KATZ, J., concurring in part and dissenting in part. The crux of the dispute in the present case is whether the dismissal by the grievance committee (grievance committee) of the Greater Hartford Association of Realtors, Inc., of the request for arbitration filed by the plaintiff, Coldwell Banker Manning Realty, Inc., on the ground that the request had not been filed within a specific 180 day time period constituted an award that, in the absence of a motion to vacate, conclusively disposed of the controversy between the parties. The majority concludes that: the 180 day period is a discretionary time limit after which time the grievance committee simply declined to exercise jurisdiction; such a discretionary decision is not an award; and, accordingly, the grievance committee's decision does not require dismissal of the plaintiff's action in the trial court. The majority's principal reason for reaching its threshold conclusion is that, because the arbitration agreement (agreement) between the parties in the present case instructs the grievance committee to "consider" certain factors before it decides whether to refer the matter to an arbitration panel for a full evidentiary hearing and some of those factors undoubtedly involve the exercise of discretion, the 180 day period for filing requests for arbitration similarly must be a matter of discretion. The majority therefore has concluded that the trial court's judgment should be reversed and the case should be remanded to that court for further proceedings on the plaintiff's complaint. I respectfully disagree with the remand portion of the decision as it applies to the claims against the named defendant, Cushman and Wakefield of Connecticut, Inc. (defendant).[1]

My principal disagreement with the majority's analysis is that it has reached its conclusion on the basis of an unfounded determination—namely, that, as a matter of law, the agreement clearly and unambiguously indicates the intended effect of the time limit. In my view, this approach is improper because, as I explain in this opinion, the agreement is ambiguous as to this issue. See *State* v. *Philip Morris*, *Inc.*, 289 Conn. 633, 643, 959 A.2d 997 (2008) (noting that arbitration agreement is subject to principle of contract construction that, "[a]lthough the intention of the parties typically is a question of fact, if their intention is set forth clearly and unambiguously, it is a question of law" [internal quotation marks omitted]). Indeed, the majority's opinion overlooks the tension between two policy considerations created by the ambiguity in the agreement: (1) the plaintiff's construction that the majority adopts renders the mandatory arbitration provision in the agreement largely illusory, contrary to the preference for enforce-

ment of such agreements; and (2) the defendant's construction raises questions of fair notice to parties that they would have a considerably shorter period in which to bring an arbitration action than they otherwise would have under the applicable statutes of limitations in a court action. Because I would conclude that the agreement is ambiguous and that the decision issued pursuant to that agreement does not make clear whether the grievance committee declined to exercise jurisdiction or lacked jurisdiction after the 180 day period expired, I am unable to determine whether this is an award that conclusively determines the parties' rights as to the claims at issue. I, therefore, would remand this matter to the trial court with direction to remand the case to the grievance committee to clarify its decision.

I begin with certain relevant principles of arbitration jurisprudence. Our court has not defined what constitutes an award. The few courts that have defined the term have done so in broad terms that provide little guidance in the present matter.[2] Although the majority assumes that only decisions on the merits of the claims submitted to arbitration constitute awards, it implicitly acknowledges that, if the operative time period in the present case was tantamount to a jurisdictional statute of limitations, the dismissal would constitute an award. I disagree with the majority's first point, but agree with the second.

A decision that a matter is not arbitrable can be an award; see *Stratford* v. *International Assn. of Firefighters, AFL-CIO, Local 998*, 248 Conn. 108, 110–25, 728 A.2d 1063 (1999) (addressing whether doctrine of res judicata barred parties from relitigating question of whether matter was arbitrable under contract when prior "award" had been issued deciding that matter was not arbitrable); that properly may be the subject of a motion to vacate or to confirm.[3] See, e.g., *Local 369, Utility Workers Union of America, AFL-CIO* v. *Boston Edison Co.*, 752 F.2d 1, 2 (1st Cir. 1984); *Metal Products Workers Union, Local 1645, UAW-AFL-CIO* v. *Torrington Co.*, 358 F.2d 103, 106 (2d Cir. 1966); *Hotel Employees & Restaurant Employees Union Local No. 17* v. *Criterion Restaurant, Inc.*, 352 N.W.2d 835, 837 (Minn. App. 1984); *Case* v. *Monroe Community College*, 89 N.Y.2d 438, 441, 677 N.E.2d 279, 654 N.Y.S.2d 708 (1997); *Council 13, American Federation of State, County & Municipal Employees, AFL-CIO* v. *Commonwealth*, 76 Pa. Commw. 569, 571, 464 A.2d 663 (1983); *Arbitration, Madison Teachers, Inc.* v. *Madison Metropolitan School District*, 271 Wis. 2d 697, 707, 678 N.W.2d 311 (2004); see also B. Sacks, Comment, "Arbitration in Connecticut: Issues in Judicial Intervention Under the Connecticut Arbitration Statutes," 17 Conn. L. Rev. 387, 395 (1985) ("Should the arbitrator declare the dispute not arbitrable, such a declaration would constitute an 'award' determinative of the rights of the parties and

thus a final judgment. This decision is subject to immediate appeal by a motion to vacate under the provisions of [General Statutes §] 52-418.").

More significantly for our purposes, a dismissal of a request to arbitrate for failure to file the request within *mandatory* time limits is an award that may be challenged by way of a motion to vacate or that may be confirmed. See, e.g., *Patten* v. *Signator Ins. Agency, Inc.*, 441 F.3d 230, 231 (4th Cir.), cert. denied, 549 U.S. 975, 127 S. Ct. 434, 166 L. Ed. 2d 308 (2006); *Phillips* v. *Merrill Lynch, Pierce, Fenner & Smith, Inc.*, Docket No. 3:05cv1959, 2006 U.S. Dist. LEXIS 50952, *8–10 (D. Conn. July 26, 2006); *Young* v. *Ross-Loos Medical Group, Inc.*, 135 Cal. App. 3d 669, 671–72, 673–74, 185 Cal. Rptr. 536 (1982); *Beroth* v. *Apollo College, Inc.*, 135 Wash. App. 551, 556–59, 145 P.3d 386 (2006); see also *Tucker* v. *Fireman's Fund Agribusiness, Inc.*, 365 F. Sup. 2d 821, 823–24 (S.D. Tex. 2005) (analyzing motion to compel arbitration as motion to vacate award when petitioner claimed that, "because the arbitrator dismissed the claim based on a time limits defense, arbitration never actually occurred," given that petitioner's arguments "appear to concern the validity of the award rather than the existence of arbitration").

A related principle that is of paramount significance in the present case is that, when arbitration is mandated as the exclusive method of dispute resolution, a dismissal of a request to arbitrate for failure to file the request within mandatory time limits conclusively determines the controversy.[4] See *Cole* v. *Clifford*, District Court, Docket No. DV-00-234, 2000 Mont. Dist. LEXIS 2090, *23 (December 12, 2000) (concluding that failure to file timely request for mandatory arbitration procedure within mandated time period barred institution of court action to address otherwise arbitrable claims); *Ercoli* v. *Empire Professional Soccer, LLC*, 39 App. Div. 3d 1148, 1148–49, 833 N.Y.S.2d 818 (2007) (concluding that trial court properly granted motion to dismiss complaint on ground that plaintiff's sole available remedy was arbitration because he was subject to binding arbitration provision and arbitrator had dismissed demand for arbitration as untimely); *Rhodes* v. *Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 75 App. Div. 2d 767, 768, 427 N.Y.S.2d 826 (1980) ("it is true that when arbitration is the exclusive remedy, and the arbitration agreement contains a provision limiting the time when the arbitration can be commenced, a party who permits that time to elapse without commencing an arbitration proceeding cannot avoid that limitation by bringing an action at law"); 1 L. Edmonson, Domke on Commercial Arbitration (3d Ed. 2007) § 19:1, p. 19-4 ("it appears to be a settled practice of courts that when the time expires for initiating arbitration, the party loses all remedies and cannot institute a court action later, since otherwise the result would be a return to the situation obtaining when agreements to arbitrate were

revocable at the will of a party thereto" [internal quotation marks omitted]).

Therefore, I agree with the majority that the dispositive issue in this case is whether the dismissal was a mandatory, jurisdictional requirement, and thus was an award, or whether the dismissal was a mere matter of discretion, and thus was not an award.[5] See *Marchese* v. *Shearson Hayden Stone, Inc.*, 734 F.2d 414, 422–23 (9th Cir. 1984) (concluding that arbitral decision rendered pursuant to arbitration rule providing that " 'at any time during the course of an arbitration, the arbitrators may either upon their own initiative or at the request of a party, dismiss the proceeding and refer the parties to the remedies provided by law' " constituted award, not dismissal). Because the grievance committee's decision in the present case does not indicate this fact expressly, I turn to the relevant provisions in the agreement pursuant to which the grievance committee's decision was rendered. The agreement in this case is the code of ethics and standards of practice of the National Association of Realtors (code of ethics), which was adopted by the Greater Hartford Association of Realtors, Inc. (association), pursuant to its bylaws, as well as the association's own code of ethics and arbitration manual (arbitration manual). Under the code of ethics, articles 1 through 9 set forth "Duties to Clients and Customers," articles 10 through 14 set forth "Duties to the Public," and articles 15 through 17 set forth "Duties to [Realtors]." Article 17 of the code of ethics, which is the only provision to address arbitration, provides in relevant part: "In the event of contractual disputes or specific non-contractual disputes as defined in [s]tandard of [p]ractice 17-4 between [Realtors] (principals) [a]ssociated with different firms, arising out of their relationship as [Realtors], the [Realtors] shall submit the dispute to arbitration in accordance with the regulations of their [b]oard or [b]oards rather than litigate the matter."[6]

Part nine of the arbitration manual sets forth the authority, function and procedures of the grievance committee in arbitration proceedings. As the majority properly points out, this part of the arbitration manual clearly indicates that the grievance committee acts in a gatekeeping capacity, determining whether the request for arbitration should be referred to an arbitration panel for a full evidentiary hearing. Part nine, § 42 (B), of the arbitration manual provides in relevant part: "In reviewing a request for arbitration, the [g]rievance [c]ommittee shall consider the following [eleven questions] . . . ."[7] Question three of part nine, § 42 (B), of the arbitration manual is: "Was the request for arbitration filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later?"

The majority has set forth several reasons why it has concluded that the 180 day time period is discretionary, which I need not repeat. I would agree with the majority that the fact that the grievance committee undoubtedly has discretion to dismiss a request for arbitration under some of the relevant considerations, such as when it deems the amount in dispute too large or too small or the matter too legally complex for the arbitrators,[8] could suggest that the 180 day period similarly is a matter of discretion.[9] I would add the following facts in support of the majority's construction. The 180 day time period is set forth only in the part of the arbitration manual, which sets forth the *grievance committee's* authority, function and procedures, and not in the code of ethics, which sets forth the obligations of association members, including such members' arbitration rights and duties. Moreover, the reference to the 180 day time period in the arbitration manual is not stated in terms that impose an affirmative obligation on the parties. Compare *Cole* v. *Clifford*, supra, 2000 Mont. Dist. LEXIS *17 (quoting code of ethics provision stating "requests for arbitration must be filed within 180 days after the closing of the transaction, if any, or within 180 days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later" [internal quotation marks omitted]). Nor does the arbitration manual expressly set forth a consequence for failing to file within that period. Compare *Tupper* v. *Bally Total Fitness Holding Corp.*, 186 F. Sup. 2d 981, 988 (E.D. Wis. 2002) ("Parties agree to waive all statutes of limitations that would apply in a court of law or administrative proceeding, and to submit the [d]ispute no later than one year after the [d]ispute arises. Failure to submit a [d]ispute within these time limits is intended to, and shall to the furthest extent permitted by law, be a waiver and release with respect to the [d]ispute, and, in the absence of a timely submitted [d]ispute, an [a]rbitrator has no authority to resolve the [d]ispute or render an [a]ward." [Internal quotation marks omitted.]); *DeGroff* v. *Mascotech Forming Technologies-Fort Wayne, Inc.*, 179 F. Sup. 2d 896, 909 (N.D. Ind. 2001) ("[E]mployees must initiate arbitration within one year of the time the claim accrued or, in the case of a claimed statutory violation, the time limits imposed by the applicable statute of limitations, whichever is longer. The failure to initiate arbitration within this time limit will forever bar any claim involving that dispute." [Internal quotation marks omitted.]). Indeed, in light of the fact that a statute of limitations in the three to six year range otherwise likely would control in a judicial action; see General Statutes §§ 52-576, 52-577, 52-581; it seems counterintuitive that the agreement would not utilize mandatory language if that were the intended effect. Therefore, the majority's construction of the agreement and the decision as a matter of the grievance committee declining to exercise juris-

diction is not unfounded.

I disagree, however, with the majority's implicit conclusion that this construction is the only reasonable one and therefore that the agreement is unambiguous. See *Levine* v. *Advest, Inc.*, 244 Conn. 732, 746, 714 A.2d 649 (1998) (contract is ambiguous if agreement on its face is reasonably susceptible of more than one interpretation); *Rund* v. *Melillo*, 63 Conn. App. 216, 220, 772 A.2d 774 (2001) ("[c]ontract language is unambiguous when it has a definite and precise meaning about which there is no reasonable basis for a difference of opinion" [internal quotation marks omitted]). Because the majority's construction hinges on the grievance committee's authority only to "consider" certain matters and the clearly discretionary nature of some of those matters, I first address those points before turning to other factors that would indicate that the agreement mandates the grievance committee to dismiss a matter filed after the 180 day period.

First, the grievance committee undoubtedly would be required to dismiss a request for arbitration if it were to answer some of the questions to be considered in the affirmative. For example, the grievance committee must consider whether the matter is arbitrable[10] and whether the parties are subject to arbitration because they either currently are in good standing with the association or were association members at the time the facts giving rise to the dispute occurred. If the grievance committee were to conclude that the matter is *not* arbitrable, a decision that, like the one in the present case, is made on the basis of the facts alleged in the request for arbitration, such a decision would constitute an award. See *Stratford* v. *International Assn. of Firefighters, AFL-CIO, Local 998*, supra, 248 Conn. 111–15. The grievance committee would have no continuing jurisdiction and no discretion to refer the matter for an evidentiary hearing.[11] Therefore, the mere fact that the 180 day time limit is listed as a matter that the grievance committee must consider does not render the meaning of this provision unambiguously a matter of discretion.

Second, the nature of the 180 day time limit is qualitatively different than the aforementioned clearly discretionary factors that the grievance committee considers. A request either is or is not, as a matter of fact, filed within the 180 day period. There is no discretion involved in making that determination. By contrast, whether "the amount in dispute [is] too small or too large for the [b]oard to arbitrate" or "the matter [is] too legally complex, involving issues that the arbitrators may not be able to address in a knowledgeable way" pursuant to part nine, § 42 (B) (9) and (10) of the arbitration manual are matters over which grievance committee members reasonably could disagree. Indeed, there is no qualitative language to guide the grievance committee in deciding under what circumstances an

untimely filed claim could be referred to arbitration.

Looking to the arbitration request itself, that form requires the applicant to declare, "[*u*]*nder the penalties of perjury* . . . [that] this request for arbitration is filed within 180 days after the closing of the transaction, if any, or within 180 days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later."[12] (Emphasis added.) The applicant is not required to attest to the other factors that clearly are discretionary, although it is required to attest to the factors that pertain to the prerequisites to arbitration, i.e., that the parties currently are in good standing with the association or were association members at the time the facts giving rise to the dispute occurred. The threat of perjury appears entirely at odds with a time limit that the grievance committee can waive at will and that has no legal effect other than to free the parties to pursue their claims in another forum.

Finally, if the obligation to file a request within 180 days is *not* binding, the clearly mandatory obligation under the agreement to use arbitration as the exclusive dispute resolution method would become largely illusory. Cf. *Cole* v. *Clifford*, supra, 2000 Mont. Dist. LEXIS *23 (stating in case where realtor agreement included express mandate to file request within 180 days, "[i]f a party with a dispute, who has agreed via contract to submit that dispute to mandatory arbitration, is permitted to wait out the limitations period prescribed by the arbitration clause, and then bring litigation in the court system, the very purpose of our state-enacted arbitration statutes has been thwarted"). A party seeking to avoid arbitration could, at the very least, all but guarantee that it will not have to submit to arbitration simply by filing its court action well after the 180 day period has lapsed. After all, the party likely would have three to six years to bring its court action without violating the statute of limitations. This construction of the agreement runs counter to the general rule favoring arbitration as the preferred method of dispute resolution. *New England Pipe Corp.* v. *Northeast Corridor Foundation*, 271 Conn. 329, 337, 857 A.2d 348 (2004) ("[a]rbitration is [a] favored [method of dispute resolution] because it is intended to avoid the formalities, delay, expense and vexation of ordinary litigation" [internal quotation marks omitted]); *Stratford* v. *International Assn. of Firefighters*, *AFL-CIO*, *Local 998*, supra, 248 Conn. 127 (Connecticut has "strong public policy favoring arbitration as an alternative method of dispute resolution"). Therefore, because the agreement is susceptible to two reasonable interpretations—that the 180 day period is either mandatory or discretionary—it is ambiguous as to the effect of filing an untimely request for arbitration.

Similarly, the grievance committee's decision does

not make the basis of its decision clear so that we can determine whether its decision is dispositive of the plaintiff's claims or whether it leaves open the possibility of litigation.[13] The grievance committee's decision in the present case consisted of two documents. The first document, a letter from Jeffrey P. Arakelian, the president and chief executive officer of the association, simply stated that the grievance committee had concluded that the request for arbitration had not been filed within the aforementioned 180 day period and informed the plaintiff of its right to appeal should it disagree with the dismissal of its request. The second document, a form entitled "Report of Grievance Committee; Direction Whether or Not to Proceed With Arbitration," listed five possible dispositions and had a check mark next to the following statement: "Request for arbitration was not filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the fact[s] constituting the arbitrable matter could have been known in the exercise of reasonable diligence whichever is later."

When arbitration decisions are ambiguous, the courts have authority to remand the case, without vacating it, to the arbitral authority to clarify the basis of its decision. See *Hartford Steam Boiler Inspection & Ins. Co.* v. *Underwriters at Lloyd's & Cos. Collective*, 271 Conn. 474, 484–94, 857 A.2d 893 (2004) (discussing case law supporting such authority and limitations on arbitral authority in such instances solely to clarify basis of decision and not to redetermine merits), cert. denied, 544 U.S. 974, 125 S. Ct. 1826, 161 L. Ed. 2d 723 (2005); see also *Phillips* v. *Merrill Lynch*, *Pierce*, *Fenner & Smith*, *Inc.*, supra, 2006 U.S. Dist. LEXIS *15–16 (denying motion for confirmation of award that dismissed request for arbitration on ground that request was untimely and remanding case to arbitral authority to clarify basis of decision to indicate whether dismissal was dispositive of claims or permitted litigant to pursue claims in court). In so doing, the court "ensures that private agreements to arbitrate are enforced according to their terms. . . . *Doctor's Associates*, *Inc.* v. *Casarotto*, 517 U.S. 681, 688, 116 S. Ct. 1652, 134 L. Ed. 2d 902 (1996), quoting *Volt Information Sciences*, *Inc.* v. *Board of Trustees of Leland Stanford Junior University*, 489 U.S. 468, 479, 109 S. Ct. 1248, 103 L. Ed. 2d 488 (1989). By allowing the arbitration panel to clarify its decision and to complete its assigned task, [the parties] will receive an arbitration award in accordance with the terms agreed to in their governing procedures." (Internal quotation marks omitted.) *Hartford Steam Boiler Inspection & Ins. Co.* v. *Underwriters at Lloyd's & Cos. Collective*, supra, 494.

Therefore, I would conclude that the most appropriate course of action is to reverse the trial court's decision and direct it to remand the case to the griev-

ance committee for a clarification as to whether: (1) in the exercise of its discretion, the grievance committee declined to refer the matter to arbitration because the request had been filed beyond the 180 day period; or (2) the grievance committee was mandated under the agreement to dismiss the request because it has no jurisdiction over a request made beyond that 180 day period. I further would conclude that, if the grievance committee's articulation indicates that the dismissal was mandatory and jurisdictional, that articulation is the operative award in this case that triggers the parties' rights to seek vacation or confirmation.

Therefore, I respectfully concur in part and dissent in part.

[1] I agree with the plaintiff that the trial court's ruling expressly held that the claims against the individual defendants, Joel M. Grieco and Robert E. Kelly, were not subject to arbitration and that the plaintiff did not expand the scope of arbitration in its submission to include those defendants. The plaintiff listed only the named defendant as a respondent in the request for arbitration and expressly stated in its accompanying letter that the request "is limited [to] matters as set forth in the court's [attached] ruling." Therefore, I would conclude that the grievance committee's dismissal of the request for arbitration had no effect on the claims against Grieco and Kelly that remained pending before the trial court subject to the conclusion of the arbitration proceedings.

[2] See, e.g., *Chillum-Adelphi Volunteer Fire Dept., Inc.* v. *Button & Goode, Inc.*, 242 Md. 509, 516, 219 A.2d 801 (1966) (defining "arbitration award" as "decision of an extra-judicial tribunal which the parties themselves have created, and by whose judgment they have mutually agreed to abide" [internal quotation marks omitted]); *Chiesa* v. *Fetchko*, 318 Pa. Super. 188, 194, 464 A.2d 1293 (1983) ("An award has been defined as the decision or determination rendered by arbitrators or commissioners upon a controversy submitted to them. Black's Law Dictionary [5th Ed. 1979]. See also 3 P.L.E. Arbitration § 12 [an award is the final judgment or decision pronounced by the arbitrators in settlement of the controversy submitted to them]. Also, it has been held that an award is a judgment of a tribunal selected by the parties to determine matters actually in variance between them. *Keiser* v. *Berks County*, 253 Pa. 167, 97 A. 1067 [1916]."), aff'd, 504 Pa. 503, 475 A.2d 740 (1984); *Beroth* v. *Apollo College, Inc.*, 135 Wash. App. 551, 558 n.3, 145 P.3d 386 (2006) ("[a]n arbitrator's award is a 'statement of the outcome, much as a judgment states the outcome' ").

[3] The majority relies on *Metro Properties, Inc.* v. *Yatsko*, 763 A.2d 617, 622 (R.I. 2000), for a contrary conclusion. In that case, the Rhode Island Supreme Court concluded that a party was not entitled to attorney's fees that were to be awarded to a prevailing party if that party needed to obtain judicial enforcement of an award. The court concluded, inter alia, that the arbitration panel's decision that the matter was not arbitrable because a *condition precedent* to arbitration had not been met, namely, that there was a contractual relationship between the parties, was not an award. Id. I would simply point out that the basis for the underlying arbitration decision in that case is distinguishable from a decision that the matter submitted is not arbitrable. To the extent the Rhode Island court intended to state a broad principle applicable to the latter, the court cited no authority for such a proposition and, indeed, the authority I have uncovered, which is noted in the text above, is all to the contrary.

[4] The majority concludes that this principle is inapplicable because, as I have noted in footnote 6 of this concurring and dissenting opinion, arbitration is not mandated under the operative agreement in the present case *if* both parties agree and properly notify the arbitration authority that they do not wish to arbitrate the matter. Contrary to the majority's view, it appears to me that this principle is fully applicable when the parties have not met the prerequisites to avoid their obligation to arbitrate.

