

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 06/21/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JAY NORDSTROM, a single man,)
) No. 1 CA-CV 11-0632
)
) DEPARTMENT E
Plaintiff/Appellee,)
) **MEMORANDUM DECISION**
v.)
) (Not for Publication -
RUSSO & STEELE, L.L.C., an) Rule 28, Arizona Rules of
Arizona limited liability) Civil Appellate Procedure)
company,)
)
Defendant/Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CV2009-039058

The Honorable Mark H. Brain, Judge

AFFIRMED

Cantelme & Brown, P.L.C. Phoenix
By David J. Cantelme
And D. Aaron Brown
And Samuel Saks
Attorneys for Appellee

Stoops, Denious, Wilson & Murray, P.L.C. Phoenix
By Frank L. Murray
And Stephanie Monroe Wilson
Attorneys for Appellant

H A L L, Judge

¶1 Appellant Russo and Steele, L.L.C. (R & S) appeals the superior court's confirmation of the arbitration award in favor of Appellee Jay Nordstrom. For the following reasons, we affirm.

FACTUAL¹ AND PROCEDURAL BACKGROUND

¶2 In January 2009, Nordstrom transported his specialty automobile, a 1941 Willys Coupe/Cabriolet (the Vehicle) from Dallas, Texas to the R & S automobile auction in Scottsdale, Arizona (Auction). Nordstrom and R & S entered into a Consignment Agreement on January 5, 2009, permitting R & S, as the auctioneer, to sell the Vehicle for Nordstrom at the Auction.

¶3 On January 16, 2009, the Vehicle was auctioned off at the Auction by R & S to Ronald A. Schaefer, purportedly on behalf of a dealer, Steamer Motors, on Schaefer's highest bid of \$81,000.00 when the hammer fell at the end of bidding. Thereafter, Schaefer signed a confirmation of purchase and bill of sale on the Vehicle and Nordstrom transferred the Vehicle to Schaefer. Schaefer was then required to pay R & S \$89,100.00, which included a ten percent commission to R & S, and R & S was

¹ We view the facts in the light most favorable to upholding the trial court's confirmation of an arbitration award. *Park Imperial, Inc. v. E.L. Farmer Constr. Co.*, 9 Ariz.App. 511, 513-14, 454 P.2d 181, 183-84 (1969). Because the hearing was not recorded or transcribed, we rely on the facts set forth by the Arbitrator in the arbitration award and other documents filed during the arbitration and superior court proceedings.

to remit \$81,000.00 of that amount to Nordstrom. Schaefer, however, failed to pay for the Vehicle. R & S discovered immediately after the Auction that Schaefer had been jailed in California and would not pay for any of the sixteen vehicles he purchased at the Auction, but R & S failed to immediately notify Nordstrom.

¶14 Nordstrom filed a complaint, and later an amended complaint in March 2010, alleging the following claims for relief against R & S and Schaefer: breach of contract (Schaefer and R & S), breach of the duty of good faith and fair dealing (Schaefer and R & S), and breach of fiduciary duty (R & S). Nordstrom also requested damages, attorneys' fees, and costs.

¶15 R & S moved to dismiss the complaint and compel arbitration because "the parties contractually agreed to resolve all disputes in arbitration." R & S referenced the Arbitration section of the Consignment Agreement in support of its motion:

Arbitration: Any controversy or claim arising out of or relating to this agreement, or any breach thereof, shall be finally determined by a single arbitrator without appeal under the Rules of the Commercial Arbitration of the American Arbitration Association. Such arbitration shall occur in Phoenix, Arizona unless objected to by either party. In that event the location shall be determined by the agreement of the parties, and if the parties cannot agree, the neutral arbitrator will determine the location. The judgment upon the award rendered may be entered in any court having jurisdiction thereof, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be. In the event [R & S] incurs legal fees and/or costs,

whether in litigation or collection, in enforcing this agreement or defending against any claim arising hereunder, seller shall pay such legal fees and costs.

¶16 Nordstrom and R & S stipulated to a partial stay of the proceedings in order to pursue arbitration.² An arbitration hearing was held in March 2011.³ The Arbitrator issued a twenty-eight page award, which included extensive findings and legal analysis.

