

Affirmed as Modified and Memorandum Opinion filed August 18, 2022.



In The

Fourteenth Court of Appeals

NO. 14-21-00317-CV

CROWN BUSINESS PARK, INC., Appellant

V.

IMRAN MUHAMMED AND SUMER SINGH PINGLIA, Appellees

**On Appeal from the 80th District Court
Harris County, Texas
Trial Court Cause No. 2019-71932**

MEMORANDUM OPINION

Crown Business Park, Inc. appeals the trial court's order confirming an arbitration award and denying its motion to vacate the award. In the arbitration Crown sought damages under a contract. The arbitrator found in favor of appellees Imran Muhammed and Sumer Singh Pinglia, who then sought to confirm the arbitrator's award. The trial court confirmed the award against appellant and awarded additional attorney's fees to appellees incurred in connection with filing the application to confirm the arbitration award.

On appeal, appellant argues the arbitrator exceeded his authority by awarding \$180,000 to appellees because the contract provided that the \$180,000 was a nonrefundable earnest money deposit, and appellant did not breach the contract. Appellant further asserts the trial court erred in awarding additional attorney's fees beyond those awarded by the arbitrator.

We hold that the arbitrator decided all issues within his authority, which included the authority to determine breach of the contract and damages for that breach. We also hold the trial court erred in awarding additional attorney's fees. We modify the trial court's judgment to delete the award of \$5,750 in additional attorney's fees incurred in connection with filing the application to confirm arbitration, and affirm the trial court's judgment as modified.

BACKGROUND

The parties entered into an earnest money contract for the sale of the Wilcrest Arbor Townhomes. Appellant was the seller and appellees were the buyers. Appellees deposited \$180,000 in earnest money in anticipation of the sale, which never occurred. When the sale did not occur, appellant requested surrender of the earnest money. Appellees refused to return the earnest money to appellant asserting that appellant breached the contract and was not entitled to the \$180,000. Appellant sued appellees for return of the earnest money. Pursuant to the contract's arbitration clause appellees filed a motion to compel arbitration, which the trial court granted.

After evidentiary hearings, which included witness testimony, the arbitrator found that appellant materially breached the contract "by failing to provide [appellees] its 2018 and 2019 year-to-date income statements." The arbitrator found that the contract required appellant to perform its obligations under the contract in order to claim the earnest money and that appellant materially breached the contract by failing to perform its obligation of providing income statements. The arbitrator

further found that as a result of appellant's material breach, appellant "did forego its right to claim the \$180,000 earnest money[.]" The arbitrator awarded appellees \$180,000 in earnest money plus \$36,621.75 in attorney's fees.

Appellant then moved to vacate the arbitrator's award on the ground that the arbitrator exceeded his authority under the contract. *See* Tex. Civ. Prac. & Rem. Code § 171.088(a)(3)(A). Appellees responded to appellant's motion to vacate, and subsequently moved for confirmation of the arbitrator's award. Appellees also sought additional attorney's fees incurred in moving for confirmation of the award, and responding to appellant's motion to vacate.

The trial court granted appellees' motion in its entirety, confirmed the arbitrator's final award, denied appellant's motion to vacate, awarded additional attorney's fees, and signed a judgment in favor of appellees. This appeal followed.

STANDARD OF REVIEW

The parties agree that the Texas Arbitration Act governs this case. *See* Tex. Civ. Prac. & Rem. Code §§ 171.001-.098. "Unless grounds are offered for vacating, modifying, or correcting an award under Section 171.088 or 171.091, the court, on application of a party, shall confirm the award." *Id.* § 171.087. We review de novo a trial court's order confirming or vacating an arbitration award; however, our review of the underlying award is extremely deferential. *See CVN Grp., Inc. v. Delgado*, 95 S.W.3d 234, 238 (Tex. 2002). Judicial review of the arbitration process is limited, and even a mistake of law or fact by the arbitrator in applying substantive law is not a proper ground for vacating an award. *See Aston Solar, LLC v. Sunnova Energy Corp.*, No. 14-21-00074-CV, 2022 WL 1256427, at *2 (Tex. App.—Houston [14th Dist.] Apr. 28, 2022, no pet.) (mem. op.). We indulge all reasonable presumptions in favor of the award and none against it. *See Delgado*, 95 S.W.3d at 238.

ANALYSIS

In appellant's first three issues it argues the trial court erred in denying its motion to vacate the award because the arbitrator exceeded his authority requiring him to enforce the contract as written because (1) the \$180,000 earnest money was nonrefundable; and (2) appellant's conduct did not constitute a material breach. In appellant's fourth issue it asserts the trial court erred in awarding additional attorney's fees beyond those awarded by the arbitrator.