[5] I am not inclined to agree with the plaintiff that the fact that there was no evidentiary hearing and that the fee was refunded dictate a conclusion that the grievance committee's decision is not an award. The parties contractually agreed to accept the arbitration procedures, the plaintiff stipulated to the

grievance committee the fact that the request for arbitration had been filed after the 180 day time period had passed; see footnote 12 of this concurring and dissenting opinion; and there is no claim that these procedures are unenforceable. See *HH East Parcel* v. *Handy & Harman*, 287 Conn. 189, 196, 947 A.2d 916 (2008) ("[A]rbitration is a creature of contract, whereby the parties themselves, by agreement, define the powers of the arbitrators. . . . [W]hen the parties have established the authority of the arbitrator, the extent of our judicial review of the award is delineated by the scope of the parties' agreement." [Internal quotation marks omitted.]); see also *United Paperworkers International Union, AFL-CIO* v. *Misco, Inc.*, 484 U.S. 29, 39–40, 108 S. Ct. 364, 98 L. Ed. 2d 286 (1987) ("[t]he parties bargained for arbitration to settle disputes and were free to set the procedural rules for arbitrators to follow if they chose"). If the grievance committee had concluded that the dispute was not arbitrable, I cannot see how its refund of the fee would render that decision, which otherwise would be treated as an award, not to be an award.

[6] Article 17 of the code of ethics further provides that arbitration is not required if the parties notify the board in writing that they have chosen not to arbitrate the matter.

[7] Part nine, § 42, of of the arbitration manual provides: "In reviewing a request for arbitration, the [g]rievance [c]ommittee shall consider the following:

"(1) Is the request for arbitration acceptable in the form as received by the committee? If not in proper form, the [c]hairperson may request that the [e]lected [s]ecretary or the [e]xecutive [o]fficer contact the complainant to advise that the request must be submitted in proper form.

"NOTE: If deemed appropriate by the [c]hairperson, a member of the [g]rievance [c]ommittee may be assigned to contact the complainant and to provide procedural assistance to amend the request or resubmit a new request in proper form and with proper content. The [g]rievance [c]ommittee member providing such assistance shall ensure that only procedural assistance is provided to the complainant, and that the complainant understands that the member is not representing the complainant.

"(2) Are all necessary parties named in the request for arbitration? The duty to arbitrate is an obligation of [Realtor] principals. [Realtor] principals include sole proprietors, partners in a partnership, officers or majority shareholders of a corporation, or office managers (including branch office managers) acting on behalf of principals of a real estate firm. . . .

"(3) Was the request for arbitration filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later? . . .

"(4) Are the parties members in good standing or otherwise entitled to invoke arbitration through the [b]oard's facilities? Were the parties members at the time the facts giving rise to the dispute occurred?

"(5) Is litigation pending in connection with the same transaction?

"NOTE: No arbitration shall be provided on a matter pending litigation unless the litigation is withdrawn with notice to the [b]oard and request for arbitration, or unless the court refers the matter to the [b]oard for arbitration.

"(6) Is there any reason to conclude that the [b]oard would be unable to provide an impartial [h]earing [p]anel?

"(7) If the facts alleged in the request for arbitration were taken as true on their face, is the matter at issue related to a real estate transaction and is it properly arbitrable, i.e., is there some basis on which an award could be based?

"(8) If an arbitrable issue exists, are the parties required to arbitrate or is their participation voluntary?

"(9) Is the amount in dispute too small or too large for the [b]oard to arbitrate?

"(10) Is the matter too legally complex, involving issues that the arbitrators may not be able to address in a knowledgeable way?

"(11) Is there a sufficient number of knowledgeable arbitrators available?

