Circuit Court for Howard County
Case No. C-13-CV-21-000448

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0370

September Term, 2023

HABIB A. BHUTTA, M.D.

v.

MAPLE LAWN SURGERY CENTER, LLC, ET AL.

Arthur,
Beachley,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: May 22, 2025

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

This appeal stems from the circuit court's denial of a petition to vacate an arbitration award. The circuit court declined to vacate the award because the award did not demonstrate manifest disregard of the law. We affirm.

BACKGROUND

At bottom, this case is about contract interpretation. It concerns an LLC's operating agreement, a purchase agreement for the shares of the LLC's members, and an aggrieved member who complains that he was wrongfully expelled from the LLC and thus prevented from enjoying the benefits of the purchase agreement.

The aggrieved member is Habib A. Bhutta, M.D. On June 28, 2021, Dr. Bhutta and his LLC, Preventive Care Enterprises, LLC ("PCE"), filed suit in the Circuit Court for Howard County, alleging breach of contract and related tort claims. Dr. Bhutta and PCE named Maple Lawn Surgery Center, LLC ("Maple Lawn"), Surgical Center Development #3, LLC ("SCD"), and United Surgical Partners International, Inc. ("USPI") (collectively, the "appellees") as defendants.

Maple Lawn and SCD moved to compel arbitration pursuant to Maple Lawn's operating agreement. On October 1, 2021, the circuit court compelled Dr. Bhutta and PCE to arbitrate their claims.

During the five-day hearing, the arbitrator heard testimony and reviewed voluminous written evidence, from which she made thirty-four findings of fact. The following exposition is based on those findings.

Dr. Bhutta and Maple Lawn

In 2008, Dr. Bhutta—a Maryland general surgeon, board certified in 1983—joined several other physicians and SCD to create Maple Lawn, an outpatient surgery center. Dr. Bhutta invested $25,000.00. In return, he received five shares in Maple Lawn.

In 2011, Dr. Bhutta transferred his shares in Maple Lawn to PCE, an LLC owned by him and his wife. Dr. Bhutta is the sole physician-member of PCE.

As a result of the transfer, Dr. Bhutta relinquished his status as a member of Maple Lawn, and PCE became the member subject to the operating agreement. Thereafter, the parties continued to refer to Dr. Bhutta as a member even though PCE owned the Maple Lawn shares and received all the distributions.

In early 2020, USPI expressed interest in purchasing a majority of the members' shares in Maple Lawn. A draft letter of intent was circulated in late March of 2020, and negotiations ensued over the next several months. The purchase agreement required Maple Lawn's members to represent and warrant, among other things, that they were in good standing to practice medicine and that their staff privileges at other medical facilities were not at risk.

Dr. Bhutta's Professional and Personal Circumstances

For years, Dr. Bhutta performed surgeries without issue at Maple Lawn as well as at Howard County General Hospital and other local facilities. In early 2020, however, Howard County General Hospital placed Dr. Bhutta under investigation following accusations of misconduct, including discouraging a patient from getting a second

opinion, failing to answer an emergency room call, and having to be prompted on how to properly complete an operation.

Instead of agreeing to the hospital's proposed solution, which would have required another surgeon to proctor his surgeries, Dr. Bhutta let his professional privileges at Howard County General Hospital expire as of March 31, 2020. Dr. Bhutta never informed Maple Lawn about the alleged misconduct at Howard County General Hospital, the resulting investigation, or his decision to let his staff privileges there lapse.

During the summer of 2020, Maple Lawn received two subpoenas from the Maryland Board of Physicians about Dr. Bhutta's care for patients and his professional credentials. The second subpoena, which was very broad, concerned Dr. Bhutta's credentials and care for his patients. Maple Lawn had never received a subpoena like the second one.

Apparently in response to the subpoenas, Maple Lawn requested a report from the National Practitioner Data Bank.[1] The report, which Maple Lawn received on September

[1] The National Practitioner Data Bank, which is run by the United States Department of Health and Human Services, "is a web-based repository of reports containing information on medical malpractice payments and certain adverse actions related to health care practitioners, providers, and suppliers." *About Us*, Nat'l Prac. Data Bank, https://www.npdb.hrsa.gov/topNavigation/aboutUs.jsp (last visited May 13, 2025). "Federal regulations authorize eligible entities[,]" like hospitals and state licensing authorities and medical boards, "to report to and/or query the" National Practitioner Data Bank. *Id.* "[I]t is a workforce tool that prevents practitioners from moving state to state without disclosure or discovery of previous damaging performance." *Id.*

11, 2020, contained information about Dr. Bhutta's troubles at Howard County General and his decision not to renew his privileges there.