¶17 The Arbitrator determined that R & S had "breached the Consignment Agreement with [Nordstrom] and the related duty of good faith and fair dealing, as well as its other fiduciary duties owed to its principal, to have made misrepresentations to [Nordstrom] and concealed or failed to disclose material information to [Nordstrom], and, in those matters, committed fraud against [Nordstrom] as its principal, [R & S] is liable to [Nordstrom] for . . . damages." The Arbitrator awarded Nordstrom \$81,000.00 and \$8,895.16⁴ in compensatory damages. He also awarded Nordstrom \$40,500.00 in punitive damages because: R & S's conduct showed "utter disregard for" Nordstrom; R & S

² Schaefer was not included within the stay.

³ By the time the matter proceeded to arbitration, Nordstrom filed an amended demand for arbitration, listing the following seven claims for relief: (1) breach of contract, (2) breach of duty of good faith and fair dealing, (3) breach of fiduciary duty, (4) negligent misrepresentation, (5) consumer fraud, (6) fraud, and (7) negligence.

⁴ The Arbitrator separated out this latter amount because it represented pre-arbitration expenses incurred in superior court.

"acted with an evil mind [and] acted with intentional malice;" and Nordstrom's "harm was the result of trickery and deceit" and the harm "was not accidental but was instead the result of intentional acts." The Arbitrator further awarded interest at four percent per annum and found that R & S waived its commission.

¶18 Nordstrom requested \$204,960.28 in attorneys' fees and costs, which the Arbitrator found "excessive in comparison to the amount of claims being pursued, notwithstanding the amount of punitive damages awarded herein." Although the Arbitrator accepted R & S's "contention that [Nordstrom's] attorneys' fees and costs are disproportionate to the amounts in contention[,"] the Arbitrator concluded that the evidence supported a finding "that [R & S] hindered, delayed and failed to cooperate with [Nordstrom] in its discovery causing additional time and expense which might otherwise have been obviated by professional courtesy, cooperation and observance of customary discovery and disclosure practices." The Arbitrator awarded Nordstrom \$100,000.00 in attorneys' fees and costs.

¶19 Nordstrom applied for confirmation of the arbitration award and requested attorneys' fees and costs incurred in the confirmation proceedings. R & S objected to Nordstrom's application and claim for attorneys' fees, arguing:

The arbitrator acted outside of his authority in fashioning his relief and the award should be vacated. He misconstrued non-parties at fault, and the defense [of] unclean hands, excluding evidence. He refused to timely allow amendment of pleadings. He awarded attorneys' fees and punitive damages outside his authority to do so. He furnished illogical relief in a context in which there were no damages to base it upon, in manifest disregard of the law.

Nordstrom responded that R & S's "objection is legally and factually baseless, attempts to relitigate the case, fails to identify any legitimate basis for vacatur under any standard, and has been filed in bad faith merely to delay payment of the award."

¶10 The superior court held oral argument on the parties' motions in July 2011. R & S argued the Arbitrator exceeded his authority, made legal errors, and misapplied the law to the facts of the case. Citing to *Hirt v. Hervey*, 118 Ariz. 543, 545, 578 P.2d 624, 626 (App. 1978) and the Rules of Commercial Arbitration of the American Arbitration Association (AAA Rule) R-43, the court stated that even if the Arbitrator made errors of fact or law, it did not mean that he exceeded his authority, and, in this case, he acted within the scope of his authority. The court continued that the Arbitrator had the authority to award attorneys' fees under AAA Rule R-43 and Arizona Revised Statutes (A.R.S.) section 12-341.01 (Supp. 2011) and he could "have erred in determining the amount of fees to award and failed to properly distinguish between fees that ought to be

allocated to contract claims as opposed to tort claims, but at most that is a mere error of law. Likewise, [R & S] challenges the arbitrator's decision to not allocate fault to non-parties. Again, this is a mere error of law." The court noted that it was "impossible to tell" whether the Arbitrator erred because "the parties did not arrange for a transcript or recording of the arbitration hearings."

