THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2026-000658

Andrei Savenkov,.....Appellant,

v.

Michael Brooks Derrick,.....Respondent.

FINAL BRIEF OF APPELLANT

Andrei Savenkov, Pro Se
112 Robin Hood Road
Taylors, South Carolina 29687
(864) 346-7390
a.savenkov@icloud.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES....3

STATEMENT OF ISSUES ON APPEAL....4

STATEMENT OF THE CASE....4

STANDARD OF REVIEW....5

FACTS....5

ARGUMENTS

I. BECAUSE THE BOARD MANIFESTLY DISREGARDED THE CLEAR AND UNAMBIGUOUS TERMS OF THE FEE AGREEMENT, THE CIRCUIT COURT ERRED IN AFFIRMING THE AWARD....7

II. BECAUSE RESPONDENT EXPLICITLY ADMITTED NO HOURLY BILLING RECORDS EXIST, THE CIRCUIT COURT ERRED IN UPHOLDING A FEE AWARD DEVOID OF EVIDENTIARY SUPPORT....9

III. BECAUSE THE CIRCUIT COURT ISSUED A CONCLUSORY ORDER THAT FAILED TO CONDUCT LIMITED REVIEW, THE AWARD MUST BE VACATED....10

CONCLUSION....11

TABLE OF AUTHORITIES

CASES

Glasscock v. Glasscock, 304 S.C. 158, 403 S.E.2d 313 (1991).....5, 9, 10, 11

Trident Tech. Coll. v. Lucas & Stubbs, Ltd., 286 S.C. 98, 333 S.E.2d 781 (1985).....5, 7, 10

Waldo v. Cousins, 443 S.C. 15, 904 S.E.2d 865 (2024).....5, 7, 10

STATUTES AND RULES

Rule 20(f)(3), SCACR Part IV, Rule 416.....5, 7, 10

Rule 1.5(a), South Carolina Rules of Professional Conduct.....5, 6, 9, 11

OTHER AUTHORITIES

Restatement (Second) of Agency Section 118.....8

Restatement (Second) of Contracts Section 206.....9

STATEMENT OF THE ISSUES ON APPEAL

I. DID THE CIRCUIT COURT ERR IN AFFIRMING THE AWARD WHERE THE BOARD EXCEEDED ITS POWERS BY REFORMING THE FEE AGREEMENT, IGNORING THE "AT YOUR REQUEST" WITHDRAWAL CONDITION AND TREATING A SIX-MINUTE GAP AS "SIMULTANEOUS"?

II. DID THE CIRCUIT COURT ERR IN AFFIRMING AN AWARD DEVOID OF EVIDENTIARY SUPPORT WHERE THE CONTRACT MANDATED AN HOURLY CONVERSION AND RESPONDENT ADMITTED NO TIME RECORDS EXISTED?

III. DID THE CIRCUIT COURT ERR BY ISSUING A CONCLUSORY ORDER THAT FAILED TO CONDUCT THE LIMITED REVIEW REQUIRED BY RULE 20(F), MISCHARACTERIZED THE ARGUMENT AS "MISINTERPRETATION," AND FAILED TO ADDRESS CONTROLLING PRECEDENT?

STATEMENT OF THE CASE

This is an appeal from an order of the Circuit Court for Greenville County, South Carolina, entered on February 24, 2026, by the Honorable Perry H. Gravely, Circuit Court Judge. The order affirmed the Written Decision of the Hearing Panel of the Resolution of Fee Disputes Board, issued in October 2025, which awarded attorney's fees to Respondent Michael Brooks Derrick in the amount of $15,741.00.

On March 24, 2025, Appellant Andrei Savenkov filed an Application for Resolution of Disputed Fee against Respondent with the Resolution of Fee Disputes Board. Following investigation and a hearing before a three-member panel on September 30, 2025, the Board issued its Written Decision. Appellant appealed to the Circuit Court pursuant to Rule 20, SCACR Rule 416. On February 24, 2026, the Circuit Court held a hearing and issued a

two-page order affirming the Board's award. On March 9, 2026, Appellant filed a timely Notice of Appeal to this Court.

STANDARD OF REVIEW

An appellate court reviews a circuit court's order affirming an arbitration award de novo as to questions of law. While findings of fact are reviewed for evidence of support, the appellate court owes no deference to the circuit court's conclusions of law. Where, as here, the circuit court issued a conclusory order containing no specific findings of fact or conclusions of law, the appellate court reviews the record to determine whether the circuit court performed its statutory duty under Rule 20(f).

Under Rule 20(f)(3), SCACR Rule 416, an arbitration award must be vacated where the arbitrators exceeded their powers. Arbitrators exceed their powers when they demonstrate a manifest disregard of the law or rewrite clear and unambiguous contractual terms to dispense their own brand of industrial justice. Waldo v. Cousins, 443 S.C. 15, 904 S.E.2d 865 (2024); Trident Tech. Coll. v. Lucas & Stubbs, Ltd., 286 S.C. 98, 333 S.E.2d 781 (1985). An award is also subject to vacatur where it is arbitrary and capricious or where it lacks evidentiary support. Glasscock v. Glasscock, 304 S.C. 158, 403 S.E.2d 313 (1991); Rule 1.5(a), South Carolina Rules of Professional Conduct.

