

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

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.....Petitioner.

**PETITIONER'S REPLY TO RESPONDENTS' RETURN TO
PETITION FOR A WRIT OF CERTIORARI**

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July 9, 2026

When an arbitration is held by consent and by court order pursuant to the Federal Arbitration Act (“FAA”), each litigant has a right that the arbitrator will apply the FAA and comply with the mandatory provisions of the FAA. Similarly, a litigant should not be unfairly punished because an opposing party intentionally discloses to the arbitrator confidential settlement amounts from others as part of an effort to have the arbitrator increase the Award.

(1) In this matter, the claim was submitted for arbitration pursuant to the FAA. Yet, the arbitrator intentionally decided not to follow the specifics of the FAA. As shown, after issuing the Award on October 4, 2023, the arbitrator accepted the post-Award filing from the Athimoolams when the FAA required the post-Award filing to be made to a court; the arbitrator moved forward with a consideration of the claims made in that post-Award filing, including the impermissible disclosure of the amount of Meritage’s settlement with its subcontractors; the arbitrator refused to apply the specific terms of the FAA to her post-Award actions; the arbitrator ignored the specific mandates of the FAA that did not permit the arbitrator to alter the October 4, 2023 Award; the arbitrator issued a revised award that did not comply with the FAA; and the arbitrator issued a revised award that did not comply with S.C. Code Ann. § 15-48-140. Essentially, the arbitrator acted as if the FAA did not exist when the parties stipulated that the FAA applied to the arbitration.

In particular, the Athimoolams’ “Motion for Reconsideration” was improperly submitted to the arbitrator because 9 U.S.C. §§ 10-11 did not allow this submittal by the Athimoolams to the arbitrator (instead of to a court). In addition, the FAA did not allow the arbitrator to modify the October 4, 2023 Award as requested by the Athimoolams. 9 U.S.C. § 10(a) required any motion to vacate the Award be filed with the Court (and not the arbitrator), and 9 U.S.C. 11 permitted modification or correction of an Award only under limited circumstances that did not apply to the Athimoolams’ request, as found by the trial court.

The actions by the arbitrator clearly ignored the applicable law (in this case, the statutory requirements of the FAA), and the arbitrator issued the subsequent

modified decision without any jurisdiction or power. Therefore, as stated in the Petition, according to the FAA, this Court must vacate the arbitrator's January 23, 2024 ruling because Meritage demonstrated "one of the infirmities listed in § 10 of the [FAA]". Trident Technical College v. Lucas & Stubbs, Ltd., 286 S.C. 98, 333 S.E.2d 781 (1985) (emphasis added); Smith v. Transport Workers Union of America, AFL-CIO Air Transport Local 556 374 F.3d 372 (5th Cir. 2004).

Further, S.C. Code Ann. § 15-48-130 provides that "the court shall vacate an award" when "[t]he arbitrator[] exceeded their powers." Finally, "[t]he permissible common law grounds for vacating an [arbitration] award 'include those circumstances where an award fails to draw its essence from the contract, or the award evidences a manifest disregard of the law.'" Dewan v. Walia, 544 Fed. Appx. 240 (4th Cir. 2013) (emphasis added). "... [A] manifest disregard of the law is established only where the 'arbitrator[] understand[s] and correctly state[s] the law, but proceed[s] to disregard the same.'" Id. Here, the arbitrator knew about the mandates of the FAA and simply disregarded those mandatory provisions. The arbitrator exceeded her powers because the arbitrator disregarded the law imposed by the specific mandates of the FAA.

The Athimoolams incorrectly claim in the Return that somehow the issue of an "Initial Award" or a "Final Award" is not preserved for appeal. The appeal has always claimed that the arbitrator lacked the jurisdiction or power to modify the October 4, 2023 Award. The October 4, 2023 was "THE" Award for this claim, as acknowledged by the Athimoolams' "Motion for Reconsideration. Any subsequent efforts to modify that Award pursuant to 9 U.S.C. §§ 10-11 as they requested should have been through a court and not the arbitrator. The arbitrator clearly ignored those provisions of the FAA by accepting the motion and then changing the award amount.

(2) A party should not receive a windfall from the intentional disclosure to the arbitrator of prior settlements with other parties, in clear violation of the ADR Rules. In the Return, the Athimoolams allege the settlement information disclosed to the arbitrator was publicly available, yet they do not cite to any material in the Record

for this case when that information was ever disclosed outside of the mediation, which lasted many months between Meritage, the subcontractors, and the Athimoolams. Moreover, the Return did not cite to any legal principle that supports the contention that they could tell the arbitrator about the settlement amounts or that the arbitrator was entitled to know the prior settlement amounts. Clearly, no “trier of fact” would be entitled to information about the amounts of prior settlements before that fact finder decides the amount of the recovery. And, in this case, the intentional disclosure of the settlement amounts resulted in a 524% increase. Such conduct should not be permitted.

CONCLUSION

Meritage was entitled to an arbitration and post-Arbitration process that complied with the provisions of the FAA and the SC ADR Rules, which did not happen. The negative impact to arbitrations and mediations moving forward cannot be overstated if this result is allowed to stand. Accordingly, Meritage respectfully requests the Petition be granted and the second award be vacated.

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