THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED
Dec 09 2022
S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Cynthia Graham Howe, Master-in-Equity

Appellate Case No. 2022-000134

Andrew Waldo; Jane Zheng; and SC Coast Properties, LLC d/b/a Keller Williams Realty ..... Petitioners,

v.

Michael Cousins; Founders Five, LLC d/b/a Sperry Van Ness Founders Group; and South Carolina Association of REALTORS®..... Respondents.

REPLY IN SUPPORT OF NATIONAL ASSOCIATION OF REALTORS®' MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF

Pursuant to Rule 240(f), SCACR, the National Association of REALTORS® (NAR) submits this reply in support of its motion for leave to file an *amicus curiae* brief in support of the South Carolina Association of REALTORS® (SCAR).

NAR requested leave to file an *amicus curiae* brief in support of SCAR to offer a detailed analysis of the reasoning behind—and ultimate benefits of—arbitration as prescribed in the NAR Arbitration Rules. Petitioners' return in opposition to NAR's motion merely attacks NAR's arguments on the merits and concludes NAR should not have a voice in this matter because it takes a different view from them. The Court should reject those arguments and grant NAR's motion for leave to file an *amicus curiae* brief for at least three reasons.

First, Petitioners' primary objection to NAR participating as *amicus curiae* centers on the notion that NAR's sole position is "to advocate for the position that realtors' actions, and NAR policies and procedures, should never be subject to judicial review." Pet'rs' Return at 2. In fact, they repeat this argument no less than seventeen times in their return. Petitioners, however, fail to recognize that their argument goes to the merits of the case and the scope of the Court's review, not NAR's interest in participating as *amicus curiae*. Indeed, Petitioners' return in opposition to NAR's motion for leave to file an *amicus curiae* brief reads more like a response brief on the merits. More to the point, Petitioners' objection misrepresents NAR's position and ignores the applicable scope of judicial review of arbitration awards.

Contrary to Petitioners' hyperbolic assertions, NAR does not contend that "*even a single arbitration decision by a state realtor association [cannot] be overturned by a court, no matter how much it runs afoul of the law*." Pet'rs' Return at 7. NAR understands South Carolina law on this issue: judicial review of an arbitration award is greatly limited to correcting the manifest disregard of clear, known, and controlling law, and as a result, an arbitration award will be overturned only in the most extreme circumstances. *See, e.g.*, *Pittman Mortg. Co., Inc. v. Edwards*, 327 S.C. 72, 76, 488 S.E.2d 335, 337 (1997) ("Generally, an arbitration award is conclusive and courts will refuse to review the merits of an award."); *id.* ("An award will only be vacated under narrow, limited circumstances."); *Lauro v. Visnapu*, 351 S.C. 507, 516, 570 S.E.2d 551, 555 (Ct. App. 2002) ("Judicial review of an arbitration award is limited in scope, and any attempt to convert arbitration into a trial-like proceeding is looked upon with disfavor."). NAR's interest in the case goes toward the unwarranted intrusion, not prohibited review, of courts into the arbitration process. Failure to properly and consistently apply the rules for limited judicial review will undercut the

value of arbitration—which serves the interest of Realtors®, their customers, and their clients—and waste precious judicial resources.

Second, Petitioners are the ones confusing the issues here. This case is about two NAR members who voluntarily agreed to submit their commission dispute to arbitration pursuant to NAR's Arbitration Rules. Once they did so, the Arbitration Award was binding upon them, with the limited exception of a very narrow review from the courts. But at Petitioners' behest, the master-in-equity ignored its role, employing a de novo review instead of strictly limiting its review to the statutorily prescribed bases for reviewing an arbitration award. The court of appeals corrected that error by reversing the master-in-equity and reinstating the Arbitration Award.

Yet Petitioners invite the Court to correct all alleged errors of law as if this were any other appeal. It is not. Because of the arbitration context in which this case arose, the Court's review is limited to searching for a manifest disregard of clear, known, and controlling law. *See Gissel v. Hart*, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009) (stating "for a court to vacate an arbitration award based upon an arbitrator's manifest disregard of the law, the governing law ignored by the arbitrator must be well defined, explicit, and clearly applicable"). Nothing in the law supports the Court conducting a sweeping review under the microscope Petitioners demand. *Id.* at 241, 676 S.E.2d at 323 (holding a party seeking to vacate an award under the manifest disregard of the law exception must show "something beyond a mere error in construing or applying the law").

Third, while SCAR's and NAR's interests are certainly aligned, NAR's interests are not entirely represented by SCAR in this matter. Initially, NAR has a unique interest in ensuring its members who voluntarily agree to arbitrate disputes are doing so pursuant to its Arbitration Rules so that the Arbitration Rules are consistently and dutifully applied across the United States. This allows for each of its members to resolve disputes amongst themselves in a uniform manner that

is timely and less expensive than proceeding in litigation in the court system. SCAR's interest is understandably focused on South Carolina. Regardless, nothing in the South Carolina Appellate Court Rules limits the ability of a party to proceed as *amicus curiae* simply because it has similar interests to an entity already a party to the case. Indeed, *amicus curiae* are bound to have interests that are the same or similar to parties already in the action. Rule 213 does nothing to prevent or discourage that. Petitioners are simply conflating the rule for filing an amicus brief with the rules governing intervention. *See* Rule 24(a)–(b), SCRCP.

In sum, Petitioners ask the Court to deny NAR's motion to file an *amicus curiae* brief only because (1) they do not agree with NAR's position and (2) do not understand the standard. Petitioners' arguments are without merit. NAR merely wishes to proceed as *amicus curiae* to provide insight to the Court on the Arbitration Rules and how the arbitration process under those Rules is a major benefit to membership in NAR. The Court should therefore grant NAR leave to file an *amicus curiae* brief and accept the brief conditionally attached to the motion as filed.

Respectfully submitted,

/s/Vordman Carlisle Traywick, III
Elizabeth Van Doren Gray (2434)
Vordman Carlisle Traywick, III (102123)
Sarah C. Frierson (104643)
ROBINSON GRAY STEPP & LAFFITTE, LLC
2151 Pickens Street, Suite 500
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400
egray@robinsongray.com
ltraywick@robinsongray.com
sfrierson@robinsongray.com

Counsel for Amicus Curiae National Association of REALTORS®

Columbia, South Carolina
December 9, 2022