baltimore City, Jamison asked that the circuit court vacate the award and "conduct proceedings on the issue of damages or refer the matter to the appropriate tribunal for doing so." On appeal, Jamison asserts more directly the trial court erred "by denying [his] claim for a $50,000 bonus payment for calendar year 2019, disregarding the arbitration panel's express deferral to it to consider the issue." As discussed, § 3-224

Panel refrain from making a decision until he could submit a filed 2019 return, nor did he even inquire whether the Panel would require his 2019 return.

We do not see any discussion in the record that explicitly addresses why the parties refrained from discussing Jamison's 2019 financials. We can only surmise that the absence of a filed 2019 tax return caused the parties to avoid spending any time on that issue, as their discussion for every other year involved tax returns. Regardless, based on the above and several other conversations about tax returns held during the proceedings, we conclude that there should have been some indication to Jamison that a filed tax return would be necessary in order for his right to a 2019 bonus to be resolved.

provides limited grounds for vacating an arbitration award, and as we have concluded, the Panel did not "exceed its powers" or manifestly disregard existing law in issuing its award and in declining to grant Jamison's motion for modification. Jamison did not raise any other cognizable grounds for vacating the Panel's award, either in his request for judicial review to the circuit court or in his appeal to this Court. Thus, we conclude the circuit court did not err in declining to vacate the Panel's award. Regarding Jamison's claim that the circuit court erred in not resolving the issue of a 2019 bonus itself, we hold it would have been improper for the circuit court to make such an award based on brand new evidence—the 2019 tax return—that Access World had no opportunity to challenge.[9]

In sum, we find no grounds for vacating the Panel's denial of Jamison's motion to modify, nor do we find reversible error in the trial court's refusal to consider whether Jamison was entitled to a 2019 bonus.[10]

[9] We also disagree with Jamison's construction of the Panel's opinion as having "express[ly] deferred" to the circuit court to resolve the issue. We read the Panel's opinion to imply (at the very least) that the parties are to first attempt to resolve the issue themselves, using the Panel's clear methodology. Only if the parties "are unwilling and/or unable to reach an agreement", should litigation of the issue be necessary. We presume this would come in the form of a new proceeding; not a petition to vacate or modify the existing award.

[10] Additionally, we do not see why, by using the Panel's formula, the parties could not resolve the 2019 bonus issue themselves. Neither party appealed the Panel's use of its formula for calculating whether Jamison was owed a bonus. The formula was the basis for the Panel awarding Jamison bonuses for 2016 and 2018, and for not awarding him bonuses for 2015 and 2017. These facts led us to recommend mediation to the parties after the oral argument (which, for reasons unknown to us, was unsuccessful). If the parties cannot resolve the 2019 bonus issue themselves, they have the option of re-initiating the arbitration process.

II. The Panel did not err or manifestly disregard existing law in finding Jamison breached the Agreement.

A. Parties' Contentions

Jamison raises many arguments on appeal as to why the Panel erred in finding he breached the Agreement. *First*, Jamison asserts it would have been illegal for him to refer to Access World opportunities to transport hazardous materials, since Access World did not have the permits required to do so. Thus, Jamison says, the Panel's decision that he was nonetheless required to refer those opportunities to Access World enforces an illegal contract and illegal contract performance. *Second*, and similar to his first claim, Jamison says the Panel and trial court erred by disregarding unambiguous contract provisions in the Agreement that required Jamison to refer to Access World only those opportunities it was capable of fulfilling. *Third*, Jamison says the Panel "exceeded its powers" and manifestly disregarded established law by finding breach when there was insufficient evidence that Jamison actually competed with Access World. Rather, Jamison avers, the evidence demonstrated only that Jamison had the opportunity to compete with Access World but ultimately did not. Further, the opportunities which Jamison did not refer to Access World regarded the handling of hazardous materials, which Access World could not have legally transported, and so the Agreement did not require Jamison to make those referrals. *Fourth* and finally, Jamison asserts the Panel "exceeded its powers" by not ruling on each of his defenses to breach, and the trial court erred by affirming the Panel's judgment on its assumption the Panel found Jamison's defenses were not viable.

Again, Access World declines to address Jamison's argument point-by-point, instead emphasizing the heavy burden Jamison fails to overcome to have the Panel's decision vacated. Access World asserts the trial court was correct in deferring to the Panel's interpretation of the contract and its findings of fact, in light of the full and fair hearing Jamison received, the Panel members' experience in contract interpretation, and their rational conclusions which were supported by the evidence.

B. Analysis

Illegal Contract Enforcement

The relevant anti-compete provision in the Agreement reads:

> If [Jamison] is approached by a potential new customer looking for services which can be provided by [Access World], [Jamison] must notify [Access World] of the potential new business. [Access World] has the right to take on or refuse the new business.

