Circuit Court for Baltimore City
Case No. 24-C-21-004745

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1400

September Term, 2022

STANDARD COATINGS &
CONSTRUCTION, *ET AL.*

v.

SABIN SWICKARD, *ET AL.*

Wells, C. J.,
Nazarian,
Storm, Harry C.
(Circuit Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: November 29, 2023

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

The parties to this appeal seek to wash their hands of this bathroom renovation dispute. The contractors, Standard Construction & Coatings, LLC[1] and Chung Yi, challenge the Circuit Court for Baltimore City's summary judgment in favor of their customers, homeowners Sabin Swickard and William Booz (the "Homeowners"), that denied Standard's petition to vacate an arbitration award, confirmed the award, and awarded the Homeowners attorneys' fees. Standard contends that the circuit court erred in granting summary judgment by failing to draw factual inferences in its favor as nonmovant and that the court abused its discretion in awarding attorneys' fees. We disagree and affirm.

I. BACKGROUND

Mr. Yi owns Standard, which is in the business of commercial and residential renovations. The underlying renovation began around August 2019, when Ms. Swickard and Mr. Booz hired Standard to renovate a bathroom in their Anne Arundel County home. In a written contract, the Homeowners agreed to pay Standard progress payments toward the contract price of $9,500 as work was completed.

The contract provided that if the Homeowners wanted defects in the work corrected, they needed to give "notice in writing, served via certified mail, of all allegedly defective materials or work . . . ." The agreement also defined the circumstances under which the Homeowners could terminate the contract for "unsatisfactory" work:

> FAILURE TO ADEQUATELY PERFORM. Upon written notification from [the Homeowners] that Standard's

[1] Standard clarifies in its brief that the words "Construction" and "Coatings" "were inadvertently juxtaposed in the filings." We'll avoid any confusion by referring to the business and Mr. Yi together as "Standard" throughout this opinion.

> performance is in any respect unsatisfactory, needs correction, or that Standard has failed to comply fully with the terms of this Agreement, [the Homeowners] may after ten (10) business days written notification and failure of Standard to correct the matter described in the notification, terminate the Contract and [the Homeowners] shall have all the rights and remedies provided at law or in equity, including those specified in Paragraph below
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> * * *
>
> WARRANTY: Standard warrants against any loss or damage arising from any defect in materials and workmanship furnished under this Agreement . . . . Upon written notification via certified mail of defects from [the Homeowners], Standard shall proceed with reasonable diligence to investigate, and if necessary, replace any defective materials or perform any labor necessary to correct any defect in the Project and, upon failure of Standard to do so, [the Homeowners] may furnish or secure, at Standard's expense, such material or labor as are necessary to bring the work up to the required standard, all costs thus incurred thereupon becoming a debt immediately due and payable by Standard . . . .
>
> RIGHTS OF [THE HOMEOWNERS] ON EARLY TERMINATION: In the event of termination of this Agreement by [the Homeowners] as provided herein, Standard hereby authorizes [the Homeowner] to perform and complete the Work and in connection therewith . . . .
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> * * *
>
> The Parties further agree that if [the Homeowners] terminate this Agreement pursuant to the provisions of this paragraph, then Standard shall be paid for all Work that Standard has completed as of the date of termination.

The renovation began and the Homeowners paid three out of four progress payments, $7,125 in total, toward the contract price. The Homeowners also paid an additional $3,000 for plumbing materials and purchased tile for $2,725 that was not in the original scope of work. But Ms. Swickard quickly became dissatisfied with the quality of

the work and on October 9, 2019, told Standard to stop working and requested a refund. Standard refused, and Ms. Swickard filed a Maryland Home Improvement Commission ("MHIC") Guaranty Fund claim[2] on January 27, 2020, requesting $10,125, which represented the "[a]mount of original contract," in addition to $3,000 in extra charges.

A. The Arbitration.

The parties agreed to arbitrate their dispute through the Maryland Office of the Attorney General's free Arbitration Program. Both sides signed a form arbitration agreement that listed (only) Ms. Swickard as the "consumer." In the "Nature of Consumer's Claim" section of the form, the Homeowners stated that Standard "did not complete the project and some of the work in the bathroom is defective." The Homeowners claimed further that "they were overcharged $3,000 in plumbing costs," and they estimated damages in the amount of "$13,341.87, which includes the original contract price of $10,025.00 and the $3,000.00 plumbing charge."

Importantly, the agreement to arbitrate also contained broad language in which the parties agreed to arbitrate "all disputes . . . which arise out of the transaction described

[2] MHIC Guaranty Fund claims are governed under Maryland Code (1992, 2015 Repl. Vol.), Title 8, Subtitle 4 of the Business Regulation ("BR") Article. The Fund gives homeowners an administrative remedy to "recover compensation from the Fund for an actual loss that results from an act or omission by a licensed contractor . . . as found by the Commission or a court of competent jurisdiction." BR § 8-405(a). "Actual loss" is "the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate or incomplete home improvement." BR § 8-401. Recovery from the Fund does not "limit the availability of other remedies to a claimant[.]" BR § 8-402. *See generally Brzowski v. Md. Home Improvement Comm'n*, 114 Md. App. 615 (1997) (reviewing recovery from the Fund based on an arbitration award).

above":

