FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-1958

EIG SERVICES, INC. and
EMPLOYERS PREFERRED
INSURANCE COMPANY,

Appellants,

v.

ONE CALL MEDICAL, INC. d/b/a
ONE CALL CARE MANAGEMENT;
ZONECARE USA OF DELRAY, LLC
d/b/a ONE CALL CARE
TRANSPORT + TRANSLATE; CORAL
ACQUISITION, INC.; and OPAL
ACQUISITION, INC. n/k/a ONE
CALL CORPORATION,

Appellees.

On appeal from the Circuit Court for Duval County.
Eric C. Roberson, Judge.

October 12, 2022

BILBREY, J.

Appellants challenge a final order of the trial court which confirmed the arbitrator's Interim Partial Final Award (IPFA), confirmed the arbitrator's Memorandum Opinion and Order (Order) which was issued after the IPFA, and refused to vacate the

Order. Appellants argued before the trial court that upon issuance of the IPFA the arbitrator could not make any substantive changes to it, and therefore, the arbitrator exceeded his authority in thereafter issuing the Order. The trial court disagreed finding that the arbitrator's initial ruling on count III in the IPFA was unclear, confusing, and ambiguous, and as such the arbitrator could clarify it with the Order. Finding no error in the trial court's final order, we affirm.

Background

In 2013, Appellants and Appellees entered into an agreement. Under the agreement, any disputes between the parties would be arbitrated using JAMS and its rules and procedures.[1] The agreement also provided that Florida law applied.

In 2017, Appellants instituted arbitration with a six-count statement of claim against Appellees. Appellees brought a two-count counterclaim. In the arbitration, Appellants were styled the Claimant and Appellees were styled the Respondent.

Before the arbitration hearing, the parties agreed to bifurcate the issues of liability and damages. After arbitration on liability, the arbitrator issued the 102-page IPFA. All the claims were clearly resolved except count III, which was Appellants' claim for breach of contract due to Appellees' failure to indemnify. According to the parties' agreement, Appellees had to indemnify for negligence they caused or which was caused by their employees. The issue for the arbitrator to decide on count III was whether a third party, Diamond Cab, was an employee of Appellees thereby requiring Appellees to indemnify Appellants.

In the IPFA, in discussing the issues, the arbitrator stated,

> While it is correct the notices sent by Claimant [EIG] made no reference to the claims it is making in this arbitration for fraudulent inducement, negligent

[1] JAMS is a private alternative dispute resolution provider. Its arbitration rules and procedures are available online at https://www.jamsadr.com/rules-comprehensive-arbitration.

> misrepresentation or its failure to follow same service standards for all customers or any other wrongdoing, the notices sought indemnification, it appropriately sought indemnification for those matters directly arising from the [incident giving rise to the claim for indemnification]. Accordingly, the tribunal is satisfied that the indemnification claim, from a substantive standpoint, was adequate.

Appellants contended that the last sentence above meant that it prevailed on count III. But later in the IPFA, the arbitrator held to the contrary,

> Respondent's failure to provide indemnification pursuant to the agreement is a breach of the [agreement]. Nevertheless, having considered all of the above factors set forth under Florida law, the totality of the circumstances (and in particular the Respondent's exercise over the details of Diamond Cab's work), the tribunal finds Diamond Cab was at all material times an independent contractor. See also, *McGillis v. Department of Economic Opportunity*, 210 So.3d 220 (Fla. 3d DCA 2017); *Georgia Pacific corp. v. Charles*, 479 So.2d 140 (Fla. 5th DCA 1985). Diamond Cab was neither Respondent's agent nor employee.

But then antithetical to this finding, at the end of the IPFA, in summarizing the disposition of the various claims the arbitrator stated, "Count III - for Claimant [EIG/Employers], with findings. See, Conclusions as to Count III." Reading just this conclusion makes it appear Appellants prevailed on count III.

Following the issuance of the IPFA, both parties understandably believed they prevailed as to count III. In discussing with Appellants' counsel the anticipated work ahead as to further arbitration on damages, Appellees' counsel realized that Appellants believed they had won on count III. Appellees then filed a timely request, citing JAMS Rule 24(j), for the arbitrator to

readdress the award.[2] After further proceedings and various filings by the parties, the arbitrator issued the Order.

The Order stated the Appellees' request for clarification was not an improper motion for reconsideration, but instead a proper motion for clarification under JAMS Rule 24(j). The arbitrator recognized that there were ambiguities in the IPFA that needed clarification. The arbitrator also noted his ability to interpret the JAMS rules as provided in Rule 11(a) which states, "Once appointed, the Arbitrator shall resolve disputes about the interpretation and applicability of these Rules and conduct of the Arbitration Hearing. The resolution of the issue by the Arbitrator shall be final." The arbitrator then restated his findings from the IPFA that Diamond Cab was not an employee or agent of Appellees, and as such Appellants had no right to indemnification. Unlike the ambiguities in the IPFA, it was clear from the Order that Appellees prevailed on count III.