FACTS

On March 2, 2023, Appellant Andrei Savenkov retained Respondent Michael Brooks Derrick to represent him in a personal injury matter. The parties' relationship was governed by a written Legal Services Agreement drafted entirely by Respondent.

Section 7 of the Agreement establishes a binary fee formula upon withdrawal. It provides that, in the event of withdrawal "at your request" (the client's request), Respondent is entitled

to a percentage fee of "any settlement offered as of that date." It further provides: "But, in the event that no settlement has been offered, the contingency fee schedule will be converted to an hourly rate contract, and we will be entitled to a fee of $300.00 per hour."

By June 2024, the attorney-client relationship had deteriorated. On June 11, 2024, Respondent emailed Appellant: "We don't track hours as all of our cases are handled on a contingency basis, so there are no hourly billing records." (Exhibit 4).

On February 12, 2025, Respondent, through outside ethics counsel Christopher W. Lempesis, Jr., unilaterally terminated the representation. The termination email was sent to Appellant at 2:35:03 PM and stated that representation was ended "effective immediately." (Exhibit 2). At that exact moment, no active settlement offer existed; all prior offers had been rejected by Appellant.

At 2:41 PM on the same day, six minutes after termination, the insurance carrier transmitted a written offer of $47,702.00. (Exhibit 3).

During the Circuit Court hearing on February 24, 2026, Respondent admitted the chronological gap on the record, testifying: "From the time that Mr. Lempesis sent off the termination letter, there is the six minute thing where we receive the $47,000.00 offer..." (Tr. p. 14, lines 1-5; R. p. 67, lines 1-5). Respondent further admitted to speculation regarding the precise timing, stating: "I'm completely speculating here." (Tr. p. 15, lines 13-14; R. p. 68, lines 13-14).

Despite the undisputed six-minute gap, the Hearing Panel ruled that the events were "simultaneous" and awarded Respondent $15,741.00, approximately one-third of the $47,702.00 offer. The Panel made no specific findings regarding time and labor, writing: "Though not recited here, we find the Rule 1.5(a) factors support Attorney's fee." (Panel

Decision, p. 4). The Panel also falsely stated that the parties "mutually agreed" to the disputed amount, despite Appellant's consistent objection to the entire fee.

On February 24, 2026, the Circuit Court issued a two-page order affirming the Award. The order contained no specific findings of fact, no conclusions of law, and no analysis of the contractual triggers. It mischaracterized Appellant's argument as a claim that the Board "misinterpreted" the fee agreement, rather than reformed it.

ARGUMENTS

I. BECAUSE THE BOARD MANIFESTLY DISREGARDED AND REFORMED THE CLEAR TERMS OF THE FEE AGREEMENT, THE CIRCUIT COURT ERRED IN AFFIRMING THE AWARD.

The Circuit Court erred in affirming the arbitration award because the Resolution of Fee Disputes Board exceeded its powers under Rule 20(f)(3), SCACR Part IV, Rule 416, by rewriting the explicit terms of the parties' contract. Arbitrators exceed their powers when they demonstrate a manifest disregard of the law or rewrite clear and unambiguous contractual terms to dispense their own brand of industrial justice. Waldo v. Cousins, 443 S.C. 15, 904 S.E.2d 865 (2024); Trident Tech. Coll. v. Lucas & Stubbs, Ltd., 286 S.C. 98, 333 S.E.2d 781 (1985).

Section 7 of the Legal Services Agreement establishes a strict binary formula regarding termination. The contract explicitly states: "In the event of the withdrawal of representation, at your request, you agree that we are entitled to a fee... of any settlement offered as of that date. But, in the event that no settlement has been offered, the contingency fee schedule will be converted to an hourly rate contract...".

However, the Panel selectively excised these strict conditions. The Panel quoted only: "33.33% of the 'total recovery'... of any settlement offered as of that date." (Panel Decision, p. 4;

R. p. 9). By actively removing the "at your request" condition and the hourly conversion clause, the Board engaged in surgical contract reformation, not interpretation.

The undisputed facts demonstrate that Appellant did not request the withdrawal. Respondent terminated the representation unilaterally at exactly 2:35 PM on February 12, 2025. At that precise moment, no settlement offer existed. The settlement offer of $47,702.00 arrived at 2:41 PM, six minutes after the termination was executed. During the Circuit Court hearing, Respondent explicitly admitted to this chronological gap on the record, testifying: "From the time that Mr. Lempesis sent off the termination letter, there is the six minute thing where we receive the $47,000.00 offer..." (Tr. p. 14, lines 1-5; R. p. 67, lines 1-5). Furthermore, when addressing the communication of this offer, Respondent admitted to lacking factual certainty, stating: "I'm completely speculating here" (Tr. p. 15, line 14; R. p. 68, line 14).