I. The arbitrator did not exceed his authority.

Appellant's argument for vacating the award relies on the contention that the arbitrator exceeded his authority. *See* Tex. Civ. Prac. & Rem. Code § 171.088(a)(3)(A) (on application of a party, the court shall vacate an arbitration award if, among other specifically enumerated reasons, the arbitrator exceeded his powers).

Texas law strongly favors arbitration of disputes. *Prudential Secs., Inc. v. Marshall*, 909 S.W.2d 896, 898 (Tex. 1995). An arbitrator's authority is derived from the parties' agreement to submit to arbitration. *Nafta Traders, Inc. v. Quinn*, 339 S.W.3d 84, 90 (Tex. 2011). Therefore, we look to the arbitration agreement to determine whether the arbitrator had authority to decide the issue. *See id.*; *D.R. Horton-Tex., Ltd. v. Bernhard*, 423 S.W.3d 532, 534 (Tex. App.—Houston [14th Dist.] 2014, pet. denied).

An arbitrator exceeds his authority when he disregards the contract and dispenses his own idea of justice. *Bernhard*, 423 S.W.3d at 534. However, "an arbitrator does not exceed his authority merely because he may have misinterpreted the contract or misapplied the law." *Id.* The proper inquiry is not whether the arbitrator correctly decided an issue, but whether the arbitrator had authority to

decide the issue at all. *Forest Oil Corp. v. El Rucio Land & Cattle Co.*, 518 S.W.3d 422, 431 (Tex. 2017). An arbitrator does not exceed his authority when the matter he addresses is one that the parties agreed to arbitrate. *Nafta Traders*, 339 S.W.3d at 89. We resolve any doubts regarding the scope of what is arbitrable in favor of arbitration. *See In re FirstMerit Bank, N.A.*, 52 S.W.3d 749, 753 (Tex. 2001).

A. The arbitrator did not exceed his authority as a matter of law.

Appellant argues that the arbitrator exceeded his authority as a matter of law by finding that appellant materially breached the contract and refunding the \$180,000 to appellees. Appellant asserts that by refunding the earnest money based on appellant's breach of the contract, the arbitrator impermissibly "rewrote the contract."

The contract contained the following arbitration clause:

ARBITRATION OF DISPUTES: If a controversy arises out of this Agreement (including but not limited to the parties' rights to any Deposit or the payment of any Commission(s) as provided herein) or the transaction contemplated herein, Buyer, Seller and Agent agree that such controversy shall be settled by final, binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof. In determining any question, matter or dispute, the arbitrator(s) shall apply the provisions of this Agreement without varying there from, and shall not have the power to add to, modify, or change any of the provisions hereof. Notwithstanding anything to the contrary herein, Agent may initiate a judicial action to the extent necessary to perfect its lien rights.

The arbitrator found that appellant materially breached section 7.1(H) of the contract, which provided:

FEASIBILITY: Within 7 days after the Effective Date, Seller will deliver to Buyer the following items to the extent that the items are in Seller's possession or readily available to Seller. Any item not delivered

is deemed not to be in Seller's possession or readily available to Seller. The items Seller will deliver are:

(H) 2018 year-ending income statement, and 2019 year-to-date income statement and/or bank statements.

Appellant contends that by finding it breached section 7.1(H) of the contract, and refunding the earnest money, the arbitrator failed to apply the provisions of the contract without varying there from as directed by the arbitration clause of the contract. Appellant asserts that the contract provided that the \$180,000 earnest money was nonrefundable, “[n]otwithstanding anything herein to the contrary.” Appellant further asserts that it did not breach the contract because it was not required by the contract to provide its 2018 and 2019 income statements. Essentially, appellant's argument is that the arbitrator misinterpreted Sections 7.1(H) and 7.3 of the contract. This is an issue of contract interpretation, which was for the arbitrator, not the trial court or this court, to decide. *See Aston Solar*, 2022 WL 1256427, at *4 (interpretation of the parties' contract was a matter for the arbitrator).

Whether appellant materially breached the contract and whether the \$180,000 was refundable were issues placed squarely before the arbitrator and decided during the arbitration. The arbitrator stated in the award:

This arbitration is a matter of unambiguous contract construction and specifically related to the interpretation of Section 7.1(H) and 7.3 of the Purchase Agreement (the “Agreement”) entered into by [appellees] and [appellant] on July 26, 2019, for the sale of the Wilcrest Arbor Townhomes located in Houston, Texas. Based upon the preponderance of the credible evidence, Crown Business Park, Inc. materially breached the Agreement by failing to provide Claimants its 2018 and 2019 year-to-date income statements. Section 7.1(H) mandated that Respondent provide its Income Statements.