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[2] JAMS Rule 24(j) provides,

> Within seven (7) calendar days after service of a Partial Final Award or Final Award by JAMS, any Party may serve upon the other Parties and file with JAMS a request that the Arbitrator correct any computational, typographical or other similar error in an Award (including the reallocation of fees pursuant to Rule 31(c) or on account of the effect of an offer to allow judgment), or the Arbitrator may *sua sponte* propose to correct such errors in an Award. A Party opposing such correction shall have seven (7) calendar days thereafter in which to file and serve any objection. The Arbitrator may make any necessary and appropriate corrections to the Award within twenty-one (21) calendar days of receiving a request or fourteen (14) calendar days after his or her proposal to do so. The Arbitrator may extend the time within which to make corrections upon good cause. The corrected Award shall be served upon the Parties in the same manner as the Award.

Appellants then filed a petition in the trial court to confirm the IPFA and to vacate the Order. *See* §§ 682.12, 682.13, Fla. Stat. (2019). Appellees responded to the petition and moved the trial court to confirm both the IPFA and the Order. After a hearing and additional briefing, the trial court entered its final order. The trial court found that the IPFA was confusing and ambiguous as to the resolution of count III. The trial court determined that without clarification, the IPFA standing alone did not clearly state who prevailed on that count. The trial court thus denied Appellants' attempt to vacate the Order, and instead confirmed both the IPFA and the Order. Appellants would have us reverse that ruling.

Analysis

"A very high degree of conclusiveness attaches to an arbitration award." *Deen v. Oster*, 814 So. 2d 1065, 1068 (Fla. 4th DCA 2001). Our standard of review of a final judgment confirming an arbitration award is abuse of discretion. *Timmons v. Lake City Golf, LLC*, 293 So. 3d 596, 598 (Fla. 1st DCA 2020) (citing *Nucci v. Storm Football Partners*, 82 So. 3d 180, 181 (Fla. 2d DCA 2012)).[3] But the standard of review in determining "whether the arbitrator exceeded his powers is a question of law that we review *de novo*." *Lake City Fire & Rescue Ass'n, Local 2288 v. City of Lake City*, 240 So. 3d 128, 130 (Fla. 1st DCA 2018) (citing *Nash v. Fla. Atl. Univ. Bd. of Trs.*, 213 So. 3d 363, 366 (Fla. 4th DCA 2017)).

Appellants argue that after entering the IPFA, the arbitrator lacked the authority to substantively alter it. Appellants claim that when arbitrators have "executed their award and declared

[3] Federal appellate courts apply a de novo standard when reviewing a trial court's decision whether to confirm or vacate an arbitration award, while still giving "considerable deference" to the arbitrator's decision. *International Broth. of Elec. Workers, Local Union 824 v. Verizon Florida, LLC*, 803 F.3d 1241, 1246 (11th Cir. 2015) (quoting *Osram Sylvania, Inc. v. Teamsters Local Union 528*, 87 F.3d 1261, 1263 (11th Cir. 1996)). Here, even applying a de novo standard to the trial court's confirmation of the IPFA and Order, and its refusal to vacate the Order, we would reach the same result discussed below.

their decision they are *functus officio* and have no power or authority to proceed further." *Kimm v. Blisset, LLC*, 388 N.J. Super. 14, 26, 905 A.2d 887, 894 (N.J. Super. 2006) (citations omitted). *Functus officio* is defined as "without further authority or legal competence because the duties and functions of the original commission have been fully accomplished." Black's Law Dictionary (11th ed. 2019). Appellants further argue that under the common law *functus officio* doctrine, an arbitrator is powerless to substantively change a decision, even if the arbitrator later considers the decision to be legally incorrect. *See Kimm,* 388 N.J. Super. at 26–27, 905 A.2d at 894–95; *International Broth. of Elec. Workers, Local Union 824 v. Verizon Florida, LLC*, 803 F.3d 1241, 1245–46 (11th Cir. 2015).

The *functus officio* doctrine has never been cited in a reported Florida state court case about arbitration. Even if *functus officio* has a place in Florida common law, it has been modified by the Revised Florida Arbitration Code, chapter 682, Florida Statutes (2019), and here, by agreement of the parties, the JAMS rules. *Cf. International Broth. of Elec. Workers, Local Union 824*, 803 F.3d at 1248 (determining that the *functus officio* doctrine was codified for arbitrations conducted under American Arbitration Association Labor Arbitration Rules where applicable rule provided in part that "[t]he arbitrator is not empowered to redetermine the merits of any claim already decided").