If "settlement offered" included any prior rejected offer, the Panel needed no "simultaneity" fiction to justify the percentage fee. It could have simply cited the $45,000 offer from September 2024. Its resort to "simultaneous" for the $47,702 offer proves that it understood rejected offers do not qualify. Moreover, interpreting "settlement offered" to include any prior offer would render the hourly conversion clause illusory, violating the fundamental canon that courts must give effect to all contractual provisions.

The Board acknowledged this timeline but ruled the events were "simultaneous". Six minutes is not simultaneous. Electronic timestamps are absolute. Under Restatement (Second) of Agency § 118, Respondent's authority to act for the client terminated at 2:35 PM. Like any terminated agent, he became a legal stranger to the transaction. He cannot claim a percentage fee for a settlement received when he no longer possessed agency power.

Under the doctrine of contra proferentem and Restatement (Second) of Contracts § 206, any ambiguity must be construed against the drafter. Here, there was no ambiguity. Respondent chose the words "effective immediately" and "as of that date". He tied his contingency fee to a withdrawal executed "at your request" and a settlement offer existing strictly prior to termination. The Board had no authority to disregard these terms or to substitute its equitable judgment for the parties' bargained terms. By affirming this decision, the Circuit Court endorsed a manifest disregard of clear law and contractual terms.

II. BECAUSE RESPONDENT ADMITTED NO BILLING RECORDS EXIST, THE CIRCUIT COURT ERRED IN UPHOLDING A FEE AWARD DEVOID OF EVIDENTIARY SUPPORT.

Because the conditions of Section 7 were triggered prior to the receipt of a settlement offer, the contract converted to an hourly rate of $300.00. The Board awarded Respondent $15,741.00. At the contractual rate of $300.00 per hour, this equates to exactly 52.47 hours of legal work.

The South Carolina Supreme Court firmly established in Glasscock v. Glasscock, 304 S.C. 158, 403 S.E.2d 313 (1991), that attorney fees must be supported by specific findings regarding the time and labor necessarily devoted to the case. Rule 1.5(a) of the South Carolina Rules of Professional Conduct mandates that fees be based on the time and labor required. Yet, the Board explicitly admitted its refusal to apply this standard, writing: "Though not recited here, we find the Rule 1.5(a) factors support Attorney's fee..." (Panel Decision, p. 4; R. p. 9).

The record contains zero time entries and zero documentary evidence supporting 52 hours of work. Respondent explicitly admitted this lack of evidence, stating: "We don't track hours as all our cases are handled on a contingency basis, so there are no hourly billing records".

The Panel further failed to explain its own mathematics, stating that Attorney 'earned' $16,250.57 yet awarding only $15,741.00. Neither figure corresponds to the contract formula.

To justify this evidentiary void, the Panel manufactured a false finding of fact, stating that "the parties to this fee dispute mutually agreed that the total disputed amount in controversy was $15,741.00." (Panel Decision, p. 4; R. p. 9). Appellant never agreed to this amount; the entire fee was disputed. An award based on estimated hours, a false mutual agreement, and an explicit refusal to recite the required Glasscock factors is arbitrary and capricious. The Circuit Court erred in upholding a fee award that lacks any evidentiary foundation.

III. BECAUSE THE CIRCUIT COURT ISSUED A CONCLUSORY ORDER THAT FAILED TO CONDUCT LIMITED REVIEW, THE AWARD MUST BE VACATED.

The Circuit Court's duty under Rule 20(f) was to determine whether the Panel exceeded its powers or acted arbitrarily. Instead, the Court issued a boilerplate order containing no specific findings of fact, no conclusions of law, and no analysis of the parties' arguments. Respondent explicitly asked the Court to prioritize the bar's policy interests over the contract text. The Court, by affirming, did so (Tr. p. 14, line 21 to p. 15, lines 1-2; R. p. 67, line 21-p. 68, line 2).

The Court fatally mischaracterized Appellant's argument as a claim that the Board "misinterpreted the fee agreement." (Order p. 2; R. p. 4). Appellant asserted reformation and an exceeding of arbitral powers, not mere misinterpretation. Furthermore, the Circuit Court failed to address the controlling precedents of Waldo, Trident, and Glasscock. It failed to explain how the Panel's "simultaneity" finding squared with undisputed electronic timestamps. It failed to require evidentiary support for the 52.47-hour award. Where a circuit court affirms an arbitration award without engaging the record or the governing law, its order is conclusory and cannot stand. Moreover, the Panel violated its own procedural rules by

adopting the Rule 11 investigator's findings, despite the Chairman's explicit directive that the hearing be de novo and that reports shall not be considered.

CONCLUSION

These deviations were not harmