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In the
District of Columbia
Court of Appeals

QUINN, RACUSIN & GAZZOLA, CHTD,
Appellant,

v.

PAVICH LAW GROUP, P.C., *et al.*,
Appellees.

*On Appeal from the Superior Court of the District of Columbia
Civil Division in Case No. 2021-CA-004580-B (Honorable Neal E. Kravitz, Judge)*

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**DISCLOSURE STATEMENTS PURSUANT TO
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Wye Oak Technology, Inc., is a Pennsylvania corporation. It has no parent corporations, is wholly owned by the Estate of Dale C. Stoffel, and no publicly held corporation owns 10% or more of its stock.

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STATEMENT REGARDING APPEAL

This is an appeal from a final order and judgment that confirms an arbitration award and resolves all parties' claims.

STATEMENT REGARDING ISSUES PRESENTED FOR REVIEW

Appellant's Issues 1 and 2 are not properly before the Court because the governing arbitration agreement provides that issues surrounding the jurisdiction of the Arbitrator were for the Arbitrator to decide. Judicial review of the Arbitrator's decisions on jurisdiction issues is limited to the statutory grounds, which QRG has not invoked. QRG is not entitled to judicial review of the merits of the Arbitrator's decision on any issue.

STATEMENT OF THE CASE

This is an appeal from a final order confirming an arbitration award and denying Appellant's motion to vacate that award.

STATEMENT OF BACKGROUND FACTS

The parties at bar consist of four law firms and their client. In the underlying case, the client (Wye Oak) sought a judgment against the Republic of Iraq and the Ministry of Defense of the Republic of Iraq for breach of contract. Three of the firms (who, along with the client, are Appellees herein) had contingent fee contracts with the client, with their fees being paid as percentage of the recovery. In the aggregate,

the total contingent fee payable to these three firms was 43% of the recovery.¹ The fourth firm (Appellant QRG) billed its fees hourly and did not have a written contingent fee agreement, or indeed any written retention agreement at all. JA443 (Final Award, page 37). However, QRG served as general counsel to the client and otherwise acted to control its affairs.²

As the Arbitrator discussed in the Final Award (*see* JA129-136 and JA448-455) (Final Award pages 42-49), in early July 2019, after the conclusion of a bench trial and following a status conference with the United States District Court for the District of Columbia, the parties concluded that a decision was imminent and that it would likely be a very large judgment in favor of the client. Almost immediately, QRG insisted that it was entitled to a share of the contingent fee, and it thereafter

¹ PLG was initially hired in 2009 for a 33 1/3% contingent fee. JA237. In 2014, KH was hired, and its agreement provided for a 3% contingency, JA239, and PLG agreed to reduce its percentage to 30 1/3%. JA244. During this time, QRG concealed from PLG that part of KH's work was to obtain litigation funding, which QRG would then use to replace PLG. *See* JA421 (Final Award, page 15). WTP was retained in 2017 for a 15% contingency. JA245. At this time, PLG reduced its share to 25% of the recovery. JA252.

² In addition to serving as general counsel, QRG president John Quinn served as secretary and a director of Wye Oak, as well as executor of the estate that owned all the Wye Oak shares. *See* JA451 (Final Award, page 45). (He has since been removed from all of these positions.). QRG continued to represent the client through the initial phases of the arbitration proceeding below, but withdrew from that representation following the Arbitrator's denial of the motions to dismiss filed by QRG. *See* JA292-296. Wye Oak has since been represented in this matter by separate counsel.

demanded that PLG reduce its percentage shares to make room for a percentage payable to QRG. *See id.*³

On November 15, 2019, the U.S. District Court entered judgment in favor of the client in the amount of \$120,338,393.71, plus interest. JA451 (Final Award, page 45). Four days later, on November 19, 2019, QRG threatened PLG in writing that, if PLG did not agree to substantially reduce its percentage (to accommodate paying a percentage to QRG), then QRG would have the client terminate PLG's contingency fee contract altogether so that PLG would be left with a *quantum meruit* recovery. JA622. QRG made this threat notwithstanding this Court's ruling in *Kaushiva v. Hutter*, 454 A.2d 1373 (D.C. 1983), that a lawyer hired on a contingent fee basis was entitled to his full fee when the client sought to terminate his services after he had substantially performed.

Meanwhile, in the federal court proceeding, Federal Rule of Civil Procedure 54 required fee petitions to be submitted within 15 days after entry of judgment, a deadline that rolled to Monday, December 2, 2019, because of Thanksgiving. Under its contract with Iraq, Wye Oak was entitled to be indemnified against all costs and expenses, including attorneys' fees arising out of Iraq's breach. To be made whole, Wye Oak sought to recover all fees it owed, including contingent fees.

³ QRG also proposed reducing KH's percentage from 3% to 1% but did not communicate that to KH until much later. JA453.

With the federal court deadline looming, QRG informed the parties that it would refuse to authorize the fee petition unless and until the other firms acceded to its demands. *See* JA136, JA455 (Final Award, page 49). Unable to resolve QRG’s demands, the parties negotiated an agreement called the “Agreement Concerning Attorneys’ Fees” (“ACAF”), which was executed on December 2, 2019, the day the fee petition was due. *Id.*

A recital in the ACAF stated that “Wye Oak recognizes QRG’s efforts in the prosecution of the case and hereby replaces QRG’s previous hourly fee agreement with a percentage contingent fee.” JA278. The ACAF stated that “Wye Oak will pay to the Law Firms a total contingency fee of 46% from all gross proceeds actually recovered and value received by Wye Oak,” and that all disputes arising out of or related to the agreement “including any fee owed to any party” would be resolved by arbitration under the JAMS Streamlined Rules. JA403. The ACAF did not resolve the breakdown of the percentages between the firms.

Following execution of the ACAF, the fee petition was filed in the federal court and the ACAF was submitted as an exhibit.⁴

⁴ The federal court declined to assess the entire amount of the contingent fee against Iraq under the fee-shifting provision in the underlying contract, and later awarded fees based on a lodestar calculation. *See Wye Oak Tech., Inc. v. Republic of Iraq*, No. 1:10-CV-1182 (RCL), 2020 WL 13568976 (D.D.C. May 12, 2020).

Once the client's fee obligation was capped at 46% of the total recovery to all four firms, the client had no real interest in the allocation between the firms. Nevertheless, on January 27, 2020, QRG announced that, pursuant to the ACAF, the client (meaning, in that context, QRG) would decide the contingent fee allocation among the four firms. *See* JA137-138, JA456-457 (Final Award, pages 50-51).

Citing the existence of an intractable dispute over the contingent fee allocation, and stating that the ACAF "increased the percentages to 46% without deciding the allocation to each firm," PLG demanded arbitration on February 7, 2020. JA579-589. In addition to seeking a decision on the allocation dispute, PLG also asserted claims sounding in tort based upon QRG's misconduct. JA582.

In the ACAF, Appellant and Appellees had agreed to arbitrate any dispute among them, arising out of or related to the ACAF, in a broad arbitration agreement that provides:

3. Any claim or dispute between any of the aforementioned parties arising out of or relating to this Agreement; the services to be performed under it, including any fee owed to any party, will be resolved by arbitration in the District of Columbia. The arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures. Judgment on any award may be entered in any court of competent jurisdiction.