The Agreement required that [appellant] perform its obligations under

the Agreement. Section 7.3 clearly requires Seller (Respondent) to perform under the Agreement in order to claim the earnest money. Thus, as a result of its material breach, [appellant] did forego its right to claim the \$180,000.00 earnest money as stated in Section 7.3 of the Agreement.

The arbitration clause required any controversy arising out of the contract to be decided by the arbitrator. The arbitrator, therefore, was within his authority to decide the controversy that arose out of the contract when appellees alleged appellant breached the contract. *See Nafta Traders*, 339 S.W.3d at 89 (arbitrator does not exceed his authority when the matter he addresses is one that the parties agreed to arbitrate).

Appellant further argues that the arbitrator exceeded his authority as a matter of law because the contract limited the arbitrator's authority. In arguing this issue appellant relies on the Supreme Court of Texas's decision in *Nafta Traders, Inc. v. Quinn*, 339 S.W.3d at 84. Appellant argues that the contract in this case limited the authority of the arbitrator, which is permissible under *Nafta Traders*.

In *Nafta Traders*, the Texas Supreme Court noted that Texas law recognizes and broadly protects freedom of contract. *Id.* at 95. The *Nafta Traders* Court concluded that, as to arbitration agreements to which only the TAA applies or to which both the TAA and FAA apply, parties may contract for expanded court review of the arbitration award by agreeing that the arbitrators do not have the power or authority to reach a decision based on reversible error. *See id.* at 91–101 & n.64. In this situation, parties may obtain such review by seeking to vacate the arbitration award on the ground that the arbitrators exceeded their powers by reaching a decision based on reversible error. *See Tex. Civ. Prac. & Rem. Code* § 171.088(a)(3)(A); *Nafta Traders*, 339 S.W.3d at 91–98. The *Nafta Traders* Court held that “the TAA presents no impediment to an agreement that limits the authority of an arbitrator in

deciding a matter and thus allows for judicial review of an arbitration award for reversible error.” *Id.* at 97. “But absent clear agreement, the default under the TAA, and the only course permitted by the FAA, is restricted judicial review.” *Id.* at 101.

The Supreme Court of Texas in *Hoskins v. Hoskins*, 497 S.W.3d 490 (Tex. 2016), held that, under the TAA, a party may obtain vacatur of an arbitration award only by demonstrating a ground expressly listed in section 171.088(a); these statutory vacatur grounds do not include the “manifest disregard of the law” standard developed in common law. 497 S.W.3d at 494 (“[T]he TAA leaves no room for courts to expand on those grounds.”). The *Hoskins* Court did not find any conflict with *Nafta Traders* because there the parties’ agreement contained a clear restriction on the arbitrator’s authority to issue a decision containing reversible error and the *Nafta Traders* Court allowed expanded court review of the arbitration award only to the extent a party sought vacatur of the award based on the statutory ground that the arbitrators exceeded their powers. *Hoskins*, 497 S.W.3d at 494–95; *Nafta Traders*, 339 S.W.3d at 91 (parties agreed that arbitrator “does not have authority . . . to render a decision which contains a reversible error of state or federal law” and appellant contended arbitrator exceeded his powers).

In this case, the arbitration clause does not create a right of judicial review and appellant has not claimed that it does. Here, the issue is not whether the arbitrator decided the issue of breach of contract correctly, or issued a decision containing reversible error, but whether he had the authority to decide the issue at all. *See Bernhard*, 423 S.W.3d at 534. Because the contract gave the arbitrator the authority to decide any controversy arising under the contract, appellant has not established that the arbitrator did not have authority to decide the issue of breach under the contract.

B. In the absence of a record from the arbitration hearing, this court cannot determine whether appellant’s breach of the contract was a material breach.

Appellant asserts that it did not breach the contract because under the contract it was not required to produce income statements. Appellant further asserts that even if it did breach the contract, its breach was not material. Appellees assert that the absence of a record of the arbitration proceedings renders the record on appeal incomplete and prohibits this court from considering the merits of appellant’s appeal. As to these assertions, we agree with appellees.

Appellant, seeking to vacate the arbitration award, bears the burden to produce a complete record of the arbitration proceedings establishing that the arbitrators exceeded their authority. *See Ctr. Rose Partners, Ltd. v. Bailey*, 587 S.W.3d 514, 528–29 (Tex. App.—Houston [14th Dist.] 2019, no pet.). Absent a complete transcript of the arbitration proceedings, we are to presume that adequate evidence supports the award. *See id.* Appellant has not provided any transcription of the arbitration proceedings, and appellees assert this failure is fatal to appellant’s complaint that the arbitrator exceeded his authority in issuing the award.