Appellants are correct that there is no mechanism under Florida law or the JAMS rules to seek rehearing or reconsideration of an arbitrator's final decision. *See Deen*, 814 So. 2d at 1069 (on motion for rehearing). But there are mechanisms for correction. One ground for an arbitrator to "modify or correct an award" is when it is necessary "[t]o clarify the award." § 682.10(1)(c), Fla. Stat. (2019). Additionally, the JAMS Rule 24(j) alters the *functus officio* doctrine by permitting the correction of an award upon request of a party or proposal of the arbitrator.

Chapter 682 does not define "clarify," and although there are Florida cases addressing clarification under section 682.10(1)(c), they also do not define the term. But clarify has simple definitions, such as "to free of confusion" and "to make understandable."

Clarify, Merriam-Webster's Collegiate Dictionary (Merriam-Webster, Inc., 11th ed. 2003).[4]

As shown above, the IPFA was ambiguous and confusing. It contained language leading both parties to reasonably believe that they had prevailed on count III. Without clarification, the damages phase of the bifurcated arbitration could not proceed since the arbitrator's ruling on count III could not be understood. It is arguable whether the IPFA was even an "award" until it was clarified with the Order. This is because an award "should resolve and determine all matters that have been submitted." *Jomar Prop., L.L.C. v. Bayview Const. Corp.*, 154 So. 3d 515, 518 (Fla. 4th DCA 2015). And the ambiguous IPFA alone did not do so, at least as to count III.

Appellants contend that the JAMS rules preclude substantive changes once the IPFA was issued. But JAMS Rule 24(j) allows the arbitrator to "correct any computational, typographical or other similar error in an Award." Unlike other arbitration rules, Rule 24(j) does not contain restrictive language on the arbitrator's ability to make corrections thereby codifying the *functus officio* doctrine. *See, e.g.*, *International Broth. of Elec. Workers, Local Union 824*, 803 F.3d at 1248. Therefore, whether the correction in the Order was allowed under Rule 24(j) was for the arbitrator to decide in his final authority "about the interpretation and applicability of" the rules under JAMS Rule 11(a).[5]

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[4] Section 682.10(1)(c) was amended in 2013, so it is unnecessary to determine whether "clarify" had a more limited meaning in the past. *See* Ch. 2013-232, § 21, Laws of Florida.

[5] We believe the JAMS rules can be read consistently with chapter 682 to allow substantive corrections. But even if there was a conflict between the JAMS rules and Florida law on whether the IPFA could be substantively clarified, JAMS Rule 4 provides, "the provision of law will govern over the Rule in conflict, and no other Rule will be affected."

Appellants argue that section 682.14(1)(c), Florida Statutes, limits any modification to matters "not affecting the merits of the controversy." But that subsection only applies to modifications or corrections of the award because it is "imperfect as a matter of form." § 682.14(1)(c). An arbitrator's ability to clarify an award at a party's request under section 682.10(1)(c) is not so limited.[6]

Finally, Appellants argue that the trial court should have vacated the Order due to misconduct by the arbitrator. "A trial court's authority to vacate an arbitration decision is limited to the grounds set forth in section 682.13(1), Florida Statutes." *Lake City Fire & Rescue Ass'n, Local 2288*, 240 So. 3d at 130 (citing *Schnurmacher Holding, Inc. v. Noriega*, 542 So. 2d 1327, 1328 (Fla. 1989). "Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding," is one ground for a trial court to vacate an award. § 682.13(1)(b)3.

However, even had the arbitrator erred in entering the Order, legal error is not misconduct.

> Thus, the award of arbitrators in statutory arbitration proceedings cannot be set aside for mere errors of judgment either as to the law or as to the facts; if the award is within the scope of the submission, and the arbitrators are not guilty of the acts of misconduct set forth in the statute, the award operates as a final and conclusive judgment, and—however disappointing it may

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[6] Appellants further contend that Appellees' timely motion under JAMS Rule 24(j) did not cite section 682.10. In subsequent filings with the arbitrator, section 682.10 was cited, but it was not raised "within 20 days after the movant receives notice of the award." § 682.10(2). Yet we see no requirement that the statute had to be cited to apply. Section 682.013, Florida Statutes, makes all of chapter 682 applicable to the arbitration proceedings. Additionally, at the first hearing after Appellees' motion under JAMS Rule 24(j), the arbitrator granted the parties additional time to "make any submission before the tribunal related to the" IPFA.

be—the parties must abide by it.

Cassara v. Wofford, 55 So. 2d 102, 105 (Fla. 1951); *see also Visiting Nurse Ass'n of Florida, Inc. v. Jupiter Med. Cent., Inc.*, 154 So. 3d 1115, 1134 (Fla. 2014) (citing *Schnurmacher*, 542 So. 2d at 1328). The trial court was correct in refusing the vacate the Order since even if had legal error occurred, there was no statutory basis to vacate it.

Conclusion

There was no error by the trial court in confirming both the IPFA and the Order. Clarification of the IPFA was necessary and was permitted by Florida law and JAMS rules. Finally, there were no grounds to vacate the Order.

AFFIRMED.

LEWIS and MAKAR, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

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