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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Appellate Case No.: 2024-001996

Raghu Athimoolam and Irene Athimoolam,.....Respondents,

v.

Meritage Homes of South Carolina, Inc.....Appellant.

APPELLANT'S PETITION FOR REHEARING

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April 15, 2026

INTRODUCTION

Pursuant of Rule 221, SCACR, Meritage Homes of South Carolina, Inc. ("Meritage") files this Petition for Rehearing. Meritage requests this Court reconsider its April 1, 2026 Order wherein it affirmed the trial court's rulings in this case.

LEGAL STANDARD

A petition for rehearing should be granted whenever it is shown that the Court has "overlooked" or "misapprehended" a point of fact or law. Rule 221(a) SCACR; S.C. Coastal Conservation League v. Dominion Energy S.C., Inc. 432 S.C. 217, 219 851 S.E.2d 699,700 (2020) (granting petition for rehearing).

ARGUMENT

Meritage respectfully contends that the Court overlooked or misapprehended the following:

(A) The Federal Arbitration Act ("FAA") applied to this arbitration, the Athimoolams admitted the October 4, 2023 Arbitration Award was an "Award" pursuant to the FAA, and the arbitrator lacked authority to alter the October 4, 2023 Award; and

(B) The Athimoolams' intentional disclosure of confidential settlement information to the Arbitrator in violation of the ADR Rule of Confidentiality, which resulted in an increase of approximately 524% in favor of the party that intentionally violated the confidentiality provisions, should not be allowed.

(A) The Federal Arbitration Act applied to the arbitration:

The Federal Arbitration Act ("FAA") applied to the arbitration, but the Court's April 1, 2026 Order did not consider the FAA. By consent order filed August 30, 2017 in this litigation, the parties agreed to stay the litigation and to

compel arbitration pursuant to the terms of the sales contract and the FAA. ROA 1. The order sending this litigation to arbitration stated that the "Athimoolams agree that this action should be stayed and arbitration compelled pursuant to the terms of the [Construction] Agreement and the FAA." ROA 1. Further, the "New Home Purchase Agreement" ("Contract") between the Athimoolams and Meritage specifically stated at the top of the first page:

> **THIS AGREEMENT IS SUBJECT TO MANDATORY ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT AND IF THE FEDERAL ARBITRATION ACT IS INAPPLICABLE, THE UNIFORM ARBITRATION ACT SECTION 15-48-10 ET SEQ., CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED.**

ROA 530. Therefore, the Court erred by not applying the specific terms and the mandatory provisions of the FAA.

Respectfully, the FAA mandates the relief requested by Meritage in this appeal for these reasons:

(1) The Arbitrator incorrectly concluded that the FAA did not apply to this arbitration. As shown above, the parties and the trial court submitted the case for arbitration pursuant to the FAA. The FAA was the "procedure" that the parties and the arbitrator had to follow.

(2) The Athimoolams admitted in this litigation that the October 4, 2023 Arbitration Award was an "Award" as defined by the FAA. The Athimoolams' October 16, 2023 document submitted to the arbitrator titled "Motion for Reconsideration" stated:

> Pursuant to 9 U.S.C. Code (The Federal Arbitration Act) § 9, 10, 11, the Order of Arbitration, … Plaintiffs, Raghu and

> Irene Athimoolam, (hereinafter "Plaintiffs"), by and through their undersigned attorneys and moves for reconsideration of the Arbitration Award (the "Award") dated October 4, 2023.

ROA 105. **Thus, as of October 16, 2023, the Athimoolams acknowledged that the October 4, 2023 arbitration decision by the arbitrator constituted an "Award" pursuant to the FAA and that any modification of that Award must comply with the mandates of the FAA found at 9 U.S.C §§ 1-16 (the Federal Arbitration Act).**

(3) The FAA did not permit the arbitrator to "re-decide" the same issue. The arbitrator lacked subject matter jurisdiction to vacate or modify the October 4, 2023 Award because, under the FAA, only a court of competent jurisdiction can do that in certain, very limited circumstances. Specifically, the governing provisions of the FAA, particularly the provisions of 9 U.S.C. §§ 10-11, did not permit the arbitrator to alter the October 4, 2023 Award as she did. These are jurisdictional requirements, and this Court erred by not vacating the second award pursuant to the terms of the FAA because the modification of the October 4, 2023 Award did not comply with any provision of the FAA that allowed for an alteration of the October 4, 2023 Award.