Jamison's argument—that a referral to transport hazardous materials would have been illegal because Access World did not have the required permits—assumes that the phrase "services which can be provided by [Access World]" should be narrowly construed, such that only those opportunities that Access World is already legally cleared to provide, down to specific permits, require referral. The Panel interpreted that provision differently, to require Jamison's referral of opportunities that Access World could reasonably fulfill, even if doing so would require clearing additional regulatory obstacles prior to completion. As a clear dispute of contract interpretation, we decline to supplant our own interpretation for that of the Panel's. *See Prince George's Cnty. Police Civilian Emps. Ass'n*, 447 Md. at 193 (quoting *United Steelworkers of America*, 363 U.S. at 599) ("the courts have no

business overruling [the arbitration award] because their interpretation of the contract is different from [the arbitrator's]."") (alterations in *Prince George's Cnty. Police Civilian Emps. Ass'n*).

Bolstering the Panel's conclusion that the anti-compete provision and Access World's enforcement in this case were legal, was its finding that no evidence had been presented that Access World could *not* obtain the necessary permits. In response, Jamison cites to *Thorpe v. Carte*, 252 Md. 523, 529 (1969) to say that "there is no exception for the ability of the illegally acting party to hypothetically legitimize its conduct." In *Thorpe*, our Court of Appeals held that it would not require Thorpe to pay damages to the unlicensed broker with whom he had contracted to split the commission on a real estate sale. *Id.* at 530. The court observed that an unlicensed broker cannot share in real estate commissions under sections 227 and 288 of Article 56 of the Maryland Code. *Id.* at 528. Relying on the Second Restatements of Contracts § 580, which provides that "[a]ny bargain is illegal if either the formation or the performance thereof is prohibited by constitution or statute," the court held the contract was illegal and it would not enforce it. *Id.*

The instant case is distinct from *Thorpe*. Where in *Thorpe*, statutory provisions expressly prohibited the specific act the contract required, here, Jamison has pointed us to no such authority that makes the mere *referral* of any opportunity to another who does not yet have the legal qualifications to perform the work, illegal.

We find no reason to overturn the Panel's conclusion that the anti-compete provision of the contract and Access World's interpretation and enforcement in the case of referring opportunities to transport hazardous materials, are legal.

Disregard of Unambiguous Contract Provisions

Jamison essentially presents his "illegal contract and enforcement" argument in a different form by saying that the Panel disregarded two unambiguous provisions in the Agreement. The first provision, 7(c)(i), says "In providing the Services, [Jamison] shall:

> At all times comply with all laws, rules and regulations applicable to [Access World] and [Jamison] in the Territory including, without limitation, all laws, rules and regulations applicable to [Access World] and [Jamison] relating to bribery, money laundering and/or corrupt payments[.]

The second provision Jamison alleges the Panel disregarded is 9.3, in that it limits the opportunities Jamison must refer to Access world to those "services which can be provided by [Access World]." Jamison concludes that between these two provisions, he was not required to refer to Access World cargo that would be illegal for Access World to handle. For the reasons stated immediately above for rejecting Jamison's argument that referring to Access World opportunities to transport hazardous materials would have been illegal, we reject this argument that the Panel's award disregarded these unambiguous contact provisions.

Evidence of Competition

"Whether a party to a contract breached the terms of the contract is generally a question of fact because it is for the fact finder to decide between conflicting evidence regarding the party's conduct with respect to the contract." *Weaver v. ZeniMax Media, Inc.*, 175 Md. App. 16, 49 (2007) (citing 23 Richard A. Lord, *Williston on Contracts* § 63:15 (4th ed., Supp. 2006)). Thus, whether Jamison breached the anti-compete provision of the

Agreement is a question of fact, to be answered based on the Panel's interpretation of that provision (which, as explained, we shall defer to).

The evidence of potential breach before the Panel included:

- Access World's testimony and introduction of emails, showing that Jamison's son Spencer sent multiple emails "contacting suppliers and pricing equipment" that was used by another business "to secure the waelz oxide contract and bid on other contracts against Access World's interests." The e-mail address Spencer used was a Ruxton Services email address, and in the signature block, the phone number was to Ruxton Services and Spencer was listed as a director for Ruxton Services.

- Jamison's testimony that at one time he was in talks with another business on an opportunity to transport and store "China Vitamins" or "Poultry Vitamins," which contained a hazardous material. Jamison never referred this opportunity to Access World. No deal ever materialized.

- Jamison's testimony that he had discussed doing business with a company, Sojitz, involving the transport of hazardous materials. Jamison could not recall if a deal had ever been reached but felt sure Access World could not have handled the opportunity and never referred it to them.