"If all of the relevant questions have been considered, and a majority of the [g]rievance [c]ommittee conclude that the matter is properly arbitrable by the [b]oard, the [g]rievance [c]ommittee shall send the request for arbitration to the [c]hairperson of the [p]rofessional [s]tandards [c]ommittee for arbitration by an arbitration [h]earing [p]anel."

[8] Apparently, the arbitration panels are comprised of other realtors who are association members, not attorneys.

[9] I note, however, that, unlike the agreement in the present case, other

realtor arbitration agreements expressly have acknowledged the arbitral authority's discretion to decline to exercise jurisdiction over an otherwise mandatory subject of arbitration, as well as the effect of such a decision. See, e.g., *Berke* v. *Tri Realtors*, 208 Cal. App. 3d 463, 468, 257 Cal. Rptr. 738 (1989) (Citing provisions of the arbitration manual providing that "every [a]ctive member binds himself [or herself] and agrees to submit to arbitration by the [b]oard's facilities all disputes with any other [a]ctive member, if either party to the dispute should so request and *if the* [*b*]*oard is willing to arbitrate the matter*" and further providing: "If either the [c]hairperson of the [p]rofessional [s]tandards [p]anel, in conjunction with the [s]ecretary, or the [a]rbitration [p]anel selected in the manner hereinafter provided determine that because of the magnitude of the amount involved or the legal complexity of the controversy the dispute should not be arbitrated, they shall so report to the [b]oard of [d]irectors and if the [b]oard of [d]irectors concurs, the arbitration shall terminate *and the parties shall be relieved of their obligation to arbitrate the controversy*. In this event, any deposit made by the parties shall be returned to the parties." [Emphasis altered.]); see also *Jorgensen Realty, Inc.* v. *Box*, 701 P.2d 1256, 1257 (Colo. App. 1985) (noting that arbitration manual gave Colorado Association of Realtors authority to determine whether it would accept dispute and reciting fact that chairman of professional standards committee of Colorado Association of Realtors had informed party requesting arbitration that grievance committee had not accepted dispute for arbitration and that "plaintiff was free to pursue other remedies").

[10] I am unclear how our case law concluding that a decision that a matter is arbitrable is not an award advances the majority's reasoning. In each of the cases in which this court concluded that such a decision was not an award, there was another matter pending before an arbitrator as to the *merits* of the dispute. Therefore, we have treated such decisions as not being an award solely because they are not final; in other words, they are interlocutory decisions. See *State* v. *Connecticut Employees Union Independent*, 184 Conn. 578, 579–80, 440 A.2d 229 (1981); *Conte* v. *Norwalk*, 173 Conn. 77, 80, 376 A.2d 412 (1977). In the present case, there is no interlocutory, nonfinal decision. I am similarly unclear as to the majority's reliance on case law addressing whether an award is outside the scope of the submission. In such a case, the arbitrator has exceeded his authority; *Harty* v. *Cantor Fitzgerald & Co.*, 275 Conn. 72, 84, 881 A.2d 139 (2005); whereas the majority's position in the present case, if I understand it correctly, is that the arbitral authority *had* authority to reach the merits but *declined* to exercise it beyond the 180 day period.

[11] As I previously have noted herein, a decision that a matter is not arbitrable is an award. Therefore, it cannot be said that the grievance committee's gatekeeping function deprives it of authority to render an award when the grievance committee is charged as part of the function to make that determination.

[12] The plaintiff crossed out the language in the arbitration request referring to the 180 day period and stated in a letter that accompanied the request: "Please note that the court ordered arbitration after the 180 day time limit had passed. This request for arbitration, therefore, has been filed after the 180 day time limit has passed. We have amended the request for arbitration to reflect this fact."

[13] The only evidence submitted to the trial court that bears on this issue is the second supplemental affidavit of Jeffrey P. Arakelian, the president and chief executive officer of the association, who stated therein that "[t]he [g]rievance [c]ommittee has sole responsibility for determining whether or not a matter is subject to arbitration, including, inter alia, whether it has been submitted within the *required* time frame and whether the issue relates to a real estate transaction and is properly arbitrable." (Emphasis added.)