9 U.S.C. § 10(a) provides that an arbitration award may be vacated by the court (not an arbitrator) only under the following circumstances:

1. where the award was procured by corruption, fraud, or undue means;

2. where there was evident partiality or corruption in the arbitrators, or either of them;

3. where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

4. where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

Further, 9 U.S.C. § 11 provides an arbitration award may be modified or corrected by the court (not an arbitrator) only under the following circumstances:

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

Thus, the Athimoolams needed to apply to the court and not the arbitrator for relief from the October 4, 2023 Award. Further, the Arbitrator lacked authority to act after the October 4, 2023 Award.

(4) The Arbitrator's failure to apply the mandates of the FAA and decision to alter an Award without the authority under the FAA to do so constituted a "manifest disregard of the law" as that phrase has been interpreted by cases such as C-Sculptures, LLC v. Brown, 403 S.C. 53, 742 S.E.2d 359 (2013) (citing S.C. Code Ann. § 15-48-130 and Gissel v.

Hart, 382 S.C. 235, 676 S.E.2d 320 (2009)). Here, the arbitrator declared the FAA did not apply to the arbitration when the FAA clearly applied, and her decision to alter the Award ignored the specific mandates of the FAA that did not give her the authority to do that.

The FAA clearly did not permit the arbitrator to alter the October 4, 2023 Award. Any modification or correction of the arbitration award had to meet the requirements of 9 U.S.C. § 11, which (1) required a court (and not the arbitrator) to modify or correct the award and (2) only allowed modification or correction by the court under a specific set of circumstances not met in this current matter.

Therefore, this Court must vacate the second award because Meritage clearly demonstrated that it was entitled to relief pursuant to 9 U.S.C. § 10(a)(4). In our case, the trial court specifically determined that the arbitrator did not meet any of the statutory grounds to modify an arbitration award pursuant to S.C. Code Ann. § 15-48-100 (2005) and the FAA clearly did not permit the arbitrator to alter the October 4, 2023 Award. Thus, the arbitrator clearly "exceeded" her powers because she acted without statutory support and because her decisions did not comply with 9 U.S.C. § 10(a) or 9 U.S.C. § 11 (under the FAA, a court has to modify the Award under specific circumstances).

Because Meritage demonstrated "one of the infirmities listed in § 10 of the [FAA]", the court **must** vacate the award. Trident Technical College v. Lucas & Stubbs, Ltd., 286 S.C. 98, 333 S.E.2d 781 (1985) (emphasis added). Thus, the January 23, 2024 second award should be vacated under 9 U.S.C. § 10(a)(4). See Smith v. Transport Workers Union of America, AFL-CIO Air Transport Local 556 374 F.3d 372 (5th Cir. 2004).

(5) The FAA did not require the October 4, 2023 Arbitration Award to be filed in order for it to be deemed the "Award." As previously mentioned, the Athimoolams acknowledged that the October 4, 2023 decision was an "Award" in their October 16, 2023 motion for reconsideration. The FAA requires a filing with the clerk of court only when a party moves for an order confirming, modifying, or correcting an arbitration award. 9 U.S.C. § 13.

(B) The intentional disclosure of confidential settlement information resulted in substantial damage to Meritage.

As this Court noted, the January 23, 2024 decision came after the Athimoolams intentionally violated Rule 8 of the ADR Rules, and that conduct resulted in a decision in their favor that was approximately 524% greater in value than the October 4, 2023 Award. The failure to sanction a party for an intentional violation (as opposed to accidental or inadvertent disclosure) effectively eliminates moving forward any adverse consequence against anyone that intentionally discloses confidential information to the ultimate decision maker at a trial or arbitration about offers, demands, or settlements made during a mediation. To allow this result essentially renders meaningless the cautionary warning given at the start of every in mediation in this state that the mediator cannot be called as a witness at a trial or that confidential information learned during a mediation cannot and shall not be disclosed to the trier of fact.

ADR Rule 10(b) speaks of sanctions for conduct done "without good cause." This Court's April 1, 2026 Order does not describe how the conduct at issue met a "good cause" standard. The disclosure on behalf of the Athimoolams was intentional, the disclosure was made specifically and directly to the ultimate decision maker, the disclosure was made with the specific purpose to alter the October 4, 2023 Award, and the party who intentionally disclosed the confidential information profited substantially (as evidenced by the increase of

over 500%) because of the intentional conduct. All without penalty. This conduct should not be rewarded. Clearly, Meritage disagrees with the conclusion that "no damage was done" given the humongous increase in the decision after that intentional disclosure of confidential settlement information that the arbitrator should have never known.

CONCLUSION

For these reasons, Meritage respectfully submits this Court should reconsider its April 1, 2026 Order.

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PROOF OF SERVICE

The undersigned, an attorney in this matter for Appellant Meritage Homes of South Carolina, Inc., certifies that I have on April 15, 2026 served a copy of Appellant's Petition for Rehearing upon other counsel of record by electronic mail and by depositing a copy with sufficient postage in the United States mail to:

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