¶11 The superior court confirmed the arbitration award in favor of Nordstrom. The court further awarded Nordstrom \$14,000.00 in attorneys' fees incurred in connection with the confirmation proceedings. R & S timely appealed the court's order.

DISCUSSION

¶12 We begin by addressing Nordstrom's assertion that we lack appellate jurisdiction because of the following provision in the Consignment Agreement: "Any controversy or claim arising out of or relating to this agreement, or any breach thereof, shall be finally determined by a single arbitrator without appeal under the Rules of the Commercial Arbitration of the American Arbitration Association." Citing A.R.S. § 12-3004(B) (Supp. 2011), R & S responded in its reply brief that the

Revised Uniform Arbitration Act (RUAA)⁵ “specifically preserves the right of parties to an arbitration agreement to seek an appeal of an arbitration award.” A.R.S. § 12-3004(B) provides, in relevant part: “Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not . . . [w]aive or agree to vary the effect of the requirements prescribed in § 12-2101.01.” A.R.S. § 12-2101.01(A)(6) (Supp. 2011) states that “[a]n appeal may be taken from . . . [a] judgment or decree entered pursuant to [the Uniform Arbitration Act] or [the RUAA].” Because the parties entered into the Consignment Agreement prior to the controversy and did not thereafter agree to waive their appellate rights, neither Nordstrom nor R & S waived the right to appeal to this court. We therefore have jurisdiction over this appeal pursuant to A.R.S. § 12-2101.01(A).

¶13 Nordstrom nonetheless argues that the Federal Arbitration Act (FAA), 9 U.S.C. § 10 (2000), which does not specifically prohibit waiver of appellate review of a trial court confirmation of an award, preempts the RUAA on this issue. We disagree. Although the FAA does not specifically prohibit a waiver agreement, neither does it mandate a conclusion that a state law provision precluding a pre-controversy waiver is

⁵ Chapter 21, the RUAA, sections 12-3001 through 3029, became effective January 1, 2011. It replaced the Uniform Arbitration Act, A.R.S. §§ 12-1501 through 1518.

unenforceable. Nordstrom's reliance on *MACTEC, Inc. v. Gorelick*, 427 F.3d 821 (10th Cir. 2005), is misplaced. There, the Tenth Circuit, noting that the FAA "is silent on whether such an appeal is barred if the parties agree that the district court's judgment confirming or vacating the award is to be non-appealable," simply held that such agreements are "permissible" and do not violate the FAA. *Id.* at 827, 830. Nothing in *MACTEC* or any other authority cited by Nordstrom persuades us that the RUAA's prohibition on pre-controversy waivers is preempted by the FAA's silence on this issue. See *Robart v. Alaska*, 82 P.3d 787, 792 (Alaska App. 2004) (congressional intent to supersede state law must be "clear and manifest" and federal copyright law's silence on regulation of state seals did not preempt state law regulation).

¶14 We review a superior court's confirmation of an arbitration award for an abuse of discretion and review de novo matters of statutory construction. *Nolan v. Kenner*, 226 Ariz. 459, 461, ¶ 4, 250 P.3d 236, 238 (App. 2011). "Except for certain well-defined circumstances . . . the trial court has no authority to modify an arbitration award when request is made for confirmation of that award, even though the trial court is convinced that the arbitrator[] [has] erred in [his] resolution of factual or legal issues." *Creative Builders, Inc. v. Ave. Dev., Inc.*, 148 Ariz. 452, 456, 715 P.2d 308, 312 (App. 1986).

"Judicial review of arbitration awards is severely restricted."
Id.

¶15 R & S argues that the Arbitrator exceeded his authority by: awarding \$100,000.00 in attorneys' fees, awarding punitive damages, miscalculating the amount of damages, failing to consider R & S's notice of non-parties at fault, not considering evidence of unclean hands, and improperly ordering recovery on unassignable tort claims. R & S further maintains that the Arbitrator acted in manifest disregard of the law.⁶ We address each contention in turn.