JA200, ACAF at ¶ 3. JAMS Streamlined Rule 8(b) provides:

(b) Jurisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation or scope of the agreement under which Arbitration is sought, and who are proper Parties to the

Arbitration, shall be submitted to and ruled on by the Arbitrator. The Arbitrator has the authority to determine jurisdiction and arbitrability issues as a preliminary matter.

JA564. The Parties selected the Honorable Richard A. Levie, retired Superior Court Judge, to serve as Arbitrator. JA203.

Invoking JAMS Rule 8(b), QRG asked the Arbitrator to dismiss the case on the basis that neither (1) disputes over the contingent fee allocation, nor (2) tort claims asserted against QRG, were within the scope of the arbitration agreement.

JA590-595. The Arbitrator denied that motion in a lengthy single-spaced decision, concluding that paragraph 1 of the ACAF set the 46% fee and paragraph 3 of the ACAF specified that claims or disputes as to any fee owed to any party were to arbitrated before JAMS. The Arbitrator found that PLG's claims and disputes arose out of or related to the ACAF. JA597-602. QRG moved to reconsider. JA604-611. The Arbitrator denied that motion, JA613-614, and the arbitration proceeded.⁵

⁵ The Arbitrator issued an interim award on liability on August 12, 2021, which QRG moved to vacate on December 7, 2021. On March 21, 2022, the Superior Court dismissed the First Motion to Vacate based on QRG's failure to comply with Rule 70-I and its failure to act within the limitation's periods. JA008 (docket). And on July 26, 2022, the Superior Court entered an order confirming the award based on D.C. Code §§ 16-4423(e), which provides for automatic confirmation of an award when a motion to vacate is denied. JA007 (docket). QRG then appealed the 2022 orders to this Court. *Id.* While that appeal was pending, QRG reversed its position and argued that the Interim Award was actually *not* final and that that the Superior Court had lacked subject matter jurisdiction to hear the proceeding that it had brought. Rejecting that argument, this Court found that the Interim Award was reviewable, that subject matter jurisdiction existed, and otherwise affirmed the

Later, WTP also asserted tort claims against QRG, and the Arbitrator denied QRG's motions to dismiss them. JA226, JA231.

Asserting (incorrectly) that it would waive its jurisdictional challenge if it presented an affirmative case in the arbitration proceeding, QRG announced it would claim no part of the 46% contingent fee.⁶ JA293. Nevertheless, at the same time, QRG put on a full defense of the tort claims in the arbitration.

With QRG having refused to request any percentage of the fee, the Arbitrator entered his final award on June 5, 2024, ruling that, in light of QRG's position, QRG would not be allocated any portion of the underlying contingent fee at issue. JA467.

Superior Court's dismissal of the Motion to Vacate. *Quinn, Racusin & Gazzola, Chtd. v. Pavich Law Group, et al.*, Case No. 22-CV-0596, Judgment dated February 15, 2024, at 10, 16. However, because the Superior Court had "dismissed" rather than "denied" the motion to vacate, the Court ruled that automatic confirmation was improper under D.C. Code § 16-4423(e). *Id.*, at 16. The Court remanded the case for a determination as whether the Interim Award should be confirmed under other statutes. *Id.* The Superior Court found that issues surrounding the Interim Award were mooted by the issuance of the final award and the subsequent confirmation of it. JA727, Order at 4, footnote 1.

⁶ QRG's objection to jurisdiction would not have been waived by its presenting its case on allocation in the arbitration. *See Kaplan v. First Options of Chicago, Inc.*, 19 F.3d 1503, 1510 (3d Cir. 1994), *aff'd*, 514 U.S. 938 (1995) ("where a party objects to arbitrability but nevertheless voluntarily participates in the arbitration proceedings, waiver of the challenge to arbitral jurisdiction will not be inferred"). Nevertheless, because QRG had agreed to arbitration under the JAMS Rules, and because Rule 8(b) empowered the Arbitrator to decide jurisdiction issues, judicial review of the Arbitrator's decision on jurisdiction was limited to the grounds set forth in 9 U.S.C. § 10 and D.C. Code § 16-4423. Under these circumstances, QRG's refusal to present an affirmative case on allocation is inexplicable.

The Arbitrator awarded damages against Appellant on the tort claims asserted by PLG and WTP. JA534-536.

QRG moved to vacate the award on September 3, 2024. JA004. Appellees cross-moved to confirm the award was filed on November 15, 2024. JA003. The Court denied the motion to vacate and granted the cross-motion to confirm on January 22, 2025. *Id.* An amended order of judgment was entered on February 6, 2025. *Id.*

QRG appealed. *Id.*

SUMMARY OF ARGUMENT

QRG's Brief asserts that (1) this Court owes no deference to the Arbitrator's decision on jurisdiction and (2) the arbitration agreement is unenforceable because it was the product of fraud or coercion. Neither assertion provides a basis to disturb the decision of the Superior Court.

On the first issue, settled law establishes that "where, as here, the parties' contract delegates the arbitrability question to an arbitrator, a court may not override the contract," *Henry Schein, Inc. v. Archer and White Sales, Inc.*, 586 U.S. 63, 68 (2019), and "[i]n those circumstances, a court possesses no power to decide the arbitrability issue." *Id.* (emphasis added). In other words, "a court *must defer* to an arbitrator's arbitrability decision when the parties submitted that matter to arbitration." *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 943 (1995).

Here, QRG’s Brief admits that “[t]he arbitration clause in the ACAF specified arbitration administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures,” and that “Rule 8(b) provides that jurisdictional and arbitrability disputes shall be ruled on by the Arbitrator.” Appellant’s Brief at 31.

Ignoring the plain rulings of the Supreme Court, QRG urges this Court substitute its view for that of the Arbitrator. But that is not allowed. As this Court has emphasized, “to substitute our judgment for that of the arbitrators would betray the policy—inherent in election of arbitration over a judicial trial—that the parties have bargained for the arbitrators’ judgment, even more than for legal correctness, and thus should not be deprived of that judgment.” *C.R. Calderon Construction, Inc. v. Grunley Construction. Co., Inc.*, 257 A.3d 1046, 1059 (D.C. 2021) (“*Calderon*”) (cleaned up, citation omitted).

For these reasons, QRG’s first argument—that the Arbitrator’s decision on jurisdiction is entitled to no deference—has no support in fact or law.

QRG’s second argument, that the arbitration agreement was the product of fraud or coercion, thereby rendering JAMS Rule 8(b) unenforceable, fares no better. In cases like this one, where the parties have delegated to the arbitrator the power to decide questions concerning the formation, existence or validity of the arbitration agreement, the Court may not revisit the arbitrator’s decision on *those* issues, unless

the claim of fraud or duress is directed specifically to the delegation provision itself. *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 68-71 (2010).

The delegation provision in this case was found in JAMS Rule 8(b). Here, QRG has made no claim that its agreement to JAMS Rule 8(b), or even to the JAMS Rules generally, was the product of fraud or duress.

Even if QRG's claim of fraud and duress could be considered by the Court, there is no clear and convincing evidence supporting QRG's assertion. As a result, there is no error, much less clear error, in the Superior Court's conclusion that the evidence produced by QRG actually refutes QRG's claims in this case.

For these reasons, QRG's second argument—that the arbitration agreement should be set aside as a product of fraud or coercion—likewise has no support in fact or law. (The second argument encompasses sections II and III of QRG's Brief.).