In early October 2020, Dr. Bhutta—then in his mid-seventies—suffered a stroke that left him with severe aphasia[2] and impairment of his cognitive and executive functions. Dr. Bhutta never informed Maple Lawn or his colleagues about the stroke, the resulting symptoms, or how the stroke might affect his ability to perform surgeries.

After his stroke, Dr. Bhutta remained out of the office for at least two weeks. During that time, Dr. Bhutta advised Maple Lawn staff that he was simply "not feeling well" or was "[n]ot available." The arbitrator found that Dr. Bhutta was "not candid because of the potential impact on his career, particularly the cash payment he anticipated from the USPI acquisition."

Dr. Bhutta had been recredentialed at Maple Lawn in February 2020. The arbitrator found that, "[h]ad he been scheduled for re-credentialing in the fall of 2020, he would not have been re-credentialed and would have lost his operating privileges at Maple Lawn."

[2] Aphasia is a language disorder, commonly caused by stroke, that affects a person's ability to express and comprehend language. *Aphasia*, Nat'l Inst. on Deafness & Other Commc'n Disorders (Apr. 16, 2025), https://www.nidcd.nih.gov/health/aphasia; *accord Aphasia*, *Stedman's Medical Dictionary* (28th ed. 2006). Based on the arbitrator's description of Dr. Bhutta's symptoms, he may suffer from sensory and motor aphasia, meaning he has difficulty in both understanding and expressing language. *Aphasia*, *Mosby's Medical Dictionary* (10th ed. 2017).

"Dissociation" and the USPI-Maple Lawn Deal

In late October 2020, a few weeks after his stroke, Dr. Bhutta dropped by the Maple Lawn facility to discuss scheduling surgeries. According to the office administrator, Dr. Bhutta was having difficulty speaking and was not in any condition to perform surgery.

Pursuant to the operating agreement—under which any member could be removed "for any reason, with or without cause," if seventy percent of the remaining members agreed that the member ought to be "dissociated"—Maple Lawn's members resolved to dissociate Dr. Bhutta without cause on October 28, 2020. The members were motivated by the unprecedented subpoena from the Board of Physicians, Dr. Bhutta's relinquishment of his privileges at Howard County General and his failure to disclose that he had relinquished them, his extended absence from the office with no explanation except that he did not "feel well," the risk to patients, the risk to the USPI-Maple Lawn deal, and a perception that they could no longer trust him.

Dr. Bhutta was informed of the dissociation by letter. Consistent with Maple Lawn's interpretation of a post-dissociation buyout provision,[3] the letter included a check made out to PCE for $25,000.00, the value of Dr. Bhutta's initial investment.

[3] Section 11.2 of the operating agreement provides that Maple Lawn shall purchase the dissociated member's interest "for the purchase price paid by the Member for that Member's initial purchase of the Units so purchased[.]"

The dissociation documents erroneously named Dr. Bhutta, instead of PCE, as the Maple Lawn member to be removed. Maple Lawn tried to remedy this error in 2022 (after Dr. Bhutta and PCE had filed suit, but before the arbitration commenced) by dissociating PCE retroactively to October 28, 2020. Nonetheless, because Dr. Bhutta, acting on behalf of PCE, deposited the check and retained the funds, "PCE acknowledged" that it was "practical[ly]" dissociated in October of 2020.

In the meantime, the appellees moved forward with the USPI-Maple Lawn deal and eventually closed the transaction, without PCE, in December of 2020. Dr. Bhutta and PCE did not receive the benefits of the deal.

After Dissociation

Against his own physicians' recommendations, and without an objective medical opinion approving his return to the operating room, Dr. Bhutta resumed performing surgeries at other facilities in early 2021. Dr. Bhutta believed that his stroke did not affect his surgical skills. He reasoned that the non-emergency surgeries he was performing were routine and required minimal communication with a surgical team.

