Circuit Court for Anne Arundel County
Case No. C-02-CV-22-000032

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1491

September Term, 2022

SHORE RESTORATIONS LLC, ET AL.

v.

LARRY J. FEE

Tang,
Albright,
Kenney, James A., III.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: January 29, 2024

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

This case arises out of a contract dispute between Paul Zanecki ("appellant") and Larry J. Fee ("appellee") that was submitted to binding arbitration.[1] The arbitrator found in favor of appellee and awarded appellee damages, and appellant filed, in the Circuit Court for Anne Arundel County, a Petition to Vacate Arbitration Award and Request for Hearing (hereinafter referred to herein as the "Petition") to vacate the arbitrator's award on the grounds of evident partiality on the part of the arbitrator. Following a hearing, the court denied appellant's Petition. On appeal, appellant presents a single question for our review:

> Did the circuit court err in denying Appellant's Petition on grounds that there was no evident partiality by the Arbitrator?

For reasons to follow, we hold that the court did not err in denying the petition and affirm the court's judgment.

BACKGROUND

In September 2020, appellant and appellee, a homebuilder, entered into a contract for the construction of a home on appellant's property for $318,311.00. Under the contract, the parties agreed to submit any dispute to binding arbitration. Construction on the home commenced soon thereafter, and, over time, appellant paid a large portion of the contract price to appellee.

[1] According to appellate, Shore Restorations, LLC is "a currently dissolved Maryland limited liability company of which [a]ppellant was the sole member at the time of the sale of the Property's sale to him." Appellant obtained title to the property by deed dated April 3, 2021 and recorded in the Land Records of Anne Arundel County. The contract at issue in this case was between Vincent Paul Zanecki and Larry J. Fee Construction Co. and signed on April 30, 2020. At the time, title to property on which the house was being built was in Shore Restorations, LLC, but as of April 3, 2021, it is no longer a party to this case.

In December 2021, when the home was nearing completion, a dispute arose between the parties regarding the final amount of money due to appellee. As a result, construction on the home ceased, and appellee filed a complaint to establish a mechanic's lien for $75,283.00, which represented the amount he claimed was unpaid under the contract. Appellant filed a counterclaim alleging unfair trade practices and breach of contract. As provided for in the contract, the dispute was submitted to binding arbitration, and an arbitration hearing was held. After the arbitrator ruled in favor of appellee and awarded him $75,283.00, appellant filed, in the circuit court, the Petition to vacate the arbitration award.

In the Petition, appellant alleged, among other things, that the arbitration award should be vacated because of "evident partiality" on the part of the arbitrator. Appellant asserted that the arbitrator had "had a prior business/personal relationship with [appellee,]" which the arbitrator failed to disclose. More particularly, appellant alleged that appellee "had done construction projects for the arbitrator in the past, including building part of his home, and each of them knew each other personally along with having a prior business relationship." In support of those allegations, appellant submitted two affidavits: one from the attorney who represented appellant at the arbitration hearing, and another from himself. In his affidavit, appellant's counsel stated that, during the arbitration hearing, the arbitrator "vaguely alluded to his prior business dealings with [appellee]."[2] Appellant, in his

[2] Counsel's affidavit reads "[w]hen the arbitration hearing was well along, did [the arbitrator] vaguely alluded to his prior business dealings with [appellee]." Presumably, the "did" was an editing oversight.

affidavit, stated that, the arbitrator had, during the arbitration hearing, said that appellee had built part of the arbitrator's house.

Appellee, opposing appellant's Petition, submitted two affidavits: one from himself, and the other from the arbitrator. In their respective affidavits, they denied any prior relationship with each other prior to the arbitration and stated that, until the arbitration, they had never heard of the other.

At the hearing on appellant's Petition, the parties argued their respective positions and submitted their respective affidavits for the court's consideration. Appellant stated, as he had in the Petition, that the arbitrator had a prior undisclosed relationship with appellee that raised the question of partiality. In addition, he claimed that the arbitrator made several evidentiary and other rulings in appellee's favor, which, according to appellant, raised his partiality concern even further.

Appellee countered that appellant's claims of partiality were unfounded because there was no prior relationship between appellee and the arbitrator. Appellee argued further that, if either appellant or his counsel had in fact heard the arbitrator alluding to such a relationship during the hearing, the issue should have been raised then.

At the conclusion of the hearing, the court denied appellant's Petition and made the following findings:

> THE COURT: Based upon that, the Court recognizes that the party challenging the arbitration award has the burden. I don't think that you've met your burden in this case. I think it should have been raised at the time and it sounds, based on the affidavits, unlikely to have had any significance in the proceedings.

This timely appeal followed. Additional facts will be supplied as needed below.

DISCUSSION

Parties' contentions

Appellant contends that the circuit court erred in denying his Petition to vacate the arbitration award, and that the award should have been vacated due to "an inference of evident partiality on the part of the [a]rbitrator." He maintains that the arbitrator's partiality was manifested by the arbitrator's failure to properly disclose his prior relationship with appellee and by his "conduct at the hearing[.]" As he sees it, the granting by the arbitrator of a full Arbitration Award to appellee "clearly permits an inference that he indeed acted in a partial manner favoring [appellee]."

Appellant further contends that the court's statements at the conclusion of the hearing, in which the court stated that the issue was "unlikely to have had any significance in the proceedings[,]" constituted an implicit finding that "as a factual matter the existence of the appearance of possible bias," and, because the court made that finding, he argues that it should have engaged in further analysis as to whether that relationship was sufficiently disclosed and whether a reasonable inference of partiality could be drawn. Instead, applying an "incorrect standard," the court denied the Petition because there was no showing of actual improper conduct.

In response to the court's finding that the issue should have been raised at the arbitration hearing, appellant argues that the statements regarding the relationship were "made well into the arbitration hearing" and were "so vague and evasive that [he] could not have known of the alleged bias fully and to the extent that would warrant an objection at that time." He insists that "knowledge of the [a]rbitrator's misconduct did not fully come

to light until the issuance of his short, nebulous, and one-sided opinion, which did not consider or address the voluminous evidence entered by [appellant] and summarily dismissed [a]ppellant's counterclaims with little to no analysis."

Appellee contends that the circuit court did not err in denying the Petition and that appellant failed to meet his burden of establishing that the arbitration award should be vacated. Noting that there is no evidence of "whether the alleged prior relationship ended well[or] badly," and no evidence of "sufficient contact" between them for "any qualitative impression of one another to form[,]" he argues that the adduced facts do not establish a prior relationship and are not sufficient to generate a reasonable inference of partiality. Appellee asserts that appellant's reliance on the arbitration award itself as evidence of partiality is an attempt to encourage an inappropriate review of the arbitrator's ruling on the evidence. Appellee disputes appellant's claim that the court implicitly found the existence of a prior relationship. He agrees with the court's finding that appellant should have raised the issue during the arbitration hearing, and that his failure to do so constituted a waiver.

Standard of Review

We review *de novo* a circuit court's ruling on a petition to vacate an arbitration award. *Amalgamated Transit Union, Loc. 1300 v. Maryland Transit Admin.*, 244 Md. App. 1, 11 (2019).

Analysis

The Maryland Uniform Arbitration Act, which governs the validity and enforceability of arbitration agreements, "embodies a legislative policy favoring arbitration

as an alternative method of dispute resolution." *Mandl v. Bailey*, 159 Md. App. 64, 85 (2004). In furtherance of that policy, "the General Assembly has severely restricted the role the courts play in the arbitration process" by narrowly confining, in § 3-224 of the Courts and Judicial Proceedings Article of the Maryland Code ("CJP"), "the circumstances in which the court has the power to vacate an arbitral award." *Id.*

Most relevant to this appeal, the statute states that a court "shall vacate an award if . . . [t]here was evident partiality by an arbitrator appointed as a neutral[.]" CJP § 3-224(b)(2). Partiality may be found where an arbitrator has a prior relationship with an interested party and the arbitrator fails to disclose that relationship. *See Parks v. Sombke*, 127 Md. App. 245, 253-54 (1999); *McKinney Drilling Co. v. Mach I Ltd. P'ship*, 32 Md. App. 205, 210-12 (1976). An arbitrator has a duty to disclose such a relationship when "the facts might reasonably lead to an impression or appearance of bias." *Parks*, 127 Md. App. at 252-53 (quotation marks and citation omitted). It, however, "is not necessary for a party to show that the arbitrator was actually biased in order to establish a breach of the duty of disclosure." *Id.* That said, the party alleging partiality '"must prove facts sufficient to permit an inference that there was indeed partiality by an arbitrator.'" *MCR of Am., Inc. v. Greene*, 148 Md. App. 91, 117 (2002) (quoting *Graceman v. Goldstein*, 93 Md. App. 658, 666 (1992)). That party's burden "is a heavy one[,]" and "[m]ere allegations and arguments contesting the validity of an award, unsubstantiated by the record, are insufficient to meet that burden." *Id.* (quotation marks and citation omitted).

Moreover, "[i]t is well-established that parties to an arbitration waive their objections to arbitrator bias or other allegedly improper behavior by the arbitrator if,

knowing of the alleged, biased, or improper conduct, they do not object to it prior to the arbitration award when there is still an opportunity to rectify the alleged errors." *Graceman*, 93 Md. App. at 671. In other words, "'[w]here a party has knowledge of facts possibly indicating bias or partiality on the part of the arbitrator he cannot remain silent and later object to the award of the arbitrators on that ground.'" *Id.* at 672 (quoting *Cook Indus. v. C. Itoh & Co.*, 449 F.2d 106, 108 (2nd Cir. 1971)). As the Supreme Court of Maryland has explained in the context of a motion to recuse a trial judge, "[t]o avoid disruption of a trial, or the possible withholding of a recusal motion as a weapon to use only in the event of some unfavorable ruling, the motion generally should be filed as soon as the basis for it becomes known and relevant." *Surratt v. Prince George's Cnty., Md.*, 320 Md. 439, 468-69 (1990).

Against that backdrop, we hold that the circuit court did not err in denying appellant's Petition to vacate. First, we agree with the circuit court's assessment that the issue of the arbitrator's alleged relationship with appellee should have been raised during the arbitration hearing. According to appellant, the existence of the alleged relationship came to light during the arbitration hearing when both appellant and appellant's counsel purportedly overheard comments indicating that the arbitrator and appellee had a prior relationship. At that point, appellant had "knowledge of facts possibly indicating bias or partiality on the part of the arbitrator" that should have been disclosed. *Graceman*, 93 Md. App. at 672 (quotation marks and citation omitted). Instead of bringing what was heard to the attention of those involved when resolution was possible, appellant remained silent. Instead, he waited until he received an "unfavorable ruling" to raise the issue.

To excuse his failure to object, appellant claims that the alleged statements regarding the arbitrator's purported relationship with appellee were too vague and evasive to warrant an objection when made. He insists that he did not become adequately aware of the arbitrator's "misconduct" until the issuance of "his short, nebulous, and one-sided opinion, which did not consider or address the voluminous evidence entered by [appellant] and summarily dismissed [a]ppellant's counterclaims with little to no analysis."

We are not persuaded. An unfavorable ruling is generally not evidence of bias. *See Reed v. Baltimore Life Ins. Co.*, 127 Md. App. 536, 552 (1999) ("It is settled law that a motion for recusal may not ordinarily be predicated upon the judge's rulings in the case at hand or a related case."). Nor is it evidence of any prior relationship between the arbitrator and appellee. The only support for appellant's claim of a prior relationship between the arbitrator and the appellee (and thus a duty to disclose) are the vague and evasive statements that were purportedly overheard during the arbitration hearing. But if they are sufficient to infer bias and an undisclosed relationship after an unfavorable ruling, they were sufficient to generate an inquiry when they were allegedly made.

But were we to assume that appellant's claim was timely, he would fare no better. To begin with, we find no support in the record for appellant's assertion that the court implicitly found a prior relationship or that the court applied an incorrect standard. As discussed, appellant's heavy burden of proving partiality cannot be satisfied by allegations and argument. It follows that, when a party claims partiality based on a prior relationship, the existence of that relationship cannot be satisfied by allegation and argument. Here, appellant's evidence was a vague allusion to a prior relationship that involved appellee and

the arbitrator. Appellee responded with affidavits by the arbitrator and himself that flatly denied any prior relationship. Appellant's evidence, even if considered with the arbitration award, could not reasonably support an inference of a prior relationship or "reasonably lead to an impression or appearance of bias." *Parks*, 127 Md. App. at 253 (quotation marks and citation omitted). The court recognized that appellant bore the heavy burden of advancing facts reasonably sufficient to permit an inference that the arbitrator was indeed partial toward appellee. Because the claimed partiality stemmed from a prior relationship, that burden necessarily extended to the existence of that relationship.

The court expressly found that appellant had failed to meet his burden. That the court, following that expressed finding, stated "it sounds, based on the affidavits, unlikely to have had any significance in the proceedings" is not, in our view, indicative of an implicit finding of a prior relationship between appellee and the arbitrator or suggestive of error on the part of the court. It might support the court's conclusion that appellant's burden had not been met because, "based on the affidavits," what appellant and his counsel heard or thought they heard, was not significant support for the existence of a prior relationship or an impression or appearance of bias.

In sum, we are not persuaded that the court used the wrong standard and erred in denying appellant's Petition to vacate.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.