D.C. Code §16-4422 requires an arbitration award to be confirmed “unless the award is modified or corrected pursuant to §§ 16-4420 or 16-4424 or is vacated pursuant to § 16-4423,” and § 16-4423(e) provides, “If the court denies a motion to vacate an award, *it shall confirm the award* unless a motion to modify or correct the award is pending.” (emphasis added). Beyond its assertion that its motion to vacate was improperly denied, QRG has not challenged the order confirming the award, or the resulting judgment below.

Accordingly, the judgment below should be affirmed.

STANDARD OF REVIEW

The Court’s review of an arbitration award is limited to the grounds set forth in § 10 of the Federal Arbitration Act (“FAA”), 9 U.S.C § 10, and in D.C. Code § 16-4423, the District of Columbia’s enactment of the Revised Uniform Arbitration Act. *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 586 (2008); *C.R. Calderon Constr., Inc. v. Grunley Constr. Co., Inc.*, 257 A.3d 1046, 1058 (D.C. 2021).

This Court reviews *de novo* whether the Superior Court correctly applied the statutory standards. *Fairman v. District of Columbia*, 934 A.2d 438, 442 (D.C. 2007). The Superior Court’s factual findings in an order confirming or refusing to vacate an arbitration award are reviewed for clear error. *Bank of America., N.A. v. District of Columbia*, 80 A.3d 650, 667 (D.C. 2013); *see First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 948 (1995) (on orders to confirm or vacate an arbitration award, reviewing court should apply clearly erroneous standard to findings of fact and decide questions of law *de novo*).

ARGUMENT

QRG contends that the Arbitrator erred in deciding that the claims presented to him fell within the scope of the arbitration agreement, and further that the arbitration agreement should be set aside altogether because Appellant was fraudulently induced or coerced in agreeing to arbitrate.

For the reasons set forth below, QRG strikes out on both issues.

I. QRG’S CONTENTIONS THAT THE ARBITRATOR’S DECISIONS ON JURISDICTION ARE ENTITLED TO NO DEFERENCE, AND CAN BE DECIDED ANEW BY THE COURT, HAVE NO SUPPORT IN FACT OR LAW.

QRG first contends that this Court owes no deference to the Arbitrator’s decision that the claims asserted against QRG in this case were within the scope of the arbitration agreement, and that the Court may review the jurisdiction issues anew. These contentions have no support in fact or law.

In their agreement to arbitrate, the Parties, including QRG, agreed to arbitrate under the JAMS Streamlined Rules of Arbitration, including Rule 8(b), which provided that the *Arbitrator* would decide any disputes over whether the claims asserted fell within the scope of the arbitration agreement. The rule specifically provides, in pertinent part, that “[j]urisdictional and arbitrability disputes, including disputes over the ... interpretation or scope of the agreement under which Arbitration is sought, ... shall be submitted to and ruled on by the Arbitrator.” JA564 (JAMS Streamlined Rules at page 11).

QRG admits that “Rule 8(b) provides that jurisdictional and arbitrability disputes shall be ruled on by the Arbitrator,” Brief at 30, yet QRG contends that “a court owes an arbitrator's decision regarding his or her own jurisdiction no deference

and the court reviews questions of arbitrability de novo.” Brief at 21. QRG cites no authority for this “no deference” proposition and there is none.

To get to its conclusion, on page 21 of its Brief, QRG cites *Unit Owners Ass'n of 2337 Champlain St. Condo. v. 2337 Champlain St., LLC*, 314 A.3d 1198, 1211 (D.C. 2024) for the proposition that “Interpretation of a contract is a legal question this court reviews *de novo*.”⁷ Then QRG cites *E.E.O.C. v. Waffle House, Inc.*, 534 U.S. 279, 293 (2002) for the proposition that judicial bodies ought to place arbitration agreements “on equal footing with other contracts.” Then QRG cites *Davis v. Chevy Chase Fin. Ltd.*, 667 F.2d 160, 165 (D.C. Cir. 1981) for the proposition that “arbitrators are permitted to decide only those issues that lie within the contractual mandate.” However, none of this supports QRG’s conclusion that the court can review arbitrator’s decision on jurisdiction *de novo*.

To the contrary, where the parties have delegated decisions regarding the scope of the arbitration agreement to the arbitrator, settled law establishes that the Court’s review of the arbitrator’s decision is limited to the grounds set out in the governing statutes, and the Court may not revisit the merits of the decision at all. And, it is precisely *because* arbitration agreements are placed on equal footing with

⁷ *Unit Owners* did not involve review of an arbitration award or the delegation of issues to an arbitrator for decision.

other contracts that the parties' agreement to empower the arbitrator to decide jurisdiction issues must be enforced.

Thirty years ago, in *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995), the Supreme Court held that if “parties agree to submit the arbitrability question itself to arbitration,” then “the court’s standard for reviewing the arbitrator’s decision about *that* matter should not differ from the standard courts apply when they review any other matter that parties have agreed to arbitrate.” *Id.* at 943 (emphasis in original). In direct contradiction of QRG’s “no deference” position, the Supreme Court ruled that “a court *must defer* to an arbitrator’s arbitrability decision when the parties submitted that matter to arbitration.” 514 U.S. at 943.⁸

⁸ *First Options* applies when there is “clear and unmistakable evidence” that parties have given the Arbitrator the power to decide issues of arbitrability, 514 U.S. at 944. Such clear and unmistakable evidence exists when parties incorporate the rules of arbitration services such as JAMS or the American Arbitration Association (“AAA”) into a contract, and those rules provide for delegation of jurisdiction issues to the arbitrator. *See, e.g., Communications Workers of America v. AT&T Inc.*, 6 F.4th 1344, 1347 (D.C. Cir. 2021) (AAA Rules); *Cooper v. WestEnd Capital Management, L.L.C.*, 832 F.3d 534, 546 (5th Cir. 2016) (JAMS Rules); *Belnap v. Iasis Healthcare*, 844 F.3d 1272, 1284 (10th Cir. 2017) (JAMS Rules); *Patrick v. Running Warehouse, LLC*, 93 F.4th 468, 481 (9th Cir. 2024) (JAMS Rules); *Work v. Intertek Res. Sols., Inc.*, 102 F.4th 769, 772 (5th Cir. 2024) (same; JAMS Rules). QRG admits that “[t]he arbitration clause in the ACAF specified arbitration administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures,” and that “Rule 8(b) provides that jurisdictional and arbitrability disputes shall be ruled on by the Arbitrator.” Brief at 30. QRG makes no argument that the Arbitrator here was not empowered to decide jurisdictional issues.