However, Dr. Bhutta's difficulty with language was apparent in his professional correspondence. For example, in an email in which he responded to the news of his dissociation, Dr. Bhutta wrote:

> I did splendid success made Maple surgery for the last 10-12 years. But Maple Lawn surgery terminated my service and not contract and

> maliciously action and 5 shares with it today and I have been of deprived service. (I miraculously you. I never
>
> I wish you success with your venture) But will and wish with heavy and heart miss management For the corporation of maple lawn lawn

(Sic.)

Dr. Bhutta's residual symptoms were apparent during the arbitration hearing, which occurred nearly two years after the stroke. At that time, he still suffered from what the arbitrator called "significant auditory aphasia," which prevented him from comprehending many of the questions that he was asked. "Multiple times he had to have questions repeated or rephrased because it was apparent to counsel or the Arbitrator that he did not understand them."

The Arbitration Award

Based on her factual findings and her interpretation of the operating and purchase agreements, the arbitrator issued her final award in November of 2022. The arbitrator concluded that Maple Lawn's attempt to retroactively dissociate PCE was ineffective. Therefore, she concluded that PCE was still a member of Maple Lawn when the USPI-Maple Lawn deal closed in December of 2020.

The arbitrator ultimately concluded, however, that PCE could not have participated in the venture. Because she found that Dr. Bhutta, as PCE's sole practitioner, could not honestly make the required representations and warranties, PCE too could not make the required representations and warranties. Accordingly, she concluded that PCE had not been wrongfully excluded from the venture.

The arbitrator specifically found that Maple Lawn "was prudent to terminate" its relationship with PCE and Dr. Bhutta. The arbitrator also found that "the primary motivators" for the decision to dissociate PCE and Dr. Bhutta "were the correct perceptions that Dr. Bhutta was significantly disabled[;] that he was planning to return to surgery at a time when he should not be considering that, potentially putting patients and Maple Lawn at risk[;] and that he was either not recognizing the severity of his disability or he did recognize it but was putting his financial and career aspirations ahead of patient safety and the interests of his colleagues."

On that basis, the arbitrator disposed of all of Dr. Bhutta's and PCE's claims.

POST-ARBITRATION PROCEDURAL HISTORY

On December 16, 2022, PCE and Dr. Bhutta requested that the circuit court vacate the arbitration award pursuant to Md. Code Ann., Cts. & Jud. Proc. ("CJP") § 3-224 and Maryland common law, or grant a rehearing pursuant to CJP § 3-225. PCE and Dr. Bhutta argued that the arbitrator's legal conclusions exhibited "manifest disregard" for the law, that the award was "self-contradictory," and that the findings of fact were erroneous and based on evidence beyond the arbitrator's scope of authority.

The appellees cross-petitioned to confirm the award pursuant to CJP § 3-226. In addition, they requested an award of the costs and attorneys' fees incurred while defending the award pursuant to CJP § 3-228(b), because, they argued, Dr. Bhutta had made bad faith arguments and false representations to the circuit court.

The circuit court found no serious error of law or fact in the arbitration award. The court, therefore, confirmed the award and denied Dr. Bhutta's vacatur petition. The circuit court also denied the appellees' request for costs and attorneys' fees. PCE and Dr. Bhutta noted a timely appeal, and the appellees noted a timely cross-appeal.

As an LLC, PCE was required to engage counsel to represent it on appeal. *See* Md. Code, (1989, 2018 Repl. Vol.), § 10-206(b)(4) of the Business Occupations and Professions Article. PCE engaged counsel only after this Court had ordered it to show cause why its appeal should not be dismissed. Even then, its counsel failed to file a brief within the prescribed time period, and this Court dismissed PCE's appeal pursuant to Maryland Rule 8-602(c)(5).

Dr. Bhutta moved to substitute PCE for himself as the party to this appeal, relying on an assignment agreement in which PCE assigned to Dr. Bhutta all rights and interests in PCE's claims. This Court denied the motion to substitute. Consequently, Dr. Bhutta, representing himself, is the only appellant in this action.

QUESTIONS PRESENTED

In the interest of concision, we have condensed and rephrased all questions presented as follows:

I. Did the circuit court err in denying the petition to vacate the arbitration award?

II. Did the circuit court abuse its discretion by declining to award costs and attorneys' fees to the appellees?[4]

[4] Dr. Bhutta formulated his questions as follows:

We answer each question in the negative and affirm the circuit court's orders.