> I agree on my own behalf, or on behalf of the Business named below, to submit all disputes between myself and the other party, which arise out of the transaction described above to binding arbitration under the Rules of Arbitration of the Office of the Attorney General, Consumer Protection Division, a copy of which I have received, and the Maryland Arbitration Act.
>
> I understand that in the event that any relief is awarded, the arbitrator will consider the costs of the goods, or services and any related damages arising from the transaction, but in no event will punitive damages or attorney's fees be considered. I agree to be bound by any arbitration award resulting from these proceedings, subject to a right to appeal under limited circumstances specified in the Maryland Arbitration Act. I also agree that no further legal action will be taken against the other party to this agreement arising out of the transaction described above as to the facts that are known or should be known to me today. I further agree that the Consumer Protection Division may seek confirmation of the decision rendered by the arbitrator and that jurisdiction and venue in this case shall rest with the Circuit Court for Baltimore City or in the Circuit Court where the arbitration was held.

The arbitration was conducted remotely on July 13, 2021. Both Ms. Swickard and Mr. Booz were present and represented by counsel, and Mr. Yi appeared on behalf of Standard, also with counsel. The resulting Arbitration Decision stated that "[t]he parties each affirmed, under oath, their understandings that . . . the Decision rendered by the Arbitrator will be guided by Maryland law and principles of equity" and that "[t]he Decision rendered will be legally binding upon the parties, subject only to such limited rights of appeal" specified in the MUAA.

By agreement, there is no transcript of the arbitration. According to the Arbitration Decision, the Homeowners each testified and presented testimony from three additional

witnesses, two contractors and Mr. Booz's cousin, who referred Standard to the Homeowners initially and attempted to help the parties resolve the dispute. One witness, Darrin Saylers, a contractor, "testified that he had submitted a proposal to gut and remodel [the Homeowners'] bathroom for the estimated cost of $14,995.00." And in his opinion, the bathroom work had several problems, including shoddy tile work, a buckling subfloor, incorrect tile spacing, "other serious problems" with the tile work, and an incorrectly installed shower pan and shower framing.

The Arbitrator issued her decision on September 28, 2021 and awarded the Homeowners $9,975.00. The Arbitrator found that the Homeowners had "presented sufficient evidence that [Standard] materially breached its contract" to remodel the bathroom. The decision stated that "both parties failed to adhere to the terms of their [written] agreement as to scope of work, material, and the skill level of the bathroom remodel subcontractors." Nevertheless, "Mr. Yi agreed to multiple changes in the scope of work Ms. Swickard requested without objection or consideration of the contract requirement for a written change order."

The Arbitrator credited Ms. Swickard's testimony that she had "repeatedly asked Mr. Yi to meet with her at the house to view the problems she identified" and concluded that "[e]ven a lay person with no certifications in tile installation could see from the photographs [the Homeowners] submitted that the tile installation work was defective." The Arbitrator found the Homeowners' breaches of the written contract to not be material and that Standard "materially breached the contract when [Mr. Yi] failed to correct the

serious problems with [the Homeowners'] bathroom remodel after being told on multiple occasions about the unworkmanlike tile installation by his subcontractors":

> Although [the Homeowners] did not follow the formal contract procedure for notifying [Standard] of the defective work, they did so by text and telephone calls almost daily. They also engaged two construction contractors to assess the job and asked their cousin to "mediate" the dispute with [Standard] which demonstrates their good faith. [Standard]'s only response to these efforts to address the unworkmanlike conduct of his subcontractors was to ask [the Homeowners] to let his crew complete the job because he could correct the defects with grout and a special tool once the work was completed. [The Homeowners] made the rational choice to reject [Standard]'s novel solution to [Standard]'s defective bathroom tile installation. [The Homeowners] terminated the contract, as was their right, under the terms of the FAILURE TO ADEQUATELY PERFORM provision of the Contract.
>
> . . . [The Homeowners] have proved that they are entitled to a monetary award from [Standard]. The measure of damages for breach of contract is to put the non-breaching party in as good a position as they would have been had the job been completed properly. [The Homeowners] are seeking a monetary award of $13,341.87 that includes the original contract price of $9,500.00 and the $3,000.00 charge for plumbing and tile.
>
> [The Homeowners] made 3 progress payments that totaled $7,125.00 for which they seek a refund. [Standard] completed a substantial amount of the work at the time of termination. Mr. Yi testified that 75% of the contract work was completed, whereas Ms. Swickard said 50%. [Standard] completed all of the demolition work and most of the construction work except for grouting and the mosaic tile, painting, and floor installation, which amounts to 75% of the work.

Although the Arbitrator agreed with [Standard] that it had "completed all of the demolition work" and partial construction work amounting to 75% of the work, the Arbitrator found nevertheless that the Homeowners were "entitled to a full refund of their progress payments" amounting to $7,125 (which was, in fact, 75% of the contract price).

The Arbitrator denied the Homeowners' request for the "plumbing upgrade cost of $3,000.00" because they "failed to provide sufficient evidence that the plumbing work was defective." Lastly, the Arbitrator granted the Homeowners' request for "$2,725.00 to purchase new tile," noting that the Homeowners' "construction contractor witnesses all testified that the bathroom needed to be gutted and that nothing could be salvaged to re-use." The Arbitrator found that the Homeowners' receipts for their previous tile costs supported the claim and that "principles of equity" warranted this portion of the award. The overall award in favor of the Homeowners totaled $9,975.

Twenty days later, on October 18, 2021, Standard filed a "Motion/Application to Modify/Correct Decision" in the arbitration proceeding. Standard asserted that the Arbitrator had exceeded her powers by "address[ing] matters outside and/or beyond the Claim as set forth in the Fund Complaint and the ensuing Arbitration Agreement" and by "attempt[ing] to reform or otherwise write-out of the Contract agreed upon terms" when she found that those breaches were immaterial. Standard challenged the Arbitrator's measure of damages, stating that "[t]his arbitration was not to decide a breach of contract action, but rather the [MHIC] refund claim . . . and the measure of damages allowable therein, *i.e.*[,] 'actual loss,' as provided by the Code," and actual loss would not include the cost of new tile.

The Homeowners opposed the motion on October 28, 2021. Their opposition also included a section titled "Request for Clarification," in which they asked that the "[a]ward be modified in accordance with Section 3-223" of the Maryland Uniform Arbitration Act

("MUAA") to add language that they are "entitled to recover under" BR § 8-405(a) and that "the value of [the Homeowners'] *actual loss* is $9,975.00."

The Arbitrator issued a detailed ruling on Standard's request for modification on November 16, 2021. The ruling clarified that under Maryland contract law, "[the Homeowners'] failure to provide [Standard] a 10-day opportunity to cure was not a material breach whereas [Standard]'s unworkmanlike and defective remodeling activities were a material breach." The Arbitrator emphasized that she didn't find Mr. Yi credible or persuasive and that the Homeowners presented "abundant evidence" in support of their claim. "In sum," she concluded, "[the Homeowners'] failure to offer [Standard] an opportunity to cure the many persistent defective installation problems on the job would have gained them little but delay and would have left them with a future water and mold problem in their newly remodeled bathroom."

Next, the Arbitrator clarified that "the calculation of damages . . . were based upon [the Homeowners'] actual out-of-pocket direct costs." The award included a refund for the payment for demolition of the original bathroom because "the repairs required will include complete demolition of the existing bathroom remodel job that they will have to pay again," and the ruling concluded by stating that Standard's motion to modify "[did] not satisfy any of the statutory reasons for modifying an Award."

The Arbitrator did, however, "clarify" that the damage award was for "*actual* losses":

> [The Homeowners] have asked the Arbitrator to modify the Arbitration Award for purposes of clarification by citing the

> Md. Code, Bus. Reg. § 8-405 with respect to recovery from the MHIC fund. That proceeding is separate from this arbitration and not relevant to my decision which addresses the breach of contract claims of the parties.
>
> To the extent the Arbitration Decision did not clearly state the basis for award of replacement tile damages[, the Homeowners'] Request for Clarification is **Granted** in part. The original Arbitration Decision awarded [the Homeowners] direct damages that reflect the *actual* losses they incurred due to [Standard]'s defective and unworkmanlike bathroom remodel. Accordingly, the [Homeowners] are entitled to a total monetary award of **$9,975.00**.

B. Circuit Court Proceedings.

Standard filed a timely petition to vacate the arbitration decision, then later amended it. Standard contended that the arbitration award must be vacated under Maryland Code (1973, 2020 Repl Vol.), § 3-224(b)(2)–(5)[3] of the Courts and Judicial Proceedings Article

[3] That section provides that the court must vacate an arbitration award under specific circumstances, which include:

> (2) There was evident partiality by an arbitrator appointed as a neutral, corruption in any arbitrator, or misconduct prejudicing the rights of any party;
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> (3) The arbitrators exceeded their powers;
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> (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
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> (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.

("CJ") because "the number and cumulative effect of the mistakes and errors committed by the Arbitrator, compounded by the manifest disregard of the law (including her powers, the scope of the agreement, the damages claimed and the damages award), lead to the inescapable conclusion of evident partiality and/or misconduct prejudicial to [Standard's] rights." The Homeowners responded with an opposition that asked the court to confirm the award and a motion for summary judgment and attorneys' fees. In its twenty-one page reply, Standard argued that because there was no recording of the arbitration hearing, it needed an evidentiary hearing to prove the Arbitrator's "intent, misconduct, disregard, etc." Standard claimed that, viewing the evidence in the light most favorable to it as the non-movant, summary judgment was inappropriate.

The parties appeared for a remote hearing on August 24, 2022, on the Homeowners' motion for summary judgment and attorneys' fees. The court held the matter under advisement, asked Homeowners' counsel to submit an affidavit for attorneys' fees, and issued an oral ruling at a hearing on September 14, 2022. The court stated that it found the matter "ripe for summary judgment and that there are no disputes of material fact." The court noted that Standard raised "essentially, three issues" including "that the arbitrator was [not] impartial; that the arbitrator exceeded her powers; and that the arbitrator . . . exercised a manifest disregard of the law." The court ruled that it "d[id] not find merit in any of those arguments with the case presented as it is":

> As to partiality, the complaint was that there was a change to the wording of the award. The Court, number one, does not find that to be material as to the nature of the award. Even if the arbitrator had not changed that language, . . . the

> [Homeowners] could have filed a petition in the Circuit Court to confirm the award of the arbitrator, and that award most likely would have been confirmed and then, therefore, . . . the [Homeowners] would have had a judgment. That judgment, I believe—I could be wrong—could be taken to the Maryland Home Improvement Commission to be enforced; even if it couldn't, the [Homeowners] . . . could have enforced the judgment other ways, including, obviously, levies and other means of enforcing judgment.
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> So it of itself does not indicate partiality and it is also not material.
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> As far as exceeding powers, there was a great deal of discussion . . . about the petition before the MHIC and what it set forth. The Court finds as a matter of law that that petition is essentially irrelevant once the agreement to arbitrate is entered into by the parties.
>
> I understand that the matter started out as a Maryland Home Improvement Commission case, but the parties agreed to arbitrate. I note that the arbitration is with a completely different entity; it is not with the [MHIC] anymore, which is part of the Department of Labor Licensing and Regulation, it is with the Attorney General's Office Consumer Protection Division. So it is a different beast and the parties agreed to either . . . stay or dismiss the [MHIC] hearing in lieu of this arbitration. So what is controlling is the arbitration.

The court added that "the parties agreed to submit all of their disputes and for the arbitrator to consider all of the damages and costs. . . . So there is no finding that the arbitrator exceeded her powers here . . . ." The court went one-by-one through each of Standard's contentions that the arbitrator exercised manifest disregard of the law and found that she did not do so.

Lastly, relying on the logic of *Star Development Group, LLC v. Darwin National Assurance Co.*, 813 F. App'x 76 (4th Cir. 2020), the circuit court ruled that attorneys' fees may be awarded under CJ § 3-228 for the prevailing party on a petition to vacate. And then

the court, in its discretion, decided attorneys' fees were "appropriate" in light of the "purpose of arbitration" and the parties' agreement to arbitrate. The Homeowners' counsel attested that she has been licensed since 2005, charged a reduced rate of $200 per hour, and billed a total of 15.7 hours defending the arbitration award. The court concluded that "[h]aving familiarity as a practitioner in this area of law and in this jurisdiction, I do find that the petition is reasonable, the fees are reasonable, and the amount of time is reasonable."

The court granted summary judgment, confirmed the arbitration award of $9,975, granted the request for attorneys' fees and reimbursable expenses of $3,234.57, and assessed costs against Standard. Standard timely appealed.

We discuss additional facts as necessary below.

II. DISCUSSION

Standard advances a number of issues for our review, but we consolidate and reword them into two:[4] *first*, whether the circuit court erred in entering summary judgment in favor

[4] Standard phrased the Questions Presented as follows:

> A. Did the Circuit Court err in granting a pre-discovery motion for summary judgment and preventing a full adjudication of the petition to vacate pursuant to Md. Code, Cts. & Jud. Proc. § 3-224 and Maryland common law?
>
> B. Did the Circuit Court err in failing to rule and/or failing to draw an inference of partiality/manifest disregard of the law, while instead minimalizing the Arbitrator's election to act as Claimant's collection assistant, which was accomplished via an impermissible modification of the award in violation of

Continued . . .

statutorily imposed deadlines?

C. Did the Circuit Court err in ruling and/or not drawing an inference that the Arbitrator exceeded her powers and/or the scope of the agreement (which also suggests partiality/manifest disregard of the law) when the arbitrator expanded the claim and awarded relief beyond the remedy requested?

D. Did the Circuit Court err in not finding gross mistake and/or failing to draw an inference of partiality from the Arbitrator's untenable finding that demolition somehow occurs twice?

E. Did the Circuit Court err in not finding and/or drawing an inference of exceeding powers/partiality and/or manifest disregard of the law from the Arbitrator's impermissible attempts to rewrite the contract and/or disregard the parties' contractual promises?

F. Did the Circuit Court err in failing to rule and/or not drawing an inference of partiality and/or manifest disregard of the law from the Arbitrator's application of the wrong measure of damages?

G. Did the Circuit Court err and/or abuse its discretion in awarding attorney's fees when no petition to confirm had been filed, and when the Petitions to Vacate were well-grounded?

The Homeowners phrased their Questions Presented as follows:

1. Did the circuit court correctly enter summary judgment in favor of Appellee homeowners, confirming an arbitration award and entering judgment in their favor for $13,209.57, based upon the finding, as a matter of law, that Appellant, a home improvement contractor, failed to demonstrate that the arbitrator was partial or exceeded her powers under the Maryland Uniform Arbitration Act (MUAA)?

2. Did the circuit court correctly enter summary judgment, confirming the arbitration award and entering judgment in favor of the homeowners, based upon the finding, as a matter of law, that the arbitrator's award did not reflect a manifest disregard for the law?

3. Did the circuit court properly exercise its discretion in

Continued . . .

of the Homeowners and confirming the arbitration award, and *second*, whether the circuit court abused its discretion in awarding attorneys' fees to the Homeowners. We review a decision granting a motion for summary judgment for legal error, and thus our review is *de novo*. *Mandl v. Bailey*, 159 Md. App. 64, 82 (2004). And a circuit court's decision on a petition to vacate an arbitration award is "a conclusion of law, which we review without deference." *WSC/2005 LLC v. Trio Ventures Assocs.*, 460 Md. 244, 253 (2018).

A. The Trial Court Did Not Err When It Granted The Homeowners' Motion For Summary Judgment.

Maryland Rule 2-501(f) provides that "[t]he court shall enter [summary] judgment . . . if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." *See also Washington Homes, Inc. v. Interstate Land Dev. Co.*, 281 Md. 712, 715 (1978) (reviewing a trial court's grant of a motion for summary judgment on a petition to vacate an arbitration award). Standard argues that summary judgment was not appropriate here because there were facts in dispute and the circuit court failed to resolve inferences in its favor, as the non-movant. We disagree and hold that summary judgment was appropriate because there was no real dispute as to any material facts and the Homeowners were entitled to judgment as a matter of law.

> awarding the homeowners their reasonable attorneys' fees under the MUAA, which fees were necessarily incurred in order to obtain confirmation of the award?

1. There was no real dispute as to any material facts.

First, we consider whether Standard raised any factual disputes, either in its petition to vacate the arbitration award or in its opposition to the Homeowners' motion for summary judgment. Standard didn't point to any fact outside the record in its petition to vacate. And so when the Homeowners set forth sufficient grounds for summary judgment, Maryland Rule 2-501(b), which governs responses to summary judgment motions, required Standard to allege facts and support them with admissible evidence. Standard needed to demonstrate "with some precision that there is genuine dispute as to a material fact." *Washington Homes, Inc.*, 281 Md. at 717 (cleaned up). It didn't.

The posture here matters—this isn't a direct appeal on the merits of the underlying dispute, but an appeal from a motion to vacate an arbitration award. There obviously were disputes over Standard's performance of the construction project or the Homeowners' compliance with notice requirements, but those underlying disputes don't create disputes of fact bearing on the arbitrator's authority or her handling of the case—the arbitration record is what it is. In *Washington Homes, Inc. v. Interstate Land Development Co.*, Washington Homes agreed to purchase and develop residential lots, but disputes arose "over the performance of the Sales Agreement" and the parties agreed to arbitrate. *Id.* at 714. The arbitrator declared the Sales Agreement rescinded and "'of no force and effect.'" *Id.* at 715. Washington Homes filed a petition to vacate the award, but the circuit court granted Interstate's motion for summary judgment ordering dismissal of the petition to vacate. *Id.* at 715. The Maryland Supreme Court held as a matter of law that there was no

dispute as to any material fact, and that in order to assert a genuine issue of material fact, the non-moving party must have raised facts through affidavit, deposition, answers to interrogatories, admission of facts, or by its pleadings. *Id.* at 721, 717. As here, the court had before it only the parties' arbitration agreement, the arbitration award, pleadings for specific performance, and the parties' sales agreement. *Id.* at 719. The Court noted that "[t]here was no dispute with respect to the existence or legality of these documents." *Id.* In addition, Washington Homes submitted only an affidavit from its President with the "bare allegation 'that there is a genuine dispute as to material facts . . . .'" *Id.* at 720.

Standard argues that the trial court failed to draw inferences in its favor at the summary judgment phase. But there were no disputed facts beyond the arbitration record to resolve, and thus, nothing to permit an inference in Standard's favor. The Maryland Supreme Court in *Wyndham v. Haines*, 305 Md. 269, 279 (1986), is also instructive on this point. The Court affirmed the trial court's denial of the Wyndhams' petition to vacate an arbitration award when the petition was unsupported by any evidence sufficient to permit an inference that there was "evident partiality" by the arbitrator. *Id.* The arbitrator was opposing counsel to Dr. Haines's counsel in unrelated matters creating a "fear[] that [the arbitrator]'s desire to maintain good rapport with [Dr. Haines's] counsel . . . might subconsciously influence his decisionmaking . . . ." *Id.* at 278. The Court held that the Wyndhams "failed to adduce the required proof of 'evident partiality'" because it "requires more than speculation and bald allegations of bias," particularly when "unsupported by affidavit . . . ." *Id.* at 279.

Here, the only allegation of partiality or misconduct is the alleged "number of gross mistakes made by the Arbitrator." Standard points only to the record itself, that "the cumulative effect of the mistakes and errors committed by the Arbitrator, compounded by the manifest disregard of the law . . . , lead to the inescapable inference, if not conclusion, of evident partiality and/or misconduct prejudicial to Petitioners' rights." This is not evidence and can only be characterized as "[a] bare allegation in a general way that there is a dispute as to material facts" that is insufficient to create a dispute of material fact. *Washington Homes, Inc.*, 281 Md. at 717. There was no fact-finding for the trial court to conduct, and no inferences to draw, and thus no genuine dispute over any material facts that would have barred granting the Homeowners' motion for summary judgment.

2. The Homeowners were entitled to judgment as a matter of law.

We turn *second* to whether the Homeowners were entitled to judgment as a matter of law. There is, of course, an "extremely limited role for courts in reviewing an arbitration award," a process designed "to encourage parties to seek 'an informal, expeditious, and inexpensive alternative to conventional litigation.'" *Gordon v. Lewis*, 215 Md. App. 298, 310 (2013) (*quoting Birkey Design Grp., Inc. v. Egle Nursing Home, Inc.*, 113 Md. App. 261, 265 (1997)); *see also* CJ §§ 3-201, *et seq.* (known as the Maryland Uniform Arbitration Act ("MUAA"), which embodies the General Assembly's policy favoring judicial enforcement of agreements to arbitrate). Standard must prove one of the grounds listed in CJ § 3-224(b), the few times a "court shall vacate" an arbitration award:

> (1) An award was procured by corruption, fraud, or other undue means;

> (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 . . . this subtitle, as to prejudice substantially the rights of a party; or
>
> (5) There was no arbitration agreement . . . .

An additional common law ground to vacate an arbitration award arises when an arbitrator shows a "manifest disregard of the law." *Trio Ventures*, 460 Md. at 260. But CJ § 3-224(c) states expressly that "[t]he court shall not vacate the award or refuse to confirm the award on the ground that a court of law or equity could not or would not grant the same relief." And CJ § 3-226 requires the court to confirm the award if the petition "to vacate is denied and no motion to modify or correct the award is pending."

Standard, as the party seeking to vacate the arbitration award, "b[ore] the burden of proving the existence of one of the grounds for vacating" the award. *Mandl*, 159 Md. App. at 86. And because the purpose of arbitration is to provide "an informal, expeditious, and inexpensive" resolution of disputes, *Gordon*, 215 Md. App. at 310 (cleaned up), that burden is a heavy one:

> [A] party seeking to set [an arbitrator's decision] aside has a heavy burden. In fact, the standard of review of arbitral awards is among the narrowest known to the law. The role of a court is to determine only whether the arbitrator did his job—not whether he did it well, correctly, or reasonably. Conclusions of an arbitrator are reviewed using a deferential standard on the far side of the spectrum away from a usual, expansive *de novo* standard. Appellate discipline mandates that we give deference

> to the decision of the arbitrator, and this Court does not speculate about the arbitrator's reasons for making an award. Rather, it is required that we assume the arbitrator acted properly.

Id. at 310–11 (cleaned up); *see also Mandl*, 159 Md. App. at 92 ("factual findings by an arbitrator are virtually immune from challenge and decisions on issues of law are reviewed using a deferential standard on the far side of the spectrum away from a usual, expansive *de novo* standard").

a. It was not error for the arbitrator to rely on the testimony of unlicensed contractors.

Standard's *first* argument is that the arbitrator demonstrated partiality and manifest disregard of the law when she relied on the testimony of an "unlicensed home improvement contractor," as such persons are "the very malefactors the [MHIC] is trying to eradicate." It's true that "an arbitration award which is contrary to a clear public policy will not be enforced." *Board of Educ. of Prince George's Cnty. v. Prince George's Cnty Educators' Ass'n*, 309 Md. 85, 100 (1987). But the public policy must be "explicit," "well defined and dominant, . . . ascertained 'by reference to the laws and legal precedents and not from general considerations of supposed public interests.'" *Amalgated Transit Union, Div. 1300 v. Mass Transit Admin.*, 305 Md. 380, 389 (1986) (*quoting W.R. Grace & Co. v. Local Union 759, Int'l Union of the United Rubber Workers*, 461 U.S. 757, 766 (1983)).

First and foremost, it's not clear from the record that the witness was "operating as an unlicensed contractor." The witness was an employee of a licensed business and offered his opinion on the quality of Standard's work, and the MUAA provides specifically that "[a]rbitrators are not bound by the technical rules of evidence." CJ § 3-214(b). In any event,

the decision states that "[e]ven a lay person with no certifications in tile installation could see from the photographs . . . that the tile work was defective." We defer to the arbitrator's factfinding, *Mandl*, 159 Md. App. at 92, and are unpersuaded that an arbitrator's consideration of this testimony violated any explicit public policy.

b. The modification of the award to specify damages were for "actual losses" was not grounds for vacatur.

Standard's *second* argument is that the arbitrator exceeded her powers by making an untimely modification of the award to clarify that the damages represented the Homeowners' "actual losses." This argument fails in two ways: (1) it wasn't untimely, and (2) the change was immaterial.

A party can raise matters beyond the initial filing deadline in defense to a petition to vacate that itself was timely. *See C.W. Jackson & Assocs. v. Brooks*, 46 Md. App. 63, 69 n.3 (1980), *modified on separate grounds*, 289 Md. 658 (1981). The Homeowners' request to modify of the arbitrator's award follows the same logic. Standard filed its motion to modify within the statutory deadline. CJ § 3-222. Since there was no "complete award" that ended the dispute, *Brzowski*, 114 Md. App. at 636, the arbitrator still had authority to modify the award, in this case "[f]or the purpose of clarity" under CJ § 3-222(c)(2) in a way that did not "affect[] the merits of the decision upon issues submitted" under CJ § 3-223(b)(2). *Cf. Brzowski*, 114 Md. App. at 636 (in dicta discussing the "apparent merits" of an unpreserved contention that the arbitrator exceeded its powers by modifying an arbitration award *100 days* after delivery of the award because the "arbitrator's authority to act in a dispute ends upon rendering a complete award").

The circuit court "d[id] not find that [modification] to be material as to the nature of the award," and we agree. In fact, the term "actual loss" in the award was not required for MHIC recovery and the original award in this case would have satisfied BR § 8-409 in any event.[5] *See id.* at 639. In *Brzowski v. Maryland Home Improvement Commission*, we construed BR § 8-409 "as requiring that a judicial decision or arbitration award state in substance that, based on the merits, the claimant has suffered actual loss due to fault on the part of a licensed contractor." *Id.* The term "actual loss" is not required. *Id.* We held that an arbitration decision stating "that the award he rendered reflected his determination of the cost to correct the deficiencies in the work performed" satisfied BR § 8-409. *Id.* This modification doesn't provide a basis for vacatur.

c. The damages awarded did not exceed the scope of the parties' contract or the arbitration agreement.

Standard's *third* contention is that the arbitrator exceeded her powers by awarding

[5] That section provides:

> (a) The Commission may order payment of a claim against the Fund only if:
>
> (1) the decision or order of the Commission is final in accordance with Title 10, Subtitle 2 of the State Government Article and all rights of appeal are exhausted; or
>
> (2) the claimant provides the Commission with a certified copy of a final judgment of a court of competent jurisdiction or a final award in arbitration, with all rights of appeal exhausted, in which the court or arbitrator:
>
> (i) expressly has found on the merits that the claimant is entitled to recover under § 8-405(a) of this subtitle; and
>
> (ii) has found the value of the actual loss.

damages beyond the scope of the arbitration agreement. The arbitration agreement itself was broad, afforded the award granted, and we reject Standard's attempt "to create ambiguity out of clarity." *Al Czervik, LLC v. Mayor & City Council of Balt.*, 259 Md. App. 91, 105 (2023). The parties agreed to arbitrate "all disputes" arising out of the "the work in the bathroom [that] is defective." Standard agreed further that "in the event that any relief is awarded, the arbitrator will consider the costs of the goods, or services and any related damages arising from the transaction . . . ."

Moreover, the initial contract provided that "Standard warrants against *any* loss or damage arising from *any* defect in materials and workmanship furnished under this Agreement" and contemplated damages "necessary to bring the work up to the required standard . . . ." "When a contract is breached, the damages awarded to the plaintiff . . . 'should be such as may fairly and reasonably be considered, either as arising naturally, *i.e.* according to the usual course of things from such breach of the contract itself; or such as may reasonably be supposed to have been in contemplation of both parties at the time they made the contract, as the probable result of the breach of it.'" *Trio Ventures*, 460 Md. at 268 (*quoting Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 162 n.25 (2007)). The arbitrator had the power to "attempt to put the injured party in as good a position as it would have occupied had the contract been fully performed by the breaching party." *Id.* It was no gross mistake by the arbitrator to refund the Homeowners' the contract price for the first demolition. The entitlement to "such material or labor as are necessary to bring the work up to the required standard," included, in this case, a second demolition to remove the

substandard work already completed.

d. Fact-finding regarding material and nonmaterial breaches of contract is not re-writing of the parties' contract.

Standard's *final* contention under CJ § 3-224(b) is that the arbitrator showed "[m]anifest disregard of the law . . . by the Arbitrator's attempt to rewrite and/or wholly disregard the parties' contractual promises and rights." Standard points to two contract terms in particular: (1) the "CORRECTION AND REMOVAL OF DEFECTS" provision involving whether Standard was given the right to cure and (2) the "DISPUTE RESOLUTION" provision involving whether complying with that provision was "a condition precedent to bringing any claim," as Standard alleges.

The contract provided that if the Homeowners wanted Standard to correct defects in the work, they had to give Standard "notice in writing, served via certified mail, of all allegedly defective materials or work":

> CORRECTION AND REMOVAL OF DEFECTS IN MATERIAL OR WORK: Standard shall be given notice in writing, served via certified mail, of all allegedly defective materials or work provided under this Agreement as designated by inspectors or [the Homeowners]. After receipt of said written notice, Standard shall have three (3) business days to inspect the alleged defective materials/work and proceed with repairing/remediating the same in a good and workmanlike manner. In the event the repair/remediation of any defective materials or work disturbs other unrelated finished work at the Property, Standard shall restore the other unrelated finished work as part of repairing/remediating the defective materials or work.

Although contractors generally have a right to cure, *Gamble v. Woodlea Constr.*, 246 Md. 260, 262 (1967), that right applies when the contractor "perform[s] the work substantially

as agreed prior to [its] ejection from the job." *Id.* at 265.

Here, the arbitrator found that the Homeowners had the right to reject Standard's solution to the poor tile work, which involved use of a "special tool" to fix tiles after completion of the project. The Arbitrator found that Standard had actual notice of the defects and had been given "multiple opportunities to correct their mistakes during the remodeling project." She found Mr. Yi's testimony otherwise not persuasive.

The contract also created a dispute resolution mechanism in which "an independent licensed architect, engineer or mediator chosen by [the Homeowners] and Standard" resolves the dispute. The Arbitrator found that the Homeowners complied with this provision by "ask[ing] their cousin to 'mediate' the dispute . . . ." Again, the Arbitrator made a finding of fact that the Homeowners had complied with the contract substantially. And in essence, Standard disagrees with the Arbitrator's findings that the Homeowners' breaches of certain provisions the contract were not material. Under Maryland law, though, "[w]hether a breach is considered material is a question of fact, unless the question is 'so clear that a decision can properly be given only one way, and in such a case the court may properly decide the matter as if it were a question of law.'" *Publish Am., LLP v. Stern*, 216 Md. App. 82, 102 (2014) (*quoting Speed v. Bailey*, 153 Md. 655, 661–62 (1927)).

We decline to second-guess the arbitrator's fact-finding, and in any event, Standard distorts the meaning of "manifest disregard of the law." A "manifest disregard of the law" means a "'palpable mistake of law or fact . . . apparent on the face of the award . . . .'" *Trio Ventures*, 460 Md. at 260 (*quoting Board of Educ. of Prince George's Cnty.*, 309 Md. at

105 (arbitrator exceeded authority by issuing award arising out of contract that one party lacked the authority to enter)); *see also Baltimore Cnty. Fraternal Ord. of Police Lodge No. 4 v. Baltimore County*, 429 Md. 533, 564 (2012) ("manifest disregard of the law [is] beyond and different from a mere error in the law or failure on the part of the arbitrator to understand or apply the law" (cleaned up)). In other words, "[w]e look for an error that is readily perceived or obvious; an error that is clear or unquestionable." *Trio Ventures*, 460 Md. at 263.

We see no such obvious error here. The Arbitrator applied principles of Maryland law regarding material and nonmaterial breaches of contract to the facts established during the arbitration. *See Publish Am., LLP*, 216 Md. App. at 102; *Trio Ventures Assocs.*, 460 Md. at 268. There was nothing manifestly wrong about the arbitrator's decisions in favor of the Homeowners here and finding no basis to vacate the award under CJ § 3-224(b), and the trial court did not err by finding that the Homeowners were entitled to summary judgment as a matter of law.

B. The Trial Court Did Not Abuse Its Discretion When It Awarded The Homeowners Attorneys' Fees.

Finally, we agree with the circuit court that CJ § 3-228(b) grants the court discretion to award attorneys' fees to a prevailing party on a motion to vacate. CJ § 3-228(b) provides, "[a] court may award costs of the petition, the subsequent proceedings, and disbursements." The term "disbursements" includes attorneys' fees to enforce an arbitration award. *Blitz v. Beth Isaac Adas Isr. Congregation*, 352 Md. 31, 44 (1998). "[A]n award of attorney's fees to a prevailing party pursuant to CJP § 3-228(b) is merely discretionary and not required"

and thus we review the attorneys' fees for abuse of discretion. *Trio Ventures*, 460 Md. at 271.

Although CJ § 3-228 doesn't reference petitions to vacate specifically, reading CJ §§ 3-226, 3-227, and 3-228 together leads easily to the conclusion that CJ § 3-228(b) encompasses both petitions to vacate and confirm because "in order to obtain confirmation of the arbitration award, [the Homeowners] necessarily had to defend against [Standard's] motion to vacate." *Star Dev. Grp., LLC*, 813 F. App'x at 89; *see also Blitz*, 352 Md. at 45–46 ("disbursements" include attorneys' fees in the context of proceedings to confirm an arbitration award). CJ § 3-226 mandates the court confirm the award if the application to vacate is denied, and CJ § 3-227 also mandates the court to confirm an award "unless the other party has filed an application to vacate . . . ." And we find persuasive the reasoning of the United States Court of Appeals for the Fourth Circuit in *Star Development Group*, when it awarded attorneys' fees on a petition to vacate:

> [R]eading *Blitz* to preclude defense fees for a petition to vacate while permitting fees for a petition to confirm would make little sense because similar costs arise regardless of whether a single party is petitioning or the parties are cross-petitioning. Presumably, had Plaintiffs not filed a petition to vacate, they would have raised similar arguments and defenses in their opposition to Defendants' motion to confirm, causing Defendants to incur similar costs. Those costs would unquestionably be chargeable to Plaintiffs under *Blitz*. Excluding those costs simply because Plaintiffs filed a separate petition to vacate is thus a distinction lacking logical foundation.

813 F. App'x at 89 n.8.

We hold as well that the trial court did not abuse its discretion in awarding fees. In

Goldstein v. 91st Street Joint Venture, we pointed to a Utah case providing "useful guidance" for "the factors that should be weighed in the exercise of the court's discretion in regard to an award of attorneys' fees incurred in seeking to enforce an arbitration award" because the Utah Arbitration Act "is substantively the same" as CJ § 3-228(b). 131 Md. App. 546, 575 n.9 (2000) (*citing Buzas Baseball, Inc. v. Salt Lake Trappers, Inc.*, 925 P.2d 941, 952 (Utah 1996).[6] In *Buzas Baseball*, the Utah Supreme Court emphasized the policy favoring enforceability of arbitration awards:

> [T]he fact that the Utah Arbitration Act explicitly provides for an award of attorney fees suggests that our policies favor the enforceability of arbitration awards and discourage relitigation of valid awards even more strongly than the federal act, which does not provide for attorney fees. . . .
>
> [I]t is difficult to conceive of an award of attorney fees to a prevailing party which would run afoul of our policies. The only such situation we can imagine would be one where a trial court awarded attorney fees to a party who did not prevail in the litigation or who challenged an award and prevailed only as to some very minor point but lost as to all major points. Such an award of attorney fees would arguably defeat the purposes behind the Utah Arbitration Act because it would not further the goal of discouraging unnecessary relitigation of arbitration awards. We do not mean to read a rigid "prevailing party" requirement into the Utah Arbitration Act's attorney fee provision; we are simply illustrating the scope of the policy underlying our statute—encouraging the enforceability of arbitration awards and discouraging relitigation of matters resolved by arbitration.

925 P.2d at 953–94.

[6] And, for what it's worth, *Buzas Baseball* also remanded the case for the determination of attorneys' fees entitled to the party defending against the motion to vacate the arbitration award. 925 P.2d at 952.

The circuit court adopted a reasonable position in awarding fees by explaining the purpose of arbitration and the scope of the parties' agreement ("a down-and-quick-and-dirty and inexpensive resolution of their dispute"), then making a specific finding that the fees were reasonable. We see no basis on which to disturb this award on appeal.

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