Circuit Court for Montgomery County
Case No. 486191V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1375

September Term, 2021

LESTER ANDREW HUFF

v.

M&J CONSTRUCTION AND
REMODELING, LLC

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

JJ.

Opinion by Graeff, J.

Filed: July 21, 2022

This appeal arises from a dispute between Lester Andrew Huff ("Dr. Huff"), appellant, and M&J Construction and Remodeling, LLC ("M&J"), appellee, regarding residential renovation work that M&J performed at Dr. Huff's home in Silver Spring, Maryland. The parties submitted the dispute to arbitration with the American Arbitration Association ("AAA"), and the arbitrator issued a Final Award in favor of M&J, in the amount of $45,916, plus costs, and $24,162 in attorney's fees (the "award").

M&J subsequently filed a petition to confirm the award in the Circuit Court for Montgomery County. Dr. Huff then filed a petition to vacate, or alternatively, to modify the award. After a hearing, the circuit court denied Dr. Huff's petition, confirmed the award, and granted M&J's request for attorney's fees.

On appeal, Dr. Huff presents the following questions for this Court's review, which we have reordered and rephrased slightly, as follows:

1. Did the circuit court err in denying Dr. Huff's petition to vacate, or alternatively, to modify the award on grounds that there was evident partiality by the arbitrator?

2. Did the circuit court err in denying Dr. Huff's petition to vacate, or alternatively, to modify the award on grounds that the arbitrator exceeded the scope of his authority in awarding M&J attorney's fees?

3. Did the circuit court err in denying Dr. Huff's petition to vacate, or alternatively, to modify the award on grounds that the arbitrator manifestly disregarded the law in awarding M&J "consequential damages," i.e., lost profits and unrecovered office overhead?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I.

The Underlying Dispute

In 2020, Dr. Huff began a renovation project at his home in Silver Spring. Although he was not a construction general contractor, he acted as the general contractor for this project. Dr. Huff contracted with M&J to provide demolition of portions of the house to make room for the renovation and replacement of building systems. Because Dr. Huff's home was originally constructed in the late 1890s, there were no drawings indicating what, if anything, was behind the walls in the house or which walls were primary structural elements. Therefore, the walls needed to be demolished to uncover systems that needed to be replaced or upgraded so the project architect could complete his design.

After the operating systems were completed and replacement work was installed, M&J was to replace the walls. Dr. Huff wanted the house to be ready for occupancy by August 2020. M&J started construction at Dr. Huff's home in early April 2020. Difficulties ensued. In May 2020, Dr. Huff terminated M&J's work.

II.

The Arbitration Agreement and Selection of the Arbitrator

In October 2020, Dr. Huff and M&J entered into an Agreement to Arbitrate (the "Agreement"), submitting "all claims or disputes arising out of or relating to work performed" by M&J at Dr. Huff's residence to "arbitration under the auspices of the [AAA] in accordance with the Construction Industry Arbitration Rules currently in effect." The

Agreement further provided that "[t]he award rendered by the arbitrator shall be final, and judgment may be entered in accordance with applicable law by any court having jurisdiction thereof."

Dr. Huff subsequently filed a demand for arbitration with the AAA, asserting that M&J owed him $100,000 for uncompleted work and costs to repair M&J's defective work.[1] M&J counterclaimed, alleging that Dr. Huff owed it $74,875 for, among other things, unpaid work, unreimbursed expenses, "lost profits on unperformed work," and "lost opportunity to bid other work." Zachary Chapman, Esquire, represented Dr. Huff, and Joseph Katz, Esquire, represented M&J in the arbitration.

The AAA presented Dr. Huff and M&J with five candidates to serve as arbitrator. Laurence Schor, Esquire, a member of the District of Columbia law firm of Asmar, Schor & McKenna, PLLC ("ASM"), was one of the five candidates. Dr. Huff and M&J ranked the five candidates on separate lists, indicating their respective preference for arbitrator. The AAA subsequently notified Dr. Huff and M&J that Mr. Schor was appointed as the arbitrator.

On February 2, 2021, Mr. Schor completed the AAA's General Arbitrator Oath Form (the "Oath Form"). The first section of the Oath Form, entitled "Disclosure Obligations," provided:

> It is most important that the parties have complete confidence in the arbitrator's impartiality. Therefore, please disclose any past or present

[1] The record on appeal does not contain the documents filed in the arbitration proceeding. We set forth the underlying facts as set forth by the parties and the circuit court.

> relationship with the parties, their counsel, or potential witnesses, direct or indirect, whether financial, professional, social or of any other kind. This is a continuing obligation throughout your service on the case and should any additional direct or indirect contact arise during the course of the arbitration or if there is any change at any time in the biographical information that you have provided, it must also be disclosed. Any doubts should be resolved in favor of disclosure. If you are aware of direct or indirect contact with such individuals, please describe it below. Failure to make timely disclosures may forfeit your ability to collect compensation. All disclosures will be brought to the attention of the parties.

In the second section of the Oath Form, Mr. Schor answered 15 yes-or-no questions regarding potential conflicts of interest. Although Mr. Schor responded in the negative to 14 of the questions, he responded in the affirmative to question three, which asked: "Have you had any professional or social relationship with counsel for any party in this proceeding or the firms for which they work?" Regarding his affirmative response to question three, Mr. Schor commented that he had previously "met" Mr. Katz, counsel for M&J, "but it was years ago."

The third section of the Oath Form, entitled "Arbitrator's Oath," provided:

> I attest that I have reviewed my biographical information provided to the parties on this case and confirm it is current, accurate and complete.
>
> I attest that I have diligently conducted a conflicts check, including a thorough review of the information provided to me about this case to date, and that I have performed my obligations and duties to disclose in accordance with the Rules of the [AAA], Code of Ethics for Arbitrators in Commercial Disputes, the parties' agreement, and applicable law pertaining to arbitrator disclosures.
>
> I further affirm that consistent with the applicable Rules of the American Arbitration Association, the Code of Ethics for Arbitrators in Commercial Disputes, the parties' agreement, and applicable law:

> • That I am fit to serve on the above-referenced arbitration and able to fully execute my responsibilities during all phases of the case;
>
> • That I will keep confidential all matters relating to the above-referenced arbitration;
>
> • That I will maintain a professional demeanor and appearance of impartiality during all phases of this case;
>
> • That I will endeavor to effectively manage all phases of this case with a commitment to speed, economy and just resolution in a manner consistent with the parties' expectations;
>
> • That I will bill parties responsibly and ethically and will review my bills for reasonableness relative to the nature and scope of the activity performed prior to submitting them to the AAA.

Mr. Schor reviewed the Notice of Compensation Arrangements for the case, initialed the Oath Form, and accepted the appointment as arbitrator.

III.

Pre-Hearing Conference and Supplemental Disclosure

On the afternoon of February 22, 2021, the arbitrator, Dr. Huff, M&J, and their respective counsel participated in a pre-hearing telephone conference. During the conference call, Mr. Katz, counsel for M&J, noted that he was representing the plaintiff in a pending federal action, and another member of the arbitrator's law firm, ASM, was representing the defendant in that case. Mr. Katz indicated that he "was uncomfortable proceeding" because that might taint the arbitrator's impartiality towards him and his client. The arbitrator stated that "he had already consulted with ethics counsel who advised that it was not a conflict of interest, that he did not know details of the case and would not inquire thereof, and [he] advised that he could, and would, remain impartial." At that time,

both Mr. Katz and Mr. Chapman indicated that they were amenable to proceeding with the arbitration. They never received from the AAA a written disclosure regarding the arbitrator and the involvement of his firm in the federal action.

Later that same day, February 22, 2021, the AAA sent to Mr. Katz and Mr. Chapman an email that contained a supplemental disclosure from the arbitrator. The email stated, in part: "I am the arbitrator in another case with Mr. Chapman serving as counsel for Respondent." The email requested that counsel notify the AAA of any objections by March 1, 2021. Neither Dr. Huff nor M&J objected to the supplemental disclosure.

IV.

Evidentiary Hearing and the Award

On April 29, 2021, the arbitrator conducted an evidentiary hearing.[2] Dr. Huff and M&J subsequently submitted to the arbitrator post-hearing memoranda.

On May 26, 2021, the arbitrator issued the award in favor of M&J and against Dr. Huff. The arbitrator found that "[t]here was a contract," noting that M&J identified its scope of work by email, with no objection, it supplied pricing information, and there was an understanding that the house needed to be ready for occupancy by August 2020. He found that M&J attempted to follow these "general parameters of performance" until May 2020, when its performance was interrupted, delayed, and eventually stopped by one of Dr.

[2] As indicated, the record on appeal does not include a transcript of the arbitration proceedings. Absent such a transcript, we generally defer to the arbitrator's factual findings and the legal conclusions drawn therefrom. *Downey v. Sharp*, 428 Md. 249, 266–67 (2012).

Huff's other contractors. Dr. Huff decided that M&J's cessation of work constituted an improper breach of contract and then terminated M&J for default more than two months before its work could have been completed. Dr. Huff did not permit M&J to reenter the house, complete its work, or retrieve its material and equipment.

The arbitrator also found that Dr. Huff and M&J agreed that the design for the house was not completed, but rather, it "was developing and evolving as construction work continued." He found that, because a completed design was either unavailable or being changed during construction, Dr. Huff "assumed the risk of construction delays" and "added costs and delays" that were incurred by M&J. He found that construction problems existed because of "the lack of anything resembling a final design" and the absence of a building permit issued by Montgomery County, i.e., "the authority having jurisdiction in this matter." Dr. Huff decided that the work would "proceed without obtaining an overall building permit," and he instructed his architect and the contractors "to avoid getting permits for the various systems in the house" if they were required under the Montgomery County Code.

The arbitrator found that Dr. Huff's instruction to circumvent any required permitting was "blatantly improper," and that Dr. Huff's "lockout action" against M&J was completely wrong and unjustified. Accordingly, he found that Dr. Huff breached the contract with M&J, that M&J was entitled to damages resulting from Dr. Huff's breach, and that Dr. Huff was not entitled to any recovery from M&J.

The arbitrator awarded M&J $72,253, including: (1) $45,916 in damages; (2) $24,162 in attorney's fees; and (3) $2,175 in costs and expenses. Dr. Huff was awarded $0. The award also provided: "This [a]ward is in full settlement of all claims and counterclaims submitted to this [a]rbitration. All claims not expressly granted herein are hereby denied." That same day, May 26, 2021, the arbitrator signed and dated the award, and the AAA transmitted the ruling by email to Mr. Katz, counsel for M&J, and Dr. Huff's counsel.

V.

Post-Arbitration Proceedings in the Circuit Court

On June 23, 2021, M&J filed in the Circuit Court for Montgomery County a petition to confirm the award pursuant to the Maryland Uniform Arbitration Act ("MUAA"), Md. Code Ann., Cts. & Jud. Proc. Art. ("CJ") §§ 3-202, 3-206, 3-227, and 3-228 (2020 Repl. Vol.). On August 5, 2021, Dr. Huff filed a petition to vacate, or alternatively, to modify the award pursuant to the MUAA, CJ §§ 3-223 and 3-224. The petition alleged that, in February 2021, the arbitrator and Mr. Katz formed a "business relationship" (i.e., the arbitrator's law firm, ASM, commenced its representation of the defendant in the federal action where Mr. Katz represented the plaintiff), that the relationship continued to the present day, and that the impartiality of the arbitration proceedings was irreparably impugned because the arbitrator and Mr. Katz did not disclose the relationship. The petition also alleged that the arbitrator exceeded the scope of his authority by awarding M&J compensation for attorney's fees and manifestly disregarded the law by awarding

M&J compensation for lost profits and unrecovered overhead. Dr. Huff requested that the court vacate the award, or in the alternative, modify the award "by striking the award of lost profits in the amount of $34,920 and striking the award of attorney's fees in the amount of $24,162."

On August 13, 2021, Dr. Huff filed a supplemental memorandum in support of his petition to vacate or modify the award, noting that, on August 9, 2021, Mr. Katz sent an email to Dr. Huff's counsel stating that "the relationship between him and the [a]rbitrator was discussed during the February 22, 2021 preliminary telephone conference attended by the [a]rbitrator" and Dr. Huff's counsel. In the August 9, 2021 email, Mr. Katz stated:

> [D]uring the [2:00 p.m.] call with the [a]rbitrator on February 22, 2021, I personally raised the issue with both Mr. [Schor] and Zach Chapman, indicating that I was uncomfortable proceeding in the event it would taint Mr. [Schor]'s impartiality towards me and my client. During that call, Mr. [Schor] commented that he had already consulted with ethics counsel who advised that it was not a conflict of interest, that he did not know details of the case and would not inquire thereof, and advised that he could, and would, remain impartial. At that point, I indicated [that] I was ok proceeding, as did Mr. Chapman.

Dr. Huff did not dispute Mr. Katz's representation of the conversation. He stated, however, that the relationship between the arbitrator and Mr. Katz "was a known, material concern of both Mr. Katz and the [a]rbitrator because (1) Mr. Katz expressed his concern about the relationship during the February 22, 2021 telephone conference and (2) the [a]rbitrator consulted with 'ethics counsel' about the relationship prior to the conference." Dr. Huff stated that "the manner of the disclosure violated the AAA's Disclosure Guidelines," asserting that the arbitrator "was not supposed to consult 'ethics counsel' or

accept that unnamed person's assessment that 'it was not a conflict of interest.'" Rather, the arbitrator was supposed "to disclose the relationship to [the] AAA before commencing the telephone conference." Dr. Huff alleged that the arbitrator's "failure to follow the established disclosure procedures unfairly deprived Dr. Huff of the opportunity to learn about the relationship between the [a]rbitrator and Mr. Katz and determine whether an objection was warranted," and this failure rendered the disclosure invalid.

On August 31, 2021, M&J filed a memorandum in opposition to Dr. Huff's petition to vacate or modify the award. It stated that there was no evident partiality by the arbitrator because there was "no relationship, personal or professional," between the arbitrator and Mr. Katz, the arbitrator did not exceed the scope of his authority by awarding M&J compensation for attorney's fees, and the arbitrator did not manifestly disregard the law by awarding M&J compensation for lost profits and overhead costs. M&J also argued that Dr. Huff's petition, to the extent that it sought vacation of the award, was "fatally too late," noting that the ruling was transmitted to Dr. Huff and M&J on May 26, 2021, and Dr. Huff's petition was filed on August 5, 2021—72 days after the ruling was transmitted to Dr. Huff—which was "far beyond its statute of limitations." Accordingly, M&J argued that the court was foreclosed from vacating the award and was limited to the "modification parameters" of CJ § 3-223(b), which has a 90-day limitations period.[3]

[3] On August 31, 2021, M&J also requested an award of attorney's fees pursuant to the Maryland Uniform Arbitration Act ("MUAA"), Md. Code Ann., Cts. & Jud. Proc. Art. ("CJ") § 3-228 (1974, 2020 Repl. Vol.), which provides that "the prevailing party is entitled to recover attorneys' fees incurred both at trial and on appeal in confirming and enforcing

On October 18, 2021, Dr. Huff filed a reply to M&J's opposing memorandum, asserting that the time for filing a petition to vacate pursuant to the MUAA was extended because he "did not discover the previously unknown (to him) relationship between Mr. Katz and the [a]rbitrator until July 28, 2021." Dr. Huff further argued that there was no clear intent, "such as through express agreement, to rely upon Maryland law for the enforcement of the arbitration." Accordingly, he asserted that the three-month limitations period for filing a petition to vacate under the Federal Arbitration Act ("FAA") governed Dr. Huff's petition, and pursuant to the FAA's three-month limitations provision, his petition was timely. The reply also noted that, even if Dr. Huff's petition was not governed by the FAA's three-month limitations period, the 90-day limitations period for filing a petition to vacate under the District of Columbia Uniform Arbitration Act ("DCUAA") governed Dr. Huff's petition, and pursuant to the DCUAA's 90-day limitations provision, his petition was timely.

On October 21, 2021, the circuit court held a hearing regarding Dr. Huff's petition to vacate or modify the award and M&J's request for attorney's fees. Counsel for Dr. Huff stated that he was "primarily asking to vacate the arbitration award, based on the inadequately disclosed relationship between [M&J's] counsel . . . and the arbitrator." Although the relationship between Mr. Katz, counsel for M&J, and the arbitrator was

an arbitration award." The circuit court granted M&J's request in an order issued on October 25, 2021, awarding M&J $6,702 in attorney's fees incurred from the post-arbitration proceedings. There is no issue raised on appeal regarding the court's award of post-arbitration attorney's fees.

disclosed during the pre-hearing telephone conference, "the way that disclosure was handled was clearly in violation of the [AAA] rules," asserting that the arbitrator was required "to disclose the issue before they started the phone conference."

Counsel asserted that Dr. Huff also was "asking to vacate or modify the award of the lost profits and overhead," arguing that there was no written contract regarding the renovation work, and therefore, there was only a quasi-contract, under which consequential damages, such as lost profits and overhead, are not recoverable. Counsel argued that "those damage awards are just fundamentally wrong" and "constitute a palpable mistake of law," which satisfies the standard for vacating an arbitration award under the doctrine of manifest disregard of the law.

Regarding the timeliness of his petition to vacate or modify the award, counsel stated that Dr. Huff first learned of the relationship between the arbitrator and Mr. Katz on July 28, 2021, and he filed his petition nine days later, on August 5, 2021. He argued that the MUAA extends the time for filing a petition to vacate if the petition alleges that the arbitrator's award was the product of "some undue means," and therefore, his petition to vacate the award was timely. He also reiterated his position that the petition was governed by either the FAA or DCUAA, which have a 90-day time limit to move to vacate.

M&J argued that the MUAA, not the FAA, governed the timeliness of Dr. Huff's petition, noting that Dr. Huff referenced four times in his petition that he was bringing the petition under the MUAA. It also argued that the FAA's three-month limitations period for filing a petition to vacate did not apply here because the case did not involve interstate

commerce; rather, it involved an intrastate dispute between "[t]wo citizens of this state, doing construction on a property in Montgomery County[,] Maryland." M&J further argued that the DCUAA's 90-day limitations period did not apply in the present case because Maryland follows the principle of *lex loci contractus*, i.e., for choice-of-law purposes, "[y]ou apply the law [of the forum] where the contract was entered into, which was Maryland."

Regarding evident impartiality by the arbitrator, M&J argued that the relationship between the arbitrator and Mr. Katz was disclosed during the pre-hearing telephone conference on February 22, 2021, "[s]o the idea that there wasn't a disclosure, because it wasn't in writing, is ludicrous." M&J asserted in this regard that, during the pre-hearing telephone conference, the arbitrator assured them that there would not be any communications regarding the federal action, he would not know what was going on in that case, and "it didn't affect his partiality."

Regarding the existence and scope of an underlying renovation contract between M&J and Dr. Huff, M&J argued that the arbitrator found that there was a contract, and "that contract was either ratified, or it was an oral contract to do whatever [M&J] did and what [Dr. Huff] paid for." M&J asserted that the court could not "second guess . . . whether an arbitrator was right or not." Rather, the relevant standard was whether the arbitrator's finding was rational. The standard was not whether the contract was, in fact, an implied contract or a quasi-contract.

M&J also argued that there was no manifest disregard of the law in the present case. It argued that Dr. Huff did not present any law to the arbitrator regarding unjust enrichment or quantum meruit. Accordingly, there was no basis to modify the award.

Regarding attorney's fees incurred from the arbitration proceedings, M&J argued that the AAA's rules state, "very clearly, [that] attorney['s] fees may be awarded when both parties ask for [them]," and here, "that's exactly what happened." M&J asserted that "both parties asked for [attorney's fees] in multiple manners," such as "checking the box" for attorney's fees and, with invoices amounting to $15,000, asking the arbitrator to award $15,000 in legal fees.

At the conclusion of the hearing on October 21, 2021, the circuit court concluded that it could modify, but not vacate, the award for timeliness reasons. The court stated:

> I think the first thing to address is that [CJ], [§] 3-224(a), does require [that] a petition to vacate the award shall be filed within 30 days after delivery of the copy of the award to the petitioner.
>
> So I do think [that] the [c]ourt has the authority to modify the [A]ward, but not vacate it, because I don't think that was accomplished pursuant to the rule.

The court then addressed the impartiality argument. It found that the "alleged conflict" or "evident partiality" was disclosed during the pre-hearing telephone conference on February 22, 2021. It further stated that, where the alleged relationship was between Mr. Katz and another partner in the arbitrator's law firm, not Mr. Katz and the arbitrator, it did not find "any evident partiality." It further stated that it did not "find that any of the findings of the final award were guided by any evident partiality."

The court upheld the arbitrator's award of "consequential damages," i.e., compensation for M&J's lost profits and unrecovered overhead. It found that it was rational for the arbitrator to conclude, and, indeed, the court concluded, that a contract existed between Dr. Huff and M&J. Thus, it was proper for the arbitrator to award M&J compensation for lost profits and overhead.

The court also found that it was proper for the arbitrator to award M&J compensation for attorney's fees that it incurred from the arbitration proceedings. Pursuant to the AAA's rules, an arbitrator cannot award attorney's fees, "unless they're requested by both parties, they are permitted by law, or they are provided for in the contract." The court then found that both M&J and Dr. Huff requested that the arbitrator award compensation for attorney's fees incurred from the arbitration proceedings, noting that Dr. Huff's counsel did not object to an arbitral award of attorney's fees in emails between his counsel, Mr. Katz, and the arbitrator. Based on these findings, the court denied Dr. Huff's petition to vacate or modify the award.

On October 25, 2021, the circuit court issued an order confirming the arbitrator's award of $45,916, plus costs, and $24,162 in attorney's fees. It also granted M&J's request for attorney's fees pursuant to CJ § 3-228, awarding $6,702 for attorney's fees incurred from the post-arbitration proceedings.

This appeal followed.

DISCUSSION

Before addressing the questions that Dr. Huff presents for review, we shall first set forth the applicable principles of arbitration law. "'Arbitration is the process whereby parties voluntarily agree to substitute a private tribunal for the public tribunal otherwise available to them.'" *Linton v. Access Funding LLC*, 253 Md. App. 507, 518 (quoting *Gold Coast Mall, Inc. v. Larmar Corp.*, 298 Md. 96, 103 (1983)), *cert. granted*, 478 Md. 244 (2022). It is "'consensual; a creature of contract.'" *Allstate Ins. Co. v. Stinebaugh*, 374 Md. 631, 648 (2003) (quoting *Curtis G. Testerman Co. v. Buck*, 340 Md. 569, 579 (1995)).

The MUAA, CJ §§ 3-201 to 3-234, "'embodies a legislative policy favoring enforcement of executory agreements to arbitrate.'" *Linton*, 253 Md. App. at 519 (quoting *Gold Coast Mall*, 298 Md. at 103). "'[A]rbitration is favored and encouraged in Maryland because it provides an informal, expeditious, and inexpensive alternative to conventional litigation.'" *Prince George's Cnty. Police Civilian Emps. Ass'n v. Prince George's Cnty. ex rel. Prince George's Cnty. Police Dep't*, 447 Md. 180, 192 (2016) (quoting *Amalgamated Transit Union v. Lovelace*, 441 Md. 560, 576 (2015)). "[B]ecause Maryland courts have historically considered arbitration to be a 'favored' dispute resolution method, common law rule dictates that courts generally must defer to the arbitrator's findings of fact and applications of law." *Balt. Tchrs. Union, Am. Fed'n of Tchrs., Loc. 340, AFL-CIO v. Mayor & City Council of Balt.*, 108 Md. App. 167, 181, *cert. denied*, 342 Md. 472 (1996). "'[M]ere errors of law and fact [do] not ordinarily furnish grounds for a court to vacate or refuse enforcement of an arbitration award.'" *Downey v. Sharp*, 428 Md. 249, 266 (2012)

(quoting *Bd. of Educ. v. Prince George's Cnty. Educ. Ass'n*, 309 Md. 85, 98–99 (1987)). "This limited review serves to strike a balance between the need for efficient, speedy, and economical dispute resolution, and the need to establish justified confidence in arbitration among the public." *Letke Sec. Contractors, Inc. v. U.S. Sur. Co.*, 191 Md. App. 462, 473 (2010).

"[T]he General Assembly has severely restricted the role the courts play in the arbitration process," providing for narrowly confined "circumstances in which the court has the power to vacate an arbitral award." *Mandl v. Bailey*, 159 Md. App. 64, 85 (2004). The MUAA provides for five, limited grounds upon which a court "shall vacate" an arbitration award: (1) the award was "procured by corruption, fraud, or other undue means"; (2) there was "evident partiality by an arbitrator appointed as a neutral, corruption in any arbitrator, or misconduct prejudicing the rights of any party"; (3) the arbitrator exceeded his or her powers; (4) the arbitrator committed certain procedural errors in the conduct of the hearing, "as to prejudice substantially the rights of a party"; or (5) there was no agreement to arbitrate the controversy. CJ § 3-224(b)(1)–(5). *Accord Prince George's Cnty. Police Civilian Emps. Ass'n*, 447 Md. at 193.

The MUAA also provides for three, narrow grounds upon which a court "shall modify or correct" an arbitration award: (1) there was either "an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award"; (2) the arbitrator awarded upon a matter not submitted to him or her and "the award may be corrected without affecting the merits of the decision upon the issues

submitted"; or (3) the award "is imperfect in a matter of form, not affecting the merits of the controversy." CJ § 3-223(b)(1)–(3). *Accord MCR of Am., Inc. v. Greene*, 148 Md. App. 91, 116 (2002).

A circuit court's decision on a petition to vacate or modify an arbitration award is "a conclusion of law, which we review without deference." *WSC/2005 LLC v. Trio Ventures Assocs.*, 460 Md. 244, 253 (2018). "'Therefore, we review that court's disposition for legal error.'" *State v. Philip Morris, Inc.*, 225 Md. App. 214, 242 (2015) (quoting *Montgomery County v. Fraternal Order of Police, Montgomery Cnty. Lodge 35, Inc.*, 427 Md. 561, 572 (2012)), *cert. denied*, 137 S. Ct. 295 (2016). "To that end, we accept any relevant factual findings by the circuit court that are not 'clearly erroneous[.]'" *Id.* (quoting *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 947-48 (1995)).

I.

Evident Partiality

Dr. Huff's first contention is that the circuit court erred in refusing to vacate the award on grounds of evident partiality by the arbitrator. As indicated, the MUAA provides that a court "shall vacate" an arbitration award if there was "evident partiality by an arbitrator appointed as a neutral, corruption in any arbitrator, or misconduct prejudicing the rights of any party." CJ § 3-224(b)(2). Section 3-224(a) of the statute, however,

provides that a petition to vacate an award generally "shall be filed within 30 days after delivery of a copy of the award to the petitioner." CJ § 3-224(a)(1).[4]

The circuit court found that the petition was not filed within that timeframe, and therefore, it did not have the authority to vacate the award. Although Dr. Huff challenges this finding at the end of his brief, we decline to address it because it was not set forth in the "Questions Presented" section of his brief. *Green v. N. Arundel Hosp. Ass'n, Inc.*, 126 Md. App. 394, 426 (1999) (citing Md. Rule 8-504(a)(3)), *aff'd on other grounds*, 366 Md. 597 (2001), *cert. denied*, 535 U.S. 1055 (2002). *Accord Grebow v. Client Prot. Fund of the Bar of Md.*, —– Md. App. —–, —–, No. 1392, Sept. Term, 2020, slip op. at 28 (filed June 29, 2022); *O'Sullivan v. Kimmett*, 252 Md. App. 653, 678–79 (2021); *Peterson v. Evapco, Inc.*, 238 Md. App. 1, 62 (2018). As this Court in *Green* explained, "[c]onfining litigants to the issues set forth in the 'Questions Presented' segment of their brief ensures that the issues presented are obvious to all parties and the Court." 126 Md. App. at 426 (citing *DiPino v. Davis*, 354 Md. 18, 56 (1999)).

Nevertheless, even if we assumed that the petition was timely filed, we would conclude that the circuit court did not err in finding that there was no evident partiality by the arbitrator. To be sure, an arbitrator has a duty to disclose to the parties any information

[4] Although there is an exception if the petition alleges corruption, fraud, or other undue means, in which case the petition shall be filed within 30 days after the grounds became known, *see* CJ § 3-224(a)(2), the circuit court properly rejected the argument that Dr. Huff did not discover the relationship until he saw an email from Mr. Katz after the award was issued. The record is clear that the relationship was disclosed in the February 22, 2021 conference call.

regarding an actual or perceived conflict of interest. *Parks v. Sombke*, 127 Md. App. 245, 249, 252 (1999). An arbitrator's failure to do so is a breach of the duty of disclosure and may permit an inference that there was evident partiality by the arbitrator. *Id.* at 253. "[D]isclosure is necessary in order to create and maintain the atmosphere of trust and openness that is needed to preserve the integrity and effectiveness of the arbitration process." *Id.* at 249.

"[T]he question to be addressed by a court in determining when an arbitration award is to be vacated for 'evident partiality' is 'whether the arbitration *proceedings* were fundamentally unfair.'" *Graceman v. Goldstein*, 93 Md. App. 658, 669 (1992) (quoting *Forsythe Intern., S.A., v. Gibbs Oil Co. of Tex.*, 915 F.2d 1017, 1020 (5th Cir. 1990)), *cert. denied*, 329 Md. 336 (1993). "The establishment of 'evident partiality' requires more than speculation and bald allegations of bias. The moving party must prove facts sufficient to permit an inference that there was indeed partiality by an arbitrator." *Wyndham v. Haines*, 305 Md. 269, 279 (1986) (footnote omitted).

Here, the circuit court found that the alleged relationship i.e., that the arbitrator's firm represented the defendant in the federal action where Mr. Katz represented the plaintiff was tenuous, elongated, and did not show any evident partiality. The evidence supported that finding.

Moreover, the court found that the relationship was disclosed during the pre-hearing telephone conference on February 22, 2021. The court's finding in this regard was not clearly erroneous. And we are not persuaded by Dr. Huff's argument that the failure to

disclose in writing, pursuant to the AAA's disclosure rules, created an inference of bias. *See ANR Coal Co. v. Cogentrix of N.C., Inc.*, 173 F.3d 493, 499 (4th Cir.) (For purposes of the FAA, an arbitrator's violation of the AAA's disclosure rules "would not, by itself, require or even permit a court to nullify an arbitration award."), *cert. denied*, 528 U.S. 877 (1999).[5] Accordingly, the circuit court properly declined to vacate the award on the ground of evident partiality.

II.

Scope of Authority

Dr. Huff contends that the circuit court erred in refusing to vacate the award of attorney's fees to M&J. He suggests that the arbitrator exceeded his powers in awarding M&J attorney's fees, asserting that there was no contractual or statutory basis for such an award, and therefore, the inclusion of such fees in the award was clearly erroneous.

M&J contends that the arbitrator was authorized to award attorney's fees by virtue of the parties' agreement to be bound by the AAA's Construction Industry Arbitration Rules. It argues that the circuit court correctly rejected the request to vacate the Award on grounds that the arbitrator exceeded the scope of his authority in awarding M&J attorney's fees.

[5] This Court has noted that, when construing the MUAA, Maryland courts look to federal decisions interpreting the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1–16. *Thompson v. Witherspoon*, 197 Md. App. 69, 80 (2011). *Accord Holmes v. Coverall N. Am., Inc.*, 336 Md. 534, 541 (1994) (noting that the MUAA is the "State analogue" to the FAA) (quoting *Regina v. Envirmech*, 80 Md. App. 662, 667 (1989)).

As indicated, the MUAA provides that a court "shall vacate" an arbitration award if the arbitrator exceeded his or her powers. CJ § 3-224(b)(3). "In determining whether an arbitrator exceeded the arbitrator's powers, a court does not review the arbitrator's interpretation of a contract for legal correctness." *Prince George's Cnty. Police Civilian Emps. Ass'n*, 447 Md. at 208. "Instead, in determining whether an arbitrator exceeded the arbitrator's powers, a court determines whether the arbitrator acted within the scope of the arbitrator's authority." *Id.* "Before an award can be vacated on the ground that an arbitrator exceeded his authority, the record must objectively disclose that the arbitrator exceeded that authority in some respect." *Birkey Design Grp., Inc. v. Egle Nursing Home, Inc.*, 113 Md. App. 261, 266–67 (1997).

As M&J points out, an arbitration award "may lawfully include an award of attorneys' fees if the underlying agreement between the parties so provides." *Marsh v. Loffler Hous. Corp.*, 102 Md. App. 116, 125 (1994). *Cf.* CJ § 3-221(b) ("Unless the arbitration agreement provides otherwise, the award may not include counsel fees."). The Agreement in this case incorporated the AAA's Construction Industry Arbitration Rules. AAA Rule 48, entitled "Scope of Award," provides that the arbitrator's award may include "an award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement." AAA Rule 48(d)(ii). Thus, by incorporating this rule into the Agreement, the Agreement provided that attorney's fees could be awarded if both parties requested them. The circuit court found that both parties requested attorney's fees. The record supports that finding.

On May 10, 2021 at 12:37 p.m., counsel for M&J sent the following message by email to the arbitrator:

> Mr. Schor — something we did not cover at the hearing was how you would like a request for attorney's fees to be presented — is that something that you would award entitlement to first and then the quantum decided at a later time, as would occur in traditional litigation, or would you like the parties to submit attorney's fees now for your consideration?

Dr. Huff's counsel was copied on the email.

That same day, at 12:59 p.m., the arbitrator sent the following response by email to counsel for M&J and counsel for Dr. Huff:

> All:
>
> While I make no statement about whether attorney's fees will be awarded, I ask that both firms provide your requested amount of attorney's fees with supporting documentation to me by Wednesday, May 12 at 5:00 [p.m.] If this date is a hardship, please let me know today. The record will remain open until Wednesday, May 12 at 5:00 [p.m.]

Two days later, on May 12, 2021, at 1:29 p.m., counsel for M&J sent the following email to the arbitrator:

> Mr. Schor:
>
> Please see the attached report from my billing software, indicating 69.4 hours incurred on the Huff matter, which was billed at $335 per hour for the 2020 time and $345 per hour beginning January 2021, for a total of $24,162 in costs incurred. To date, $13,280 has been paid, for which the cancelled checks are attached. Attached is my latest "pre-bill" for the period of April 27 through yesterday, for which another $10,723 is now due and owing.
>
> Finally, attached is the AAA Statement to M&J showing a total of $2,175 charged to M&J, and a receipt to M&J for $1375 and another for $800, representing the $2,175 paid amount.

> We ask for $24,162 in reimbursement of attorney's fees and $2,175 of AAA costs for this "case about nothing" enacted by Dr. Huff following his own wrongful termination of M&J.

Dr. Huff's counsel was copied on the email.

That same day, at 3:09 p.m., counsel for Dr. Huff sent the following message by email to counsel for M&J and the arbitrator:

> Mr. Katz, I submitted our bills to the arbitrator *in camera* and have not reviewed yours. We will serve our bills on you at the direction of the arbitrator. I don't know that it is necessary unless and until the arbitrator decides whether fees should be awarded, at which point both sides will need access in order to assert reasonableness - or unreasonableness, as the case may be. Not intending to hide anything but I am strapped for time and haven't reviewed the entries for descriptions that might need to be redacted (unlikely but still possible). **[E 47]**

The arbitrator subsequently issued his ruling, awarding M&J $24,162 in attorney's fees. **[E 12]**

As the circuit court found, by submitting to the arbitrator proof of counsel's billable work, both parties requested an award of attorney's fees. Accordingly, the award of fees was authorized by the Agreement, which incorporated AAA Rule 48. *See D'Amelia v. Toll Bros., Inc.*, 235 A.3d 321, 331 (Pa. Super. Ct. 2020) (Arbitrator had authority to award attorney's fees under AAA Rule 48 where "both parties requested attorneys' fees in connection with the arbitration proceeding"); *Lasco Inc. v. Inman Constr. Corp.*, 467 S.W.3d 467, 475 (Tenn. Ct. App. 2015) (same). The circuit court properly found that the

arbitrator did not exceed the scope of his authority by awarding M&J $24,162 in attorney's fees.[6]

III.

Manifest Disregard of the Law

Dr. Huff next contends that the circuit court erred in denying his motion to vacate and/or modify the award because the arbitrator's award of lost profits and compensation for office overhead was a "palpable mistake of law" in the absence of an enforceable contract between the parties. He argues that "the parties failed to execute a contract" or "agree upon essential terms" of a contract, and in the absence of an enforceable contract, "the claimant can only invoke quasi-contractual remedies such as unjust enrichment or quantum meruit," not consequential damages.

M&J contends that the court properly denied this claim because the award of consequential damages was proper. It argues that the arbitrator "rationally found the existence of an enforceable contract." Although there was no signed contract, M&J states that the arbitrator's reasoning was supported by "the basic contract doctrine of ratification" or as "an oral contract constituting the *material* terms of the written contract." M&J argues that the arbitrator's award of consequential damages does not satisfy the high standard for a finding of manifest disregard of the law.

[6] *MCR of America, Inc. v. Greene*, 148 Md. App. 91 (2002), upon which Dr. Huff relies, is distinguishable from this case. In *MCR*, this Court concluded that there was no contractual basis upon which to make an award of attorney's fees. *Id.* at 104.

As indicated, the MUAA provides five, limited grounds upon which a court can vacate an arbitration award. *See* CJ § 3-224(b)(1)–(5). In addition to those statutory bases, Maryland common law provides three grounds for vacating an award. *See Amalgamated Transit Union, Loc. 1300 v. Md. Transit Admin.*, 244 Md. App. 1, 14 (2019), *cert. denied*, 468 Md. 222 (2020). As relevant to this appeal, "Maryland recognizes manifest disregard of the law as a permissible common-law ground for vacating an arbitration award." *WSC/2005*, 460 Md. at 256. Manifest disregard of the law involves a "substantive attack" on "the merits of the arbitrator's award, rather than the way in which the arbitrator's decision was reached." *Amalgamated Transit Union*, 244 Md. App. at 15. The manifest disregard standard turns on whether the arbitrator "made a palpable mistake of law or fact appearing on the face of the award." *WSC/2005*, 460 Md. at 263. "[T]he 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.* (quoting 4 Thomas H. Oehmke & Joan M. Brovins, *Oehmke Commercial Arbitration* § 149:2, at 149–4 (3d ed. 2017)). Whether an arbitrator made a palpable mistake of law or fact requires us to review the award "for an error that is readily perceived or obvious; an error that is clear or unquestionable." *Id.*

Here, the arbitrator found that "[t]here was a contract," noting that M&J identified the scope of its work in numerous, uncontradicted emails and supplied pricing information for its work. There was "an overall understanding on the time of performance," i.e., Dr. Huff's house needed to be ready for occupancy by August 2020, and the parties agreed to

"these general parameters of performance," which M&J attempted to follow. The arbitrator also found that Dr. Huff "refused to sign any of the more complete contract forms" submitted by M&J "that contained many of the standard clauses that assign risks and identify obligations to individual parties," and such contractual language "would have guided the parties' actions, such as a termination clause that addresses limitations on recoverable damages." The arbitrator relied on this fact "in awarding certain damages" to M&J, including $34,920 for lost profits and unrecovered office overhead.

Whether the arbitrator made a palpable mistake of law or fact by awarding M&J lost profits and compensation for office overhead turns on the issue of whether there was a contract between M&J and Dr. Huff because, under Maryland law, contract damages are distinguishable from quasi-contractual remedies. *Compare Adcor Indus., Inc. v. Beretta U.S.A. Corp.*, 250 Md. App. 135, 154 ("'In a breach of contract action, upon proof of liability, the non-breaching party may recover damages for 1) the losses proximately caused by the breach, 2) that were reasonably foreseeable, and 3) that have been proven with reasonable certainty.'") (quoting *Hoang v. Hewitt Ave. Assocs., LLC*, 177 Md. App. 562, 594 (2007)), *cert. denied*, 475 Md. 678 (2021), *and Thomas v. Cap. Med. Mgmt. Assocs., LLC*, 189 Md. App. 439, 464 (2009) (Damages for lost profits are recoverable in a breach of contract action if the plaintiff proves lost profits with "reasonable certainty."), *with Clark Off. Bldg., LLC v. MCM Cap. Partners, LLLP*, 249 Md. App. 307, 315 (2021) (Because recovery in quasi-contract is aimed "at forcing the defendant to disgorge benefits that it would be unjust for him to keep," the measure of damages for unjust enrichment is

the gain to the defendant, not the loss to the plaintiff.) (quoting *Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 296 (2007)).

The relevant principles of contract law are well established. "A contract has been defined as 'a promise or set of promises for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.'" *Cnty. Comm'rs for Carroll Cnty. v. Forty W. Builders, Inc.*, 178 Md. App. 328, 376 (quoting *Kiley v. First Nat'l Bank of Md.*, 102 Md. App. 317, 333 (1994)) (cleaned up), *cert. denied*, 405 Md. 63 (2008). "Creation of a contract requires an offer by one party and acceptance by the other party." *Cochran v. Norkunas*, 398 Md. 1, 23 (2007). "An offer must be definite and certain." *Md. Supreme Corp. v. Blake Co.*, 279 Md. 531, 539 (1977). "A person accepts an offer of services through silence where the person knows the terms on which the services are offered, receives the benefit of the services, and does not reject the offer despite having a reasonable opportunity to do so." *Att'y Grievance Comm'n of Md. v. Donnelly*, 458 Md. 237, 283 (2018).

Here, the arbitrator's finding that "[t]here was a contract" is not palpably inconsistent with these principles. As indicated, the arbitrator found that: M&J identified the scope of its work in numerous, uncontradicted emails to Dr. Huff and supplied pricing information for its work; there was "an overall understanding on the time of performance"; and the parties agreed to "these general parameters of performance." M&J attempted to comply with such parameters, and Dr. Huff received the benefit of M&J's work until his "lockout action" against M&J, which was "completely wrong" and "unjustified." Under

these circumstances, the arbitrator's finding of a contract between the parties does not amount to "an error that is readily perceived or obvious; an error that is clear or unquestionable." *WSC/2005*, 460 Md. at 263. Accordingly, the arbitrator did not manifestly disregard applicable law in awarding M&J lost profits and compensation for office overhead, and the circuit court did not err in denying Dr. Huff's petition on this issue.

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