STANDARDS OF REVIEW

I. Arbitration Awards

A circuit court's decision to grant or deny a petition to vacate an arbitration award is a legal conclusion that we review de novo. *WSC/2005 LLC v. Trio Ventures Assocs.*, 460 Md. 244, 253 (2018). Although we afford the circuit court's conclusion no deference, we review the arbitration award under the same deferential standard that the circuit court employs during its review of the award. *Amalgamated Transit Union, Local 1300 v. Maryland Transit Admin.*, 244 Md. App. 1, 11-18 (2019).

"Judicial review of an arbitrator's decision is extremely limited, and a party seeking to set it aside has a heavy burden." *Letke Sec. Contractors, Inc. v. United States*

---

1. Did the trial court err in not considering Appellant's mental capacity when affirming the arbitration award?

2. Did the trial court err in finding that Appellants were dissociated upon receipt of a $25,000 check?

3. Did the trial court err in allowing hearsay evidence during the arbitration hearing?

The appellees formulated their questions as follows:

1. Whether the Circuit Court correctly confirmed the award and denied the Petition to Vacate Arbitration Award?

2. Whether the Circuit Court abused its discretion in denying attorneys' fees and costs pursuant to Maryland Code (2006, 2020 Repl. Vol., 2023 Supp.), Courts & Judicial Proceedings Article, § 3-228(b)?

Sur. Co., 191 Md. App. 462, 472 (2010). The applicable standard of review is "'among the narrowest known to the law.'" *Amalgamated Transit Union, Local 1300 v. Maryland Transit Admin.*, 244 Md. App. at 12 (quoting *Letke Sec. Contractors, Inc. v. United States Sur. Co.*, 191 Md. App. at 472). "'[F]actual 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.'" *State v. Philip Morris, Inc.*, 225 Md. App. 214, 241 (2015) (quoting *Mandl v. Bailey*, 159 Md. App. 64, 92 (2004)). "'[M]ere errors of law or fact would not ordinarily furnish grounds for a court to vacate or to refuse enforcement of an arbitration award.'" *Baltimore Cnty. Fraternal Order of Police Lodge No. 4 v. Baltimore County*, 429 Md. 533, 560 (2012) (quoting *Bd. of Educ. of Prince George's Cnty. v. Prince George's Cnty. Educators' Ass'n, Inc.*, 309 Md. 85, 99 (1987)). "That a reviewing court simply would have interpreted the [issues] differently is not enough." *Amalgamated Transit Union, Local 1300 v. Maryland Transit Admin.*, 244 Md. App. at 15.

We, too, "defer to an arbitrator's findings of fact and her application of the law . . . even when these are erroneous." *Id.* at 12 (citations omitted). We employ this limited scope of review because our courts have "long held arbitration to be a favored method of dispute resolution" that should not be "constantly subjected to judicial second-guessing," and because "the parties have bargained for an arbitrator's—and not a court's—resolution" of their claims. *Id.* at 12-13 (internal citations and quotation marks omitted).

II. Attorneys' Fees

"[A]n award of attorney's fees to a prevailing party pursuant to CJP § 3-228(b) is merely discretionary[.]" *WSC/2005 LLC v. Trio Ventures Assocs.*, 460 Md. at 271. Therefore, we review the circuit court's denial of the appellees' request for costs and attorneys' fees under CJP § 3-228(b) for an abuse of discretion. *Id.*

STANDING ON APPEAL

Before considering the merits of this appeal, we address the appellees' argument that Dr. Bhutta lacks standing. The appellees did not contest Dr. Bhutta's standing to challenge the award in circuit court where PCE and Dr. Bhutta were separately named plaintiffs. The appellees, however, now contend that Dr. Bhutta lacks standing on appeal because this Court dismissed PCE's appeal and because, they say, Dr. Bhutta was not personally aggrieved by PCE's inability to participate in the USPI-Maple Lawn deal. Dr. Bhutta argues that he has standing on appeal based on a February 2024 assignment agreement, wherein PCE assigned its interests in this dispute to him.

Dr. Bhutta's standing was likely uncontentious in circuit court because PCE still had standing. However, the parties' circumstances have changed since the circuit court proceedings, and Dr. Bhutta's individual standing is now at issue because of post-trial developments: we dismissed PCE's appeal, and PCE assigned its claims against the appellees to Dr. Bhutta. Assuming for the sake of argument that Dr. Bhutta, as PCE's assignee, may assert PCE's claims, we reach the merits of this appeal.