- Jamison's testimony that he referred a number of other hazardous material transport opportunities to another business and not to Access World, on his belief that it would be illegal for Access World to take the business.

First, we note that the Panel could have reasonably concluded that breaching the anti-compete provision would not have necessarily required Jamison to *execute and fulfill* a "side deal" in competition with Access World. The provision requires that Jamison "notify [Access World] of the potential new business" he encounters, "which can be provided by [Access World]", so that Access World can decide whether "to take on or refuse the new business." Applying the plain meaning of this provision—as well as the Panel's conclusion that there was no evidence Access World could not have obtained the requisite permits—the Panel could have reasonably found Jamison breached the

Agreement, based solely on the evidence that Jamison discussed engaging his own business or that of others with potential customers seeking services that could have been provided by Access World, neglecting to refer those customers to Access World.

Neither this interpretation of the contract nor the factual finding of breach is irrational. Certainly, neither is "a palpable mistake of law or fact appearing on the face of the award." *WSC/2005 LLC*, 460 Md. at 260. And even if either constituted a lesser, mere error of law or fact, such errors are not grounds for vacating an arbitration award. *Prince George's Cnty. Police Civilian Emps. Ass'n*, 447 Md. at 192. "Courts generally defer to an arbitrator's findings of fact and applications of law," *id.*, and we see no reason to diverge from that rule here.

Panel's Failure to Expressly Rule on Each of Jamison's Defenses to Breach

Finally, Jamison alleges the Panel "exceeded its powers" by not ruling on all issues presented to it in that its opinion did not expressly address Jamison's defenses to breach of insufficient evidence and the illegal contract doctrine. Jamison's cites *Snyder*, 79 Md. App. at 37, for support. There, this Court explained that "arbitrators exceed their jurisdiction by refusing to consider all claims that are properly before them." *Id.* But that does not equate to a requirement that the arbitrator *expressly address* in his or her opinion every argument a party raised for or against a claim; it requires only that the arbitrator *consider* all claims.

In our view, the issues of sufficiency of the evidence for breach and the legality of referring a hazardous material opportunity to Access World are embedded in the Panel's determination of breach. That is, the Panel could not have found breach in this case without having determined that there was sufficient evidence that Jamison should have referred

certain opportunities to Access World but did not. We see no need to require the Panel to have expressly addressed these arguments in their opinion.

Further, the May hearing transcripts demonstrate that the Panel was actively considering whether the Agreement required Jamison to pass on certain hazardous material opportunities to Access World, and if so, whether he failed to do so. A vast amount of testimony was dedicated to establishing whether or not Access World had plans to obtain the necessary permits for storing hazardous materials, and the Panel inserted its own questions on the ease of obtaining the permits and penalties for not doing so. Additional testimony focused on conversations Jamison had with potential competitors of Access World and the presence of agency relationships between Jamison and those persons. There again, the arbitrators probed the witnesses for more details of their discussions with and reliance on Jamison for business.

Jamison directs us to no authority that would require arbitrators to include in their opinions an analysis of each argument and defense raised in resolution of the merits. We find no such requirement in our own review of the MUAA, and instead find authority that *supports* affirming an arbitration award that, as here, may not expressly address every argument raised, but nonetheless leaves no doubt as to the parties' rights and obligations. *See, e.g.*, *Mandl v. Bailey*, 159 Md. App. 64, 103 (2004) ("[A]n arbitration award is final and complete for purposes of court review when all the issues submitted to arbitration have been resolved definitively enough that the rights and obligations of the parties, with respect to those issues, 'do not stand in need of further adjudication'.") (quoting *Rocket Jewelry Box, Inc. v. Noble Gift Packaging, Inc.*, 157 F.3d 174, 176 (2d Cir. 1998)); *Birkey Design*

Grp., Inc. v. Egle Nursing Home, Inc., 113 Md. App. 261, 267 (1997) ("If, on its face, the award represents a plausible interpretation of the contract, judicial inquiry ceases and the award must be enforced. This remains so even if the basis for the arbitrator's decision is ambiguous[.]") (internal quotation marks and citation omitted); *W. Elec. Co. v. Commc'n Equip. Workers, Inc.*, 409 F. Supp. 161, 174 (D. Md. 1976), *aff'd sub nom. W. Elec. Co. v. Commc'n Equip. Workers, Inc., Indep.*, 554 F.2d 135 (4th Cir. 1977) ("A mere ambiguity in the opinion accompanying an award, which permits the inference that the arbitrator may have exceeded his authority, is not a reason for refusing to enforce the award.") (quoting *United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 598 (1960)). We find this argument to be without merit.

Having found none of Jamison's arguments on appeal to require vacating the Panel's award, we affirm.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. APPELLANT TO PAY THE COSTS.