Without a transcript of the arbitration proceedings, we cannot determine whether a party asked the arbitrator during the proceedings to decide issues regarding the contract and its breach. *See id.* at 529 (concluding that absent a complete transcription of the arbitration proceedings the court would presume that the evidence gave the arbitrator the power to issue the award that appealing party alleged exceeded the arbitrator’s power); *Kline v. O’Quinn*, 874 S.W.2d 776, 783 (Tex. App.—Houston [14th Dist.] 1994, writ denied) (concluding that without a record of the arbitration proceedings the court was not able to determine what claims the parties submitted or what evidence the parties offered). Given the lack of any transcription of the arbitration proceedings, we conclude that appellant has not

established that the arbitrator exceeded his authority by adjudicating the breach of contract claim and in finding the breach was material. *See Bailey*, 587 S.W.3d at 529.

The trial court, therefore, did not err in denying appellant's motion to vacate the arbitration award. We overrule appellant's first three issues.

II. The trial court erred in awarding additional attorney's fees.

In appellant's fourth issue it asserts the trial court erred in awarding attorney's fees beyond those granted in the arbitrator's award. We agree.

Appellees filed a response to appellant's motion to vacate the arbitrator's award and an application for confirmation of the award. In appellees' response they requested attorney's fees incurred in responding to appellant's motion to vacate and in seeking confirmation of the award. The trial court, in its final judgment, awarded appellees \$5,750 "incurred . . . in connection with filing the Application to Confirm Arbitration Award and its Response to Plaintiff's Application to Vacate Arbitration Award." Appellant preserved error by objecting in the trial court to appellees' request for additional attorney's fees because the fees went beyond the arbitrator's award. *See Tex. R. App. P. 33.1(a)*.

It is undisputed that this attorney's fee award was not a part of the arbitrator's award. Appellant asserts that appellees' request for attorney's fees was a request to modify the arbitrator's award, and, as such, was filed outside the statutory deadline to request a modification of the award. *See Tex. Civ. Prac. & Rem. Code § 171.091(b)* (application to modify arbitrator's award must be made no later than the 90th day after the date of delivery of a copy of the award to the applicant). The arbitrator's award was delivered to the parties December 21, 2020. Appellees requested post-arbitration attorney's fees in a motion filed April 28, 2021. Therefore,

under the statute, appellees' request to modify the arbitrator's award for additional attorney's fees was filed too late.

Appellees do not dispute that their request for attorney's fees was beyond the statutory time limit to request a modification to the award. Appellees assert, however, that the award of additional attorney's fees was authorized by the contract, which provided that the prevailing party shall recover its attorney's fees in "arbitration or other legal proceeding." Appellees assert that because the motion to confirm the award and motion to vacate the award were "other legal proceedings," the contract entitled appellees to additional fees. We disagree with appellees' contention that the arbitration award does not apply to proceedings to confirm the award.

"Confirmation of an arbitration award is part and parcel of the arbitration process." *Kline*, 874 S.W.2d at 784. The contract bound the parties to pursue their claims in the arbitral forum. By adding attorney's fees incurred after the arbitration award, the trial court impermissibly modified the arbitration award. *See Fogal v. Stature Constr., Inc.*, 294 S.W.3d 708, 723 (Tex. App.—Houston [1st. Dist.] 2009, pet. denied); *Kosty v. S. Shore Harbour Cmty. Assoc., Inc.*, 226 S.W.3d 459, 465 (Tex. App.—Houston [1st Dist.] 2006, pet. denied) (holding trial court erred by adding attorney's fees to arbitration award); *Kline*, 874 S.W.2d at 781 (concluding that trial court did not err in refusing to award attorney's fees when claim for fees was filed more than 90 days after the award was rendered).

Here, the additional attorney's fees were incurred in seeking to confirm the arbitration award and in responding to appellant's motion to vacate the award. As such, the request for fees was filed outside the statutory deadline for modification of the arbitration award. *See* Tex. Civ. Prac. & Rem. Code § 171.091(b). While the contract permits attorney's fees for other legal proceedings, this court has held that

attorney's fees awarded for pursuit of a judgment confirming the arbitrator's award are "part and parcel" of the arbitration process. *Kline*, 874 S.W.2d at 784. As such, the trial court erred in modifying the arbitrator's award by awarding attorney's fees when the claim for fees was filed more than 90 days after the award was rendered. *See id.* Appellant's fourth issue is sustained.

CONCLUSION

Having concluded the trial court erred in awarding \$5,750 in attorney's fees to appellees that were not part of the arbitration award, we modify the trial court's judgment to delete that award. As modified, we affirm the trial court's judgment.

/s/ Jerry Zimmerer
Justice

Panel consists of Justices Zimmerer, Spain, and Poissant.