DISCUSSION

I. The Arbitration Award and Manifest Disregard of the Law

CJP § 3-224 requires a court to vacate an arbitration award on five specific grounds. The statutory grounds for vacating an arbitration award are not, however, exclusive. *See WSC/2005 LLC v. Trio Ventures Assocs.*, 460 Md. at 256-60. A court may also vacate an arbitration award on the common-law ground of manifest disregard for the applicable law. *Id.* at 252; *id.* at 260. In the circuit court, Dr. Bhutta argued that the arbitration award exhibits manifest disregard for the law.

Under the manifest disregard standard, a court must vacate an arbitration award when a "palpable mistake in law or fact" is "apparent on the face of the award . . . ." *Id.* at 254 (emphasis omitted) (quoting *Goldsmith v. Tilly*, 1 H & J 221, 223 (Md. Gen. Ct. 1802)). This common-law doctrine presents a high bar for claimants. "[M]anifest disregard is more than a mere error of law or failure by the arbitrator to understand and apply the law." *Id*. at 262. Even if an arbitrator does not "expressly rely" on settled law, her legal conclusions are adequate under the manifest disregard standard if they are "sufficiently consistent with the principles previously recognized by [the appellate courts]." *Id.* at 268-69.

"Federal courts have explained that manifest disregard of the law occurs when: (1) the applicable legal standard is clearly defined and not subject to reasonable debate; and (2) the arbitrator refused to heed that legal principle." *Id*. (citing *Wachovia Secs., LLC v. Brand*, 671 F.3d 472, 480-81 (4th Cir. 2012)). Under the standard that is applied in the

federal courts, "the party challenging the award must show that the award is 'based on reasoning so palpably faulty that no judge, or group of judges, could ever conceivably have made such a ruling[.]'" *Id.* at 263 (quoting 4 Thomas H. Oehmke & Joan M. Brovins, *Oehmke Commercial Arbitration* § 149:2, at 149-4 (3d ed. 2017)).

In the instant case, none of the arbitrator's legal conclusions evidence a manifest disregard of the law. Her conclusions were "consistent with the objective theory of contract interpretation[,]" reflected an understanding of business law principles, and conceivably could have been reached by any judge in her position. *Baltimore Cnty. Fraternal Order of Police Lodge No. 4 v. Baltimore County*, 429 Md. at 564.

For example, the arbitrator concluded that PCE was not dissociated by the October 28, 2020, vote. In reaching that conclusion, the arbitrator correctly acknowledged that Dr. Bhutta and PCE are two separate legal entities, stating: "Dr. Bhutta and PCE are two different persons under the law. Indeed, one important purpose of forming a limited liability company is to do business through a separate entity." The arbitrator interpreted section 9.4[5] of the operating agreement to conclude that, because Dr. Bhutta had not been a Maple Lawn member since transferring his shares in 2011, the attempted dissociation did nothing more than "fire" him from the board. She also interpreted section 11.1(h)[6] to

[5] Section 9.4 of the operating agreement provides that "[t]he transferor in a Transfer of the transferor's entire Interest to an Assignee shall cease to be a Member and shall not have any power to exercise any rights of a Member[.]"

[6] Section 11.1 discusses the events under which a member may be dissociated.

conclude that, because Dr. Bhutta, instead of PCE, was named as the member on the dissociation voting documents, PCE was not formally dissociated and was, therefore, still a member when the USPI-Maple Lawn deal closed.

The arbitrator supported this conclusion by acknowledging that Maple Lawn's attempt to retroactively dissociate PCE was ineffective. She stated, "[u]nder Maryland law, ratification of an error does not extend to changing retroactively the entity against which an action has been taken." This statement is sufficiently consistent with Maryland business law, under which nonbinding actions can be ratified by subsequent board resolutions. *See, e.g.*, *Tower Oaks Boulevard, LLC. v. Procida*, 219 Md. App. 376, 405 (2014). We see no error, much less any serious error, in the arbitrator's interpretation of the ratification doctrine to mean that new actions to *override* prior, nonbinding actions do not have the same retroactive effect as resolutions to *authorize* prior, nonbinding actions. A judge could reach the same conclusion—that the 2022 vote was not meant to ratify the ineffective 2020 dissociation of Dr. Bhutta, but was, instead, a new action (to properly dissociate PCE with an effective date of October 28, 2020) taken amid litigation to correct a crucial mistake.