I. Arbitrator's authority

A. Attorneys' fees

¶16 R & S first argues that the Arbitrator exceeded his authority under A.R.S. § 12-3023(A)(4) (Supp. 2011), by awarding Nordstrom \$100,000.00 in attorneys' fees. The Consignment Agreement signed by the parties, stated, in part:

⁶ Nordstrom argues that R & S waived any objections to the Arbitrator's award because it moved to compel arbitration in the superior court and failed to object to the Arbitrator that he lacked authority to decide the issues submitted to him. See AAA Rule 7(a) ("The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement."). We disagree that R & S waived any objections to the Arbitrator's authority by urging that the dispute had to be arbitrated. Furthermore, other than asserting in the superior court that R & S waived its objection to Nordstrom's entitlement to attorneys' fees and costs, Nordstrom did not raise this issue during the confirmation proceedings and cannot now assert a broader waiver argument on appeal.

Arbitration: Any controversy or claim arising out of or relating to this agreement, or any breach thereof, shall be finally determined by a single arbitrator without appeal under the Rules of the Commercial Arbitration of the American Arbitration Association. . . . In the event [R & S] incurs legal fees and/or costs, whether in litigation or collection, in enforcing this agreement or defending against any claim arising hereunder, seller shall pay such legal fees and costs.

¶17 Because the arbitration provision explicitly referred to the AAA Rules, these rules are incorporated into the Consignment Agreement by reference and the parties are bound by them. See *A.P. Brown Co. v. Superior Court*, 16 Ariz.App. 38, 40, 490 P.2d 867, 869 (1971). AAA Rule R-43(a) states, in pertinent part: "The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract." Further, AAA Rule R-43(d)(ii), provides: "The award of the arbitrator(s) 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."

¶18 R & S maintains that the Arbitrator erred by awarding Nordstrom attorneys' fees because the Consignment Agreement states that R & S is not responsible for paying legal fees, the award of fees was not authorized by law, and the Arbitrator could only award fees for the disputes arising from the

contract, not tort claims. We disagree. As permitted by AAA Rule R-43(d)(ii), both R & S and Nordstrom requested attorneys' fees. Nordstrom requested fees in his amended demand for arbitration and R & S requested fees in its response to Nordstrom's demand for arbitration. Thus, based on the parties' mutual request for fees, the Arbitrator was authorized to award fees in the exercise of his discretion. *Cf. Coutee v. Barington Capital Grp., L.P.*, 336 F.3d 1128, 1136 (9th Cir. 2003) ("An arbitration panel may award attorney's fees, even if not otherwise authorized by law to do so, if both parties submit the issue to arbitration."). Because we conclude that the Arbitrator had the authority to award fees, it is not necessary to address the other bases for awarding fees argued by the parties. Moreover, we conclude the Arbitrator did not exceed his authority in awarding Nordstrom approximately fifty percent of the amount of attorneys' fees he requested.⁷

B. Punitive damages

¶19 Next, R & S argues that the Arbitrator exceeded his authority by awarding Nordstrom \$40,500.00 in punitive damages because an award of punitive damages requires actual damages as a predicate and Nordstrom was not awarded actual damages. We

⁷ Because we conclude that the Arbitrator did not exceed his authority when he awarded attorneys' fees to Nordstrom, we need not consider Nordstrom's argument that R & S waived this claim by failing to object during the arbitration proceedings.

disagree. The broad authority extended to arbitrators pursuant to AAA Rule R-43(a) to "grant any remedy or relief that the arbitrator deems just and equitable" allows arbitrators to consider and award punitive damages, if appropriate and authorized by law. See *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 61-62 (1995); see also A.R.S. § 12-3021(A) (Supp. 2011) ("An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.").

¶20 Because we have not been provided a transcript of the arbitration proceedings, we presume that the evidence presented supported the Arbitrator's findings. See *Anzilotti v. Gene D. Liggin, Inc.*, 899 S.W.2d 264, 267 (Tex. App. 1995) ("When a non-prevailing party seeks to modify or vacate an arbitrator's award, he bears the burden to bring forth a complete record that establishes his basis for relief. . . . Without a record, we are to presume that adequate evidence was presented to support the arbitrator's award."); see also *Parrish v. Camphuysen*, 107 Ariz. 343, 346, 488 P.2d 657, 660 (1971) (presumption in favor of validity of Master's findings strengthened when no transcript provided to the appellate court).

¶21 In any event, the Arbitrator made reasoned and specific findings pertaining to his punitive damages award. He concluded that "[t]he harm [Nordstrom] suffered was a result of intentional disregard by [R & S] of [Nordstrom's] interests and the ensuing significant risk of economic loss, by misrepresenting, concealing and failing to disclose material facts to [Nordstrom] and placing its own interests ahead of [Nordstrom's] interest." The Arbitrator also found that "[t]he evidence also supported a conclusion that [Nordstrom's] harm was the result of trickery and deceit" and R & S acted reprehensibly and "with an evil mind." The Arbitrator awarded punitive damages against R & S in the amount of \$40,500.00, or fifty percent of the sales price of the Vehicle, and found that it was "a necessary and proper award and not unconstitutionally excessive under the circumstances of this arbitration and the evidence presented." These findings support an award of punitive damages. See *Medasys Acquisition Corp. v. SDMS, P.C.*, 203 Ariz. 420, 424, ¶ 17, 55 P.3d 763, 767 (2002) (punitive damages may be awarded when the proof is clear and convincing that defendant engaged in "reprehensible conduct" and acted "with an evil mind").

¶22 We also reject R & S's claim that it is not liable for an award of punitive damages. Even assuming, as R & S argues, that the award of the Vehicle essentially constituted a set-off

of the monetary amount awarded to Nordstrom, the Arbitrator also awarded consequential damages to Nordstrom for attorneys' fees incurred in suing Schaefer.⁸ We therefore conclude that the Arbitrator lawfully and properly issued a punitive damages award against R & S.

C. Miscalculation of damages

¶23 R & S next argues that the Arbitrator made mathematical errors in his award of punitive damages to Nordstrom. R & S maintains that we should modify the award pursuant to A.R.S. § 12-3024(A)(1) (Supp. 2011), which states, that "the court shall modify or correct the award if . . . [t]here was an evident mathematical miscalculation or an evident mistake in the description of a person or thing or property referred to in the award." R & S makes the same argument regarding the miscalculation as it did in its argument that the punitive damages award was improper, i.e., that there were no actual damages because the \$81,000.00 awarded to Nordstrom cancelled out the award of the Vehicle to R & S. In its confirmation of the arbitration award, the superior court found that R & S did not "identif[y] an error that would fit within the confines of this statute, so the Court declines to do so."

⁸ Because the Arbitrator clearly awarded Nordstrom damages, we need not consider Nordstrom's additional claim that the Vehicle was worth substantially less than its original worth after it sustained damages while in R & S's care.

¶124 We conclude that the superior court did not err in determining that R & S failed to identify an evident mathematical miscalculation or mistake in the Arbitrator's award to Nordstrom. The argument by R & S on this issue amounts to an expression of disagreement with the factual and legal determinations made by the Arbitrator. However, "an arbitration award is not subject to attack merely because one party believes that the arbitrators erred with respect to factual determinations or legal interpretations." *Hirt*, 118 Ariz. at 545, 578 P.2d at 626. Further, as we previously stated, there were actual damages awarded to Nordstrom and R & S did not receive an "award" of the Vehicle. Accordingly, we reject R & S's argument that the superior court was required to modify the award pursuant to A.R.S. § 12-3024(A)(1).

D. Notice of non-parties at fault and unclean hands defense

¶125 R & S next argues that the Arbitrator exceeded his authority by "not considering" its notice of non-parties at fault and unclean hands defense. Again, we disagree. The Arbitrator explicitly addressed R & S's notice of non-parties at fault and unclean hands defense in its decision, stated that it considered all affirmative defenses, and found that the evidence and law did not support a finding in R & S's favor.

¶126 As we have previously stated, "an arbitration award is not subject to attack merely because one party believes that the arbitrators erred with respect to factual determinations or legal interpretations." *Hirt*, 118 Ariz. at 545, 578 P.2d at 626. "[T]he decisions of the arbitrators on questions of fact [a]nd of law are final and conclusive, except when they conflict with the express guidelines or standards set forth or adopted in the arbitration agreement." See *Smitty's Super-Valu, Inc. v. Pasqualetti*, 22 Ariz.App. 178, 182, 525 P.2d 309, 313 (1974); see also *Hirt*, 118 Ariz. at 545, 578 P.2d at 626. R & S has not persuaded us that the Arbitrator's decision conflicted with the arbitration agreement in any way. We therefore conclude there is no merit to this argument.

E. Recovery on non-assignable tort claim

¶127 R & S maintains that the Arbitrator exceeded his authority and "fail[ed] to follow the law" by assigning recovery to Nordstrom because Nordstrom used Gas Monkey's dealer's license at the R & S auction, Gas Monkey subsequently assigned its rights to Nordstrom during the litigation, and Gas Monkey is therefore the true owner of the claims. As we have previously stated, a party cannot attack an arbitration award merely because that party believes the arbitrator committed legal errors. *Hirt*, 118 Ariz. at 545, 578 P.2d at 626. Accordingly, this issue is non-reviewable.

II. Manifest disregard of the law

¶128 Finally, R & S contends that the Arbitrator acted in manifest disregard of the law by "exceeding his authority to award attorneys' fees, and/or improperly awarding punitive damages, and/or erring the mathematics of his award, and/or refusing [R & S's] Notice of Non-Parties at Fault . . . and/or refusing to allow evidence of unclean hands, and/or improperly ordering recovery based on assigned tort claims that are not assignable." Although the context of R & S's argument is vague and non-specific, we nonetheless address the issue.

¶129 The FAA allows a federal court to vacate an arbitration award "that is completely irrational or exhibits a manifest disregard for the law." *Kyocera Corp. v. Prudential-Bache Trade Servs., Inc.*, 341 F.3d 987, 998 (9th Cir. 2003). Arizona statutes and case law do not explicitly permit a manifest disregard of the law as a basis for setting aside an arbitration award. Even if we were to conclude that the manifest disregard of the law standard is a basis for setting aside an award in Arizona, there is no basis in the record of this case to conclude that the Arbitrator manifestly disregarded the law. As we have previously mentioned, we have reviewed the Arbitrator's twenty-eight page ruling and do not perceive he made significant, let alone, manifest, errors of law.

III. Attorneys' fees and costs on appeal

¶30 Both parties request attorneys' fees and costs on appeal. We decline to award R & S fees because it was not the prevailing party on appeal. Nordstrom requests his attorneys' fees pursuant to A.R.S. § 12-3025(B) (Supp. 2011), which permits "reasonable costs of the motion and subsequent judicial proceedings." In *Steer v. Eggleston*, 202 Ariz. 523, 528, ¶¶ 23-25, 47 P.3d 1161, 1166 (App. 2002), we held that A.R.S. § 12-1514 (2003) permits an appellate court to award attorneys' fees on appeal from the confirmation of an arbitration award. A.R.S. § 12-1514 states that "[u]pon the granting of an order confirming . . . an award, . . . [c]osts of the application and of the proceedings subsequent hereto, and disbursements may be awarded by the court." Because the language in A.R.S. § 12-1514 is analogous to A.R.S. § 12-3025(B), we conclude that we have the authority to award attorneys' fees on an appeal from the confirmation of an arbitration award under A.R.S. § 12-3025(B). In the exercise of our discretion, we therefore grant Nordstrom's request for his reasonable attorneys' fees on appeal. We also grant Nordstrom his costs on appeal upon his compliance with the Arizona Rules of Civil Appellate Procedure 21.

CONCLUSION

¶31 For the foregoing reasons, we affirm the superior court's confirmation of the arbitration award.

_____/s/_____
PHILIP HALL, Judge

CONCURRING:

_____/s/_____
MAURICE PORTLEY, Presiding Judge

_____/s/_____
MICHAEL J. BROWN, Judge