This means that the Court’s review of the Arbitrator’s decision on the scope of the arbitration agreement is limited to the statutory grounds for setting aside an award generally. *Id.* at 942-943 (citing 9 U.S.C. § 10). As a result, this Court’s review of the Arbitrator’s decision is limited to the grounds set forth in 9 U.S.C. § 10 and D.C. Code § 16-4423. *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 586 (2008) (the text compels a reading of the §§10 and 11 categories as exclusive); *Calderon*, 257 A.3d at 1058 (“review is limited to the grounds set forth in D.C. Code § 16-4423”). Generally, § 10(a) of the FAA and D.C. Code § 16-4423 permit the court to vacate the decision of an arbitrator who has exceeded his powers or otherwise engaged in affirmative misconduct. QRG has not cited to any provision in either statute, both of which are quoted in full in the Addendum to this Brief.⁹

D.C. law recognizes that parties may agree to delegate decisions on arbitrability to the arbitrator. *See generally Fraternal Ord. of Police/Metro. Police Dep’t Lab. Comm. v. D.C. Metro. Police Dep’t*, 277 A.3d 1272, 1275 (D.C. 2022) (reinstating arbitrator’s decision on arbitrability where parties had agreed to the arbitrator deciding arbitrability). Cases decided under the Uniform Act have reached the same conclusion as the Supreme Court under the Federal Act. *See Matter of*

⁹ In the Superior Court, QRG argued that the Arbitrator had exceeded his powers (a statutory ground) by rendering a decision that was “completely irrational” and in “manifest disregard” of the applicable law. QRG makes no such argument on appeal and has abandoned those arguments.

Estate of Anches, 9 Wash. App. 2d 1078 (2019) (parties may, by contract, delegate the question of arbitrability to the arbitrator.); *United States Fire Insurance Co. v. American Walks at Port St. Lucie, LLC*, 386 So.3d 575, 580 (Fla. Dist. Ct. App. 2024) (parties agreed to AAA arbitration rules, arbitrability issue was for arbitrator under Uniform Act).

The limitation of the Court’s review to the statutory grounds also means that this Court cannot decide the merits of the scope-of-the-arbitration-agreement issue for itself if the arbitrator has been empowered to decide it. In *Henry Schein, Inc. v. Archer and White Sales, Inc.*, 586 U.S. 63 (2019), the Supreme Court ruled that, “if a valid agreement exists, and if the agreement delegates the arbitrability issue to an arbitrator, *a court may not decide the arbitrability issue.*” *Id.* at 69 (emphasis added). The Court explained that, where “the parties’ contract delegates the arbitrability question to an arbitrator, a court may not override the contract.” *Id.* at 68. The Court ruled that this “is true *even if the court thinks that the argument that the arbitration agreement applies to a particular dispute is wholly groundless.*” *Id.* (emphasis added).

The Supreme Court decisions in *First Options* and *Henry Schein*, which QRG neither cites nor distinguishes, dispose of the argument that this Court owes no deference to the Arbitrator’s decisions on these issues.

QRG’s “no deference” argument is not rescued by D.C. Code § 16-4406(b), another authority that QRG has neither cited nor relied upon as a basis for its appeal, but which the Court will undoubtedly come across when it reviews the D.C. Revised Uniform Arbitration Act. That statute provides that “[t]he court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.”

Two separate reasons exist for this statute’s inapplicability to this case. First, D.C. Code § 16-4404(a) provides that parties may agree to waive or vary the effect of the statutory requirements, and the parties here did so by agreeing to the JAMS Rule 8(b).

Second, the law established under the FAA displaces any contrary rule that may exist as a matter of state law. More than forty years ago, the Supreme Court explained that “[i]n enacting § 2 of the federal Act, Congress declared a national policy favoring arbitration and withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration.” *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984). In *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011), the Supreme Court ruled that “When state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA.” *Id.* at 341. Thus,

even if § 16-4406(b) could be read as prohibiting arbitrators from deciding the scope of the arbitration agreement, that prohibition would be displaced by the FAA.

Nor would QRG's claim be rescued by D.C. Code § 16-4423(b) (enacted as part of the Arbitration Act of 2007), also not cited by QRG. It recites that "[t]he court may vacate an award made in the arbitration proceeding on other reasonable ground." In *AI Team USA Holdings, LLC v. Bingham McCutchen LLP*, 998 A.2d 320 (D.C. 2010), this Court ruled that this statute "does not authorize *de novo* review of an arbitrator's award. Rather, this court's review of an arbitration award is still extremely limited." *Id.* at 324.

Under D.C. law, it has long been settled that this Court does not sit in appellate review of arbitrators' decisions and "will not set aside an arbitration award for errors of either law or fact made by the arbitrator." *Shore v. Groom Law Group*, 877 A.2d 86, 91 (D.C. 2005), *as amended* (Mar. 14, 2005). As this Court has explained, "To substitute our judgment for that of the arbitrators would betray the "policy—inherent in election of arbitration over a judicial trial—that the parties have bargained for the arbitrators' judgment, even more than for legal correctness, and thus should not be deprived of that judgment." *Calderon*, 257 A.3d at 1059 (*quoting Cathedral Ave. Co-op., Inc. v. Carter*, 947 A.2d 1143, 1152 (D.C. 2008)).

Judicial review of an arbitration award is not available "merely because a party received an unfavorable result." *Calderon*, 257 A.3d at 1058 (*quoting Stuart*

v. Walker, 143 A.3d 761, 768 (D.C. 2016). As a result, even if QRG were to convince the Court that Judge Levie’s determinations on the scope of the arbitration agreement were incorrect, setting aside the award is not an available remedy, because the parties agreed that Judge Levie would decide that issue. *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, 559 U.S. 662, 671 (2010) (“It is not enough for petitioners to show that the panel committed an error—or even a serious error.”).

QRG has not cited a statutory ground for vacating the Arbitrator’s decision on the scope of the arbitration agreement. And there is no support in fact or law for the proposition that the Court can simply decide the issue for itself when the parties’ agreement has delegated the decision to the Arbitrator.

Accordingly, QRG’s first issue provides no basis for disturbing the decision of the court below.

II. QRG AGREED THAT THE ITS FRAUD IN THE INDUCEMENT AND COERCION ARGUMENTS WERE FOR THE ARBITRATOR TO DECIDE.

In Section II of its Brief, QRG argues that it was induced by fraud or coercion into signing the ACAF that contained the arbitration clause. But this was also an issue for the *Arbitrator* to decide. On this subject, JAMS Rule 8(b) provides, in pertinent part, that “Jurisdictional and arbitrability disputes, including disputes over the formation, existence, [or] validity ... of the agreement under which Arbitration

is sought, ... shall be submitted to and ruled on by the Arbitrator.” JA564, Appellees’ Exhibit D, page 11.

As with the first issue, QRG has failed to cite or discuss the governing law that disposes of this case.

A. Claims of fraudulent inducement or coercion are for the arbitrator to decide unless the fraud or coercion related to the arbitration itself.

In *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967), the Supreme Court ruled that, when claims of fraudulent inducement are raised, an arbitration agreement is considered separately from the larger contract and, as a result, a claim for fraudulent inducement of the contract containing the arbitration agreement is an issue for the arbitrator to decide, *unless the alleged fraud in the inducement related to the arbitration agreement itself*. 388 U.S. at 403-404. The severability of the arbitration provision exists “as matter of substantive federal arbitration law” and is a rule that “applies in state as well as federal courts.” *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 445–46 (2006). As a result, any claim by QRG that its agreement to the ACAF as a whole was induced by fraud was for the Arbitrator to decide.

In *Prima Paint*, the parties had agreed to arbitrate “[a]ny controversy or claim arising out of or relating to this Agreement, or the breach thereof.” 388 U.S. at 398. The Court ruled that “This contractual language is easily broad enough to encompass

Prima Paint's claim that both execution and acceleration of the consulting agreement itself were procured by fraud.” *Id.* at 406. The language in the ACAF is quite similar: “Any claim or dispute ... arising out of or relating to this Agreement ... will be resolved by arbitration.” JA 235. As a result, under *Prima Paint*, QRG’s claims that the ACAF was procured by fraud were within the scope of the arbitration agreement, even in the absence of JAMS Rule 8(b).

In *Prima Paint*, the Court reasoned that any claim that the arbitration agreement itself had been procured by fraud was for the court, because such a claim went to the “making” of the arbitration agreement, and thus was among the issues to be decided by the court under § 4 of the FAA (9 U.S.C. § 4). 388 U.S. at 403-404. But in *Prima Paint*, there was no counterpart to JAMS Rule 8(b), which delegated to the arbitrator the power to decide disputes over the making of the arbitration agreement.

B. Where the parties have delegated issues of contract formation and existence to the arbitrator, such questions are for the arbitrator to decide unless the fraud or coercion related to the delegation clause specifically.

The Supreme Court addressed the effect of a delegation provision like JAMS Rule 8(b) in *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63 (2010). The Supreme Court ruled that a “delegation provision,” under which the arbitrator was empowered to decide the enforceability of an arbitration agreement, was itself an agreement to

arbitrate, severable from the rest of the larger arbitration agreement of which it was a part. *Id.* at 68-69. The Court explained that “[a]n agreement to arbitrate a gateway issue is simply an additional, antecedent agreement the party seeking arbitration asks the federal court to enforce, and the FAA operates on this additional arbitration agreement just as it does on any other.” *Id.* at 70.¹⁰ The Court ruled that, unless a challenge is made the delegation provision specifically, the Court must treat it as valid, leaving any challenge to the validity of the larger arbitration agreement to the Arbitrator. *Id.* at 72.¹¹

¹⁰ *Rent-A-Center* involved a challenge to the arbitration agreement on unconscionability grounds, and the contract contained a specific provision empowering the arbitrator to decide any dispute relating to the enforceability of the agreement, including any claims that all or any part of the agreement was void or voidable. 561 U.S. at 68. Several months before *Rent-A-Center* was announced, this Court decided *Keeton v. Wells Fargo Corp.*, 987 A.2d 1118 (D.C. 2010), in which this Court found that the unconscionability issue was for the court, not the arbitrator, stating that “[a] challenge that the clause is unconscionable disputes its validity, not its scope, and it is up to the courts, not arbitrators, to adjudicate the validity of an arbitration clause. Regardless of what authority Easterns's form contract purported to confer on the arbitrator, the validity of the arbitration clause itself was for the court to decide.” *Id.* at 1122. Because *Rent-A-Center* and its progeny require enforcement of arbitration agreements delegating questions validity of the arbitration agreement to the arbitrator, unless the challenge is made to the delegation provision specifically, the sweeping statements in *Keeton* have no application in this case. And, in any event, *Keeton* is neither relied upon nor cited by QRG.

¹¹ An example of a challenge to the arbitration provision specifically is found in this Court’s decision in *Bank of America., N.A. v. District of Columbia*, 80 A.3d 650 (D.C. 2013), in which the District of Columbia argued that “it never entered an agreement to arbitrate any contract-related dispute because no authorized agent for the District had authority to sign such an agreement.” *Id.* at 665. In this case, by

Just last year, in *Coinbase, Inc. v. Suski*, 602 U.S. 143 (2024), the Supreme Court unanimously reaffirmed that “[t]he severability principle establishes that a party seeking to avoid arbitration *must directly challenge the arbitration or delegation clause, not just the contract as a whole*,” *id.* at 150 (emphasis added), and that “[j]ust as the arbitrability of the merits of a dispute depends upon whether the parties agreed to arbitrate that dispute, so the question ‘who has the primary power to decide arbitrability’ turns upon what the parties agreed about *that matter*.” *Id.* at 149 (quoting *First Options*, 514 U.S. at 943).

C. QRG has not demonstrated fraud or coercion related to the delegation clause specifically.

As a result of *Rent-A-Center*, it is not enough for QRG to argue that the arbitration agreement generally had been procured by fraud or coercion—QRG was required to show that its agreement to JAMS Rule 8(b) had been so procured, because JAMS Rule 8(b) was a separate and severable agreement to arbitrate any jurisdictional and arbitrability disputes. In the absence of showing that its agreement to Rule 8(b) had been procured by fraud, QRG’s arguments were for the Arbitrator to decide under *Prima Paint* and *Rent-A-Center*.

contrast, there is no question that QRG had the power to agree to arbitrate and did in fact enter into such an agreement.

In *Rent-A-Center*, the Supreme Court specifically rejected the argument that the delegation clause became unenforceable if the entire contract were set aside, noting that, “as in *Prima Paint* itself, where the alleged fraud that induced the whole contract equally induced the agreement to arbitrate which was part of that contract—we nonetheless require the basis of challenge to be directed specifically to the agreement to arbitrate before the court will intervene.” 561 U.S. at 71. *See also Buckeye Check Cashing*, 546 U.S. at 444-446 (discussing severability of arbitration agreements and the rule that challenges to agreement as a whole were for the arbitrator).

Federal courts in the District of Columbia apply this principle consistently. *See Hickey v. Smith*, No. 1:22-CV-02343 (TNM), 2023 WL 1991645, at *4 (D.D.C. Feb. 14, 2023) (because plaintiff did not challenge provisions delegating issues of arbitrability to the arbitrator, those “disputes are properly before the arbitrator rather than this Court”); *Andresen v. IntePros Federal, Inc.*, 240 F. Supp. 3d 143, 149 (D.D.C. 2017) (“when a valid and enforceable delegation provision is in place, a court is prohibited from reaching the gateway question of arbitrability and must reserve that question for arbitral resolution”); *Mercadante v. XE Servs., LLC*, 78 F. Supp. 3d 131, 137 (D.D.C. 2015) (challenge to the validity of an arbitration provision rather than to a delegation provision does not prevent a court from enforcing delegation provision).

Here, QRG seeks to avoid the decision of the Arbitrator on the jurisdiction issues but, as a matter of federal law, QRG was required to show that it was fraudulently induced or coerced into agreeing to JAMS Rule 8(b), which empowered the Arbitrator to decide those issues. It made no such showing.

In the Superior Court, QRG nowhere argued it was fraudulently induced or coerced into agreeing to JAMS Rule 8(b) or even to the JAMS Rules generally.¹² Nor could it—the evidence established that QRG itself proposed the use of the JAMS Rules and never once questioned them. *See, e.g.*, JA633 (third “whereas” clause of an arbitration agreement drafted and proposed by QRG to resolve PLG’s and QRG’s shares of the total contingent fee provided for arbitration under the “Rules and Procedures of JAMS, Inc.”).

In this Court, likewise, Section II of QRG’s Brief contains no challenge to Rule 8(b), and indeed does not even mention Rule 8(b), or even QRG’s agreement to the JAMS Rules generally or the delegation of jurisdictional disputes to the

¹² QRG’s contentions to the Superior Court on this issue are found at JA033-JA037. QRG’s arguments were directed to the ACAF as a whole, and not to the arbitration clause in particular; QRG first contended that the arbitration clause was not enforceable because the entire ACAF was invalid. *See* JA033 (“WTP and PLG induced QRG into executing that ACAF.... Accordingly, the ACAF arbitration clause does not constitute a valid agreement.” At JA035, QRG asserted that “Material factual omissions by PLG and WTP about the arbitration clause in the ACAF induced Quinn to sign the contract with the clause as drafted.” But QRG never said what those factual omissions about the arbitration clause actually were.

Arbitrator. Accordingly, all of the issues raised in Section II of the QRG's Brief were for the Arbitrator to decide, and the Superior Court had no power to decide them.

III. QRG'S CHALLENGE TO RULE 8(B) FAILS BECAUSE THERE IS NO ACTUAL CHALLENGE TO RULE 8(B).

Not until Section III (pages 30-31) of its Brief does QRG finally get around to discussing Rule 8(b). QRG admits that "[t]he arbitration clause in the ACAF specified arbitration administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures." Brief at 30. And QRG admits that "Rule 8(b) provides that jurisdictional and arbitrability disputes shall be ruled on by the Arbitrator." *Id.*

As its sole basis for challenge, QRG equates Rule 8(b) to a "forum selection clause," and quotes from a footnote in *Scherk v. Alberto-Culver Co.*, 417 U.S. 506 (1974), a case involving an arbitration proceeding before the International Chamber of Commerce in Paris, France. There, the Supreme Court observed that "an arbitration or forum-selection clause in a contract is not enforceable if the inclusion of that clause in the contract was the product of fraud or coercion." *Id.*, at 519, n. 14. Of course, the key phrase in this passage is "if the inclusion of *that clause* in the contract was the product of fraud or coercion." And, in making that statement, the Supreme Court cited to *Prima Paint. Id.* Thus, the Court did nothing more than restate the rule in *Prima Paint* that the claim of fraud had to be directed to the arbitration provision itself, which in this case is Rule 8(b).

QRG's entire argument to show that its agreement to Rule 8(b) specifically was the product of fraud or coercion is contained in one sentence on page 32 of its Brief: "For the reasons provided above, JAMS Rule 8(b) is rendered irrelevant as its application is unenforceable." Brief at 32. But in setting forth the basis for its alleged fraud/coercion claim (Brief at 27-31), QRG nowhere mentions Rule 8(b) and nowhere explains how it was defrauded or coerced into agreeing to Rule 8(b). Accordingly, QRG has not made and cannot make the evidentiary showing necessary to show that its agreement to Rule 8(b) was the result of fraud or coercion.

On this score, QRG's claim fails under *Hercules & Co. v. Shama Restaurant Corp.*, 613 A.2d 916 (D.C. 1992), a case that QRG did cite. Although decided before *First Options*, *Buckeye*, *Rent-A-Center*, *Henry Schein*, and *Coinbase*, *Hercules* recognized the principle that claims of fraud in the inducement must be directed to the specific arbitration agreement at issue. This Court ruled that "a party seeking to avoid arbitration must allege in its pleadings facts that establish all the elements of fraud *with respect to the arbitration clause in particular*," and that "[a] complaint alleging only that the entire contract was fraudulently induced is insufficient as a matter of law to avoid referral of the issue of fraud to arbitration." 613 A.2d at 923 (emphasis added).

Hercules also ruled that "common law fraud is never presumed" and that party asserting it "must prove it by clear and convincing evidence." 613 A.2d at 923. This

is no less true in the context of challenging arbitration awards. As this Court explained, “[w]hen the fundamental and powerful policy that favors arbitration of disputes and narrowly constricts the scope of judicial intervention, is considered together with the requirement that fraud be pleaded with particularity and proved by clear and convincing evidence, parties to arbitration agreements should not be readily permitted to avoid them simply by invoking in their pleadings the pejorative cry of fraud.” *Id.* (cleaned up, citations omitted); And, the Court stated, “if Hercules were permitted to avoid its obligation to arbitrate simply upon this ‘mere cry of fraud in the inducement,’ the reliability of agreements to arbitrate would be seriously undermined.” *Id.* at 935.

Hercules was decided at the pleading stage, yet its reasoning is no less applicable to the proof stage. Challenges to arbitration awards are summary proceedings. *See* Superior Court Rule 70-I(b). Both the FAA and the DCRAA require a party seeking to vacate an arbitration award to do so by motion. 9 U.S.C. § 6 (“Any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.”), D.C. Code § 16-4405(a) (“Except as otherwise provided in § 16-4427, an application for judicial relief under this chapter shall be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions”).

In the District of Columbia, as in the federal courts, evidence supporting a motion must be submitted with the motion. Superior Court Rule 6(c) governs motions generally and provides that “[a]ny affidavit supporting a motion or opposition must be served with the motion or opposition unless the court orders otherwise.” Modeled on the Federal Rules, this rule applies not just to affidavits but to all evidence submitted in support of a motion. *Masters v. Lin*, No. CV 6:14-2473-TMC, 2015 WL 12830505, at *6 (D.S.C. Jan. 23, 2015) (“Although Section 6(c)(2) refers to “affidavits,” ... that language includes other documents in support of the motion.”). As a result, because vacation of an arbitration award can be sought only by motion, any evidence that a party seeks to have the Court consider must be submitted with the motion. *See Weber v. Merrill Lynch Pierce Fenner & Smith, Inc.*, 455 F. Supp. 2d 545, 551 (N.D. Tex. 2006) (striking evidence submitted for the first time in a reply brief in support of a motion to vacate an arbitration award).

Accordingly, when QRG set out to challenge its agreement to JAMS Rule 8(b) as being a product of fraud, it was required to present all of its evidence that fraud in the inducement occurred, and that evidence had to be clear and convincing. That is, QRG was obliged to identify statements of the other parties that were untrue, and that it relied upon, when it agreed that the arbitration under the ACAF would be governed by JAMS Rule 8(b). Nowhere does QRG make any such showing.

IV. THERE IS NO ERROR, MUCH LESS CLEAR ERROR, IN THE SUPERIOR COURT’S FACTUAL FINDING THAT QRG’S CLAIMS WERE REFUTED BY ITS OWN EVIDENCE.

Far from concluding that QRG had submitted any clear and convincing evidence of fraud, the Superior Court concluded that “the evidence presented with the briefing *refutes beyond any genuine factual dispute* QRG’s contention that Mr. Quinn was fraudulently induced (or induced under duress) to agree to the JAMS arbitration clause in the ACAF.” JA739 (emphasis added). There is no error, much less clear error, in this factual finding.

QRG has failed to explain with clear and convincing evidence that it was misled into agreeing the JAMS Rule 8(b), and has not shown the Superior Court’s clear error in concluding otherwise. Under *Rent-A-Center*, arguments directed generally to the arbitration clause are not enough. But even QRG’s arguments directed generally to the arbitration clause fail to show any evidence, much less clear and convincing evidence, of fraud or duress.

QRG does nothing more than summarily assert that “[t]he record in this case establishes that WTP and PLG induced QRG into executing the ACAF, *notwithstanding QRG’s repeated objections to the arbitration clause*, through a combination of concealment of key facts from QRG and coercion.” Brief at 27 (emphasis added). Yet QRG identifies no such objections to the arbitration clause. Indeed, QRG does not identify even one instance where it objected to inclusion of

the arbitration clause where QRG would participate as a party. The sole “objection” cited in the Brief related to the interests of other parties. *See* Brief at 29 (“Acting on behalf of QRG and as Wye Oak's general counsel, Quinn rejected this demand *because it was not in Wye Oak's interests.*”). Mr. Quinn’s testimony submitted to the Arbitrator recited that “[b]ecause I knew that any arbitration proceeding would necessarily entail creating a record of PLG’s substantial underperformance of its contractual obligations to Wye Oak and because Wye Oak lacked funds to pay counsel for what looked like a protracted proceeding, *I consistently said that arbitration was contrary to Wye Oak’s interests. I was also trying to avoid the creation of a record of PLG’s behavior over the years 2009-2017.*” JA325 ¶ 11 (emphasis added).¹³

However, as stated above, once Wye Oak’s exposure to fee claims was capped by the ACAF, the outcome of the allocation between the firms had no effect on Wye Oak. QRG’s “objection” had nothing to do with QRG’s decision to agree to arbitrate disputes involving QRG arising out of or relating to the ACAF. Nor did it have anything to do with the agreement to use JAMS Rules, or in particular Rule 8(b).

¹³ During the time QRG was trying to force the other firms to cut it into the deal, QRG repeatedly disparaged PLG. However, when the time came for QRG to back up its statements with proof, it could not.

QRG also asserts that “Material factual omissions by PLG and WTP about the arbitration clause in the ACAF induced Quinn to sign,” Brief at 27, but QRG again fails to identify those omissions.

QRG appears to argue that WPT and PLG concealed their intent to resolve the allocation of the contingent fee among the firms by arbitration. But QRG knew all along that this would be the case if an agreement between the firms was not reached, admitting that “[t]he record clearly shows WTP pushing arbitration in the fall of 2019 as a mechanism to settle the allocation issue.” Brief at 29. This, likewise, has nothing to do with the agreement to use JAMS Rule 8(b) or the JAMS Rules generally.

QRG argues that Mr. Quinn rejected the draft agreement that had been signed by PLG. Brief at 29. But this “objection” also had nothing to do with QRG being a party to arbitration, or even with arbitration generally. Mr. Quinn’s email rejecting the draft stated he had attached to it a “revised draft arbitration agreement which I am prepared to recommend to the Wye Oak Board.” *See* JA308 and JA638. QRG did not submit this revised agreement as part of its evidence, but Appellees did. JA638-643. This “revised agreement” had been prepared by QRG, was an agreement to which QRG would be a party, and provided for arbitration of the allocation dispute under the JAMS Comprehensive Arbitration Rules. JA642.

Rule 11 of the JAMS Comprehensive Rules contained a delegation provision identical to Streamlined Rule 8(b), as did other sets of JAMS Rules in place at the time that ACAF was agreed to.¹⁴ Because all of the JAMS Rules provided for delegation of arbitrability disputes to the arbitrator, QRG's proposal to use the Comprehensive Rules was a proposal that included delegation of jurisdiction disputes to the arbitrator.

Mr. Quinn's testimony to the Arbitrator further confirms that, in the months and weeks prior to signing that ACAF that "WTP pressed both QRG and Wye Oak to submit the entire allocation issue to Judge Levie" and that QRG sought "to counter WTP's contention that the only way to address fee allocation was via JAMS mediation or compulsory arbitration." JA325 ¶ 11. As near as can be determined, QRG now says it was deceived into believing that the other parties were not intending to arbitrate the very issues that they had been pressing for weeks to have resolved by arbitration.

And, in any event, there is no evidence at all that QRG was deceived into agreeing to JAMS Rule 8(b), which is the issue here.

¹⁴ See JA666 (JAMS Comprehensive Rule 11(b)); JA668 (JAMS Engineering and Construction Rule 11(b)); JA670 (JAMS Employment Arbitration Rule 11(b)); JA672 (JAMS Surety Dispute Rule 7(b)). See also JA674 (JAMS International Rule 18.2).

QRG's "proof" of "coercion" fares no better. QRG asserts that one of the attorneys threatened him with financial ruin if he did not agree to include the arbitration clause in the ACAF. But this contention, even assuming it to be true, likewise misses the issue. QRG itself concedes that the parties, over the course of several weeks, had discussed arbitration using the JAMS Rules, with QRG even proposing their use. There is no argument or evidence that anyone said to QRG that it must agree to JAMS Rule 8(b) or else, or even that financial ruin would rain down unless QRG agreed to the JAMS Rules generally. Absent an attack on the delegation provision specifically, *Rent-A-Center* commands that issues of contract formation be decided by the Arbitrator.¹⁵

Notably, all of the foregoing "evidence" is directed to the allocation issue, and QRG does not appear to advance any argument that it was deceived into arbitrating the tort claims. However, as the Arbitrator noted in the Final Award, and as discussed above, QRG could have presented, but chose not to present, an affirmative case in support of the percentage to which it believed it was entitled. Under these

¹⁵ QRG asserts that the "degree of personal animus" against Mr. Quinn is "also illustrated" by the service of writs of attachment on the assets of QRG filed in the Superior Court. Brief at 29. These "writs" were post-judgment garnishment proceedings, i.e., steps that WTP has taken to collect its unpaid judgment. If QRG had wanted to stay execution of the judgment pending appeal, it could have posted a bond or taken steps to provide adequate security. Having chosen not to do so, it cannot complain about routine, legitimate collection efforts.

circumstances, QRG can hardly complain about a zero allocation—it had informed the Arbitrator in writing that it would be asking for precisely that.

Accordingly, there is no proof at all, much less clear and convincing evidence, that QRG’s agreement to JAMS Rule 8(b) was the product of fraud or coercion, and any issues such issues applying to the larger arbitration agreement were for the Arbitrator to decide. QRG is bound by the Arbitrator’s decisions on those matters, and the Arbitrator’s decisions on those issues are reviewable only to the extent they fall within permitted categories for vacatur found in 9 U.S.C. § 10 and D.C. Code § 16-4423.

V. THE FINAL AWARD WAS PROPERLY CONFIRMED.

D.C. Code § 16-4423(e) provides that “[i]f the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.” Likewise, D.C. Code § 16-4422 provides that, upon a motion by a party to confirm an award, this Court “shall issue” an order confirming the award, unless the award has been vacated under D.C. Code § 16-4423, or corrected or modified under D.C. Code §§ 16-4420 or 16-4424. And § 9 of the FAA provides that “any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected...” 9 U.S.C. § 9.

Once Appellant's motion to vacate the award was denied, there was no pending motion to modify or correct the award, and the award was properly confirmed under D.C. Code §§ 16-4422 and 16-4423(e), and 9 U.S.C. § 9.

Appellant makes no contention otherwise and, thus, does not challenge the confirmation of the award.

VI. CONCLUSION.

For these reasons, the Petition was properly denied, and the arbitration award at issue was properly confirmed.

The orders and judgment below should be affirmed.

Dated: October 16, 2025

Respectfully submitted,

/s/ Eric C. Rowe

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ADDENDUM OF STATUTES AND RULES

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9 U.S.C. § 9. Award of arbitrators; confirmation; jurisdiction; procedure.

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

9 U.S.C. § 10(a) Same; vacation; grounds; rehearing.

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration--

- (1) where the award was procured by corruption, fraud, or undue means;
- (2) where there was evident partiality or corruption in the arbitrators, or either of them;
- (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
- (4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

D.C. Code § 16-4422. Confirmation of award.

After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to § 16-4420 or 16-4424 or is vacated pursuant to § 16-4423.

D.C. Code § 4423. Vacating award.

(a) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

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

(2) There was:

(A) Evident partiality by an arbitrator appointed as a neutral arbitrator;

(B) Corruption by an arbitrator; or

(C) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to § 16-4415, so as to prejudice substantially the rights of a party to the arbitration proceeding;

(4) An arbitrator exceeded the arbitrator's powers;

(5) There was no agreement to arbitrate; or

(6) The arbitration was conducted without proper notice of the initiation of an arbitration as required in § 16-4409 so as to prejudice substantially the rights of a party to the arbitration proceeding.

(b) The court may vacate an award made in the arbitration proceeding on other reasonable ground.

(c) A motion under this section shall be filed within 90 days after the movant receives notice of the award pursuant to § 16-4419 or within 90 days after the movant receives notice of a modified or corrected award pursuant to § 16-4420, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion shall be made within 90 days after the ground is known or by the exercise of reasonable care would have been known by the movant.

(d) If the court vacates an award on a ground other than that set forth in subsection (a)(5) of this section, it may order a rehearing. If the award is vacated on a ground stated in subsection (a)(1) or (2) of this section, the rehearing shall be before a new arbitrator. If the award is vacated on a ground stated in subsection (a)(3), (4), or (6) of this section, the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator shall render the decision in the rehearing within the same time as that provided in § 16-4419(b) for an award.

(e) If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.

D.C. Superior Court Rule of Civil Procedure 6(c). Computing and Extending Time; Time for Motion Papers.

(c) **Time for Serving Affidavits.** Any affidavit supporting a motion or opposition must be served with the motion or opposition unless the court orders otherwise.

D.C. Superior Court Rule of Civil Procedure, Rule 70-I. Confirming, Vacating, or Modifying Arbitration Awards Under the Arbitration Amendments Act of 2007 (Revised Uniform Arbitration Act)

(a) Form and Service of Applications.

(1) *Form.* Applications to the court under D.C. Code 16-4405 (2010 Supp.) must be in the form of a motion and be accompanied by a proposed order.

The motion must set forth that:

- (A) there was a written agreement or order to arbitrate;
- (B) there was an award rendered pursuant to the arbitration; and
- (C) there are annexed to the pleading copies of the following:
 - (i) the agreement or order to arbitrate;
 - (ii) the selection or appointment, if any, of any arbitrator or umpire other than that designated in the agreement or order;
 - (iii) the award; and
 - (iv) each motion, notice, affidavit or other paper used in conjunction with any motion filed with the arbitrator to correct or modify the award (D.C. Code § 16-4420 (2010 Supp.)) and a copy of any order issued by the arbitrator in conjunction with such motion.
- (2) *Service*. The motion and a summons must be served in accordance with Rule 4, except that service of the motion may be made in accordance with Rule 5 on any party over whom the court has already acquired jurisdiction. Proof of service must be in accordance with Rule 4 or 5, whichever applies.
- (b) Summary Proceedings.** Proceedings under this rule are summary in nature with discovery permitted only upon a showing of good cause.
- (c) Opposition.** All objections to the motion at law or in equity must be in the form of an opposition to the motion and stated with particularity. The opposition must be served within 21 days (60 days if opponent is the District of Columbia, the United States or an officer or agency of either) after service of the motion.
- (d) Rehearing.** Where the court vacates an award, it may in its discretion and upon a finding that such rehearing is not contrary to law or equity, direct an arbitration rehearing.

JAMS Rule 8¹⁶

Rule 8. Interpretation of Rules and Jurisdiction Challenges

- (a) Once appointed, the Arbitrator shall resolve disputes about the interpretation and applicability of these Rules and conduct of the Arbitration Hearing. The resolution of the issue by the Arbitrator shall be final.

¹⁶ The JAMS Streamlined Rules are found at JA553-578.

(b) Jurisdictional and arbitrability disputes, including disputes over the formation, existence, validity, interpretation or scope of the agreement under which Arbitration is sought, and who are proper Parties to the Arbitration, shall be submitted to and ruled on by the Arbitrator. The Arbitrator has the authority to determine jurisdiction and arbitrability issues as a preliminary matter.

(c) Disputes concerning the appointment of the Arbitrator shall be resolved by JAMS.

(d) The Arbitrator may, upon a showing of good cause or sua sponte, when necessary to facilitate the Arbitration, extend any deadlines established in these Rules, provided that the time for rendering the Award may only be altered in accordance with Rule 19.

ANNEX 1

LIST OF WHITEFORD PARTNERS

Bers, Steven E.	Hancock, Thomas F IV
Bogart, Philip M.	Hathway, John J.
Bonard, Glenn R.	Herbert, Brett C.
Brady, Michael H.	Hill, Katja H.
Brauner, Lisa	Hyatt, Randi
Brooks, Todd M.	Inge, Vernon E.
Carney, Robert F.	Ingram, Kenneth J.
Chaisson, Christopher	Jeffcoat, James R.
Cheshire, Mary Claire	Johnson, Eileen M.
Childers, III, Masten	Jones, Christopher A.
Cizek, Adam	Jones, Frank S.
Cornell, Harris	Kahl, James A.
Cox, Robert H	Kanfer, Jordan
Cox, Spencer M	Kernan, Kevin A.
Curran, Robert B.	Lashley, Emily K.
Daneman, David	Lawler, George S
Davis, Mary Elizabeth	Lee, III, Edward U.
Davis, Peter J.	Lewis, Clare M
De Castro, Mario A.	Lewis, Kenneth M.
Deng, Dorothy	Maclin, Robert E Iii
Diaz, Marla J.	March, Michael
Dorsey, Gregory A.	Matricciani, Rose M.
Duo, Danila	Mezzanotte, Albert J.
Dymowski, Julianne E.	Mezzanotte, Joseph J.
Ellison, Steven	Miutescu, Razvan E.
Englander, Bradford F.	Montesinos, Roberto M.
Faraci, Stephen M.	Mouldsdale, S. Keith
Fee, Jr, Edwin G.	Mullen, Dale G.
Feiler, Eric	Neifert, Alexandra L.
Fitch, Elizabeth Ann	Newton, Kellie L.
Fletcher, Martin T.	Nussbaum, Paul M.
Gaffey, David W.	O'Connell, III, Edward J.
Gatehouse, James B.	Phillips, Marc
Glassie, Jefferson C.	Qasimi, Enayat
Gontrum, John	Radia, Rajiv
Griffith, Daniel A.	Rapp, Brandy M.
Guattery, Peter D.	Rene, Kyle R

Rinard, Chad
Rogers, Jane Saindon
Rosenthal, Herman B.
Ryan, Jr, William F.
Saeidi, Nasim
Schaefer, Stephen M.
Seaman, Jeffrey C.
Selbach, John C.
Simmons, Charles L.
Sinkins, Todd A
Smith, D. Shane

Stevens, David M.
Stoker, Ryan J.
Stone, Gregory
Strickland, Brent C
Tiller, Steven E.
Toms, Chad J.
Vendt, Eric A.
Via, Jr, Raymond B.
Vorsteg, Joseph D.
Whiteford, Thomas J.
Zivkovich, M. Trent