The arbitrator also concluded that, even though PCE was still a member when the USPI-Maple Lawn deal closed, PCE could not have participated in the deal. In drawing that conclusion, the arbitrator evaluated section 4.6 of the purchase agreement, which required any member selling their shares to be "licensed and [] in good standing to practice medicine" and, if they have "medical staff privileges at any health care

facility[,]" to have privileges that are not in jeopardy. In her objective interpretation of these warranties, the arbitrator determined that PCE could not honestly make some or all of the required affirmations because Dr. Bhutta himself could not make them.

The arbitrator acknowledged that "Dr. Bhutta was the sole physician associated with PCE. Without [Dr. Bhutta], PCE was unable to act." PCE could participate in the venture only through Dr. Bhutta, as he would have to sign the eligibility statements "on behalf of PCE." Based on her findings of fact about Dr. Bhutta's compromised health, his loss of staff privileges at Howard County General Hospital, and the troublesome subpoenas about his credentials and care for patients, the arbitrator's conclusion that PCE could not participate in the venture because Dr. Bhutta could not make the required warranties for PCE is quite reasonable. To attribute Dr. Bhutta's conduct and competence to PCE does not amount to manifest disregard; it comports with well-settled principles of agency law to which the arbitrator referred in the award. *See Plank v. Cherneski*, 469 Md. 548, 562 (2020); *id.* at 572.

Additionally, the arbitrator's disposition of Dr. Bhutta and PCE's claims for breach of the duty of good faith and fair dealing, breach of fiduciary duties, and unjust enrichment all comport with the applicable case law. The arbitrator cited *Mount Vernon Properties, LLC v. Branch Banking & Trust Co.*, 170 Md. App. 457 (2006), which holds that there is no separate cause of action for a breach of the implied duty of good faith and fair dealing. She cited *Plank v. Cherneski*, 469 Md. at 572, which holds that managing members (like Dr. Bhutta) owe fiduciary duties, such as the duties of loyalty and care, to

an LLC and its members. She also cited *County Commissioners of Caroline County v. J. Roland Dashiell & Sons, Inc.*, 358 Md. 83, 96-97 (2000), which holds that a person cannot recover for unjust enrichment when an enforceable contract governs the subject matter at issue.

Ultimately, in concluding that Dr. Bhutta and PCE failed to prove each claim, the arbitrator certainly did not ignore or refuse to apply applicable law. On the contrary, she identified, appreciated, and applied relevant authority to resolve each claim. Moreover, each of the arbitrator's conclusions conceivably could have been made by a judge in her position. Thus, the award need not be vacated under the manifest disregard standard, and the circuit court was correct to deny the vacatur petition and confirm the award.

II. Dr. Bhutta's Other Arguments

Dr. Bhutta makes a few additional arguments in support of his contention that the circuit court erred in not vacating the award. None have merit.

Dr. Bhutta contends that the arbitrator "failed to consider" his "mental capacity" —specifically, his "impaired cognitive abilities" as a result of the stroke. He seems to argue that, as a result of his "impair[ed] cognitive abilities," the decision to dissociate PCE was "voidable." Dr. Bhutta's argument is fallacious. The decision to dissociate PCE did not result from some kind of agreement that might be characterized as "voidable" because one party lacked mental capacity. The decision to dissociate PCE was a unilateral action that the members of Maple Lawn had the authority to take under the operating agreement.

Dr. Bhutta also contends that the arbitrator erred in finding that "PCE acknowledged that it was dissociated as a practical matter" because it "retain[ed] the benefits of dissociation"—the $25,000 check—after it became clear that the check represented the return of capital. Even if an arbitrator's factual findings were not "'virtually immune from challenge'"[7]—i.e., even if we could review the findings for clear error, as we review a court's factual findings—we could find no error here. The finding in question has ample support in the factual record.[8]

Finally, Dr. Bhutta argues that the arbitrator erred in allowing hearsay during the hearing. His argument has no merit. CJP § 3-214(b) makes clear that "[a]rbitrators are not bound by the technical rules of evidence." And although the parties conceivably could have agreed otherwise, the Maple Lawn operating agreement contains no term whereby the parties agreed to use the technical rules of evidence or to prevent the arbitrator from relying on hearsay. In any event, because Dr. Bhutta has not provided us with a transcript of the hearing, we have no way to tell whether he registered any objection to the alleged hearsay.

[7] *State v. Philip Morris, Inc.*, 225 Md. App. at 241 (quoting *Mandl v. Bailey,* 159 Md. App. at 92).

[8] Because of our disposition of this issue, we need not address Maple Lawn's contention that in the operating agreement the members waived the right to challenge any of the arbitrator's factual findings.

III. Awards Under CJP § 3-228(b)

In their cross-appeal, the appellees argue that the circuit court erred by declining to award them the costs and attorneys' fees that they incurred while defending the award. The appellees made their request pursuant to CJP § 3-228(b), which provides that "[a] court may award costs of the petition, the subsequent proceedings, and disbursements[;]" the latter of which includes "all [reasonable] attorneys' fees necessary to obtain confirmation of the arbitration award[.]" *Blitz v. Beth Isaac Adas Israel Congregation*, 352 Md. 31, 47 (1998); *accord Goldstein v. 91st St. Joint Venture*, 131 Md. App. 546, 574 (2000).

Relying on language from *Blitz v. Beth Isaac Adas Israel Congregation*, 352 Md. at 47, which was decided in 1998, the appellees assert that they were "entitled" to recover their costs and attorneys' fees as the prevailing party. However, it since has been settled that an award to a prevailing party under to CJP § 3-228(b) "is merely discretionary and not required." *WSC/2005 LLC v. Trio Ventures Assocs.*, 460 Md. at 271; *accord Goldstein v. 91st St. Joint Venture*, 131 Md. App. at 575.

In the circuit court, the appellees made their request for costs and fees under CJP § 3-228(b) in terms that parallel an argument for costs and fees pursuant to Maryland Rule 1-341. To make an award under Rule 1-341, a trial judge must make two findings: first, "that a party conducted litigation either in bad faith or without substantial justification[,]" and, second, that "the party's conduct merits the assessment of costs and attorney's fees[.]" *URS Corp. v. Fort Myer Constr. Corp.*, 452 Md. 48, 72 (2017). Accordingly, an

award under Rule 1-341 is, itself, discretionary, because a trial judge is not required to order an award even if the judge finds that a party's arguments lacked substantial justification or that the party proceeded in bad faith. *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 266 (1991).

Here, the appellees argue that Dr. Bhutta lacked good faith bases to challenge the arbitrator's findings of fact, that Dr. Bhutta's request to vacate the award because it "paint[ed] [Dr.] Bhutta in a worse light than is reasonable" was "not grounded in fact or law[,]" that Dr. Bhutta falsely told the circuit court of an agreement to use the traditional rules of evidence during the arbitration hearing, and, finally, that Dr. Bhutta misrepresented the award's content when he repeatedly told the circuit court that the arbitrator never distinguished PCE from Dr. Bhutta.

By styling their request in language consistent with Rule 1-341, the appellees gave the trial judge a metric with which to exercise her discretion under CJP § 3-228(b). The "bad faith or without substantial justification" metric is not inconsistent with this Court's understanding of the exercise of discretion required by CJP § 3-228(b), which guides courts to consider parties' candor during litigation. *See WSC/2005 LLC v. Trio Ventures Assocs.*, 460 Md. at 270-71. For example, in *WSC/2005 LLC v. Trio Ventures Assocs.*, the Court determined that it was not an abuse of discretion to deny the prevailing party attorneys' fees under CJP § 3-228(b) where the party challenging the award failed to prove manifest disregard, but "brought good-faith legal challenges[.]" *Id.* at 271.

Here, the trial judge considered the appellees' arguments about Dr. Bhutta's candor, and she was not persuaded to award costs and fees. We interpret the statement—"I don't believe this is a Rule 1-341 case"—to mean that the court found that Dr. Bhutta's claims were neither made in bad faith nor without substantial justification. Thus, having determined that costs and attorneys' fees were not warranted under Rule 1-341, the trial judge denied the appellees' request under CJP § 3-228(b). That decision was not an abuse of discretion. *WSC/2005 LLC v. Trio Ventures Assocs.*, 460 Md. at 271.

CONCLUSION

The circuit court correctly concluded that the arbitration award does not demonstrate manifest disregard of law. Accordingly, the court did not err in denying the vacatur petition and confirming the award. Additionally, the court did not abuse its discretion when it denied the appellees' request for costs and attorneys' fees. Both orders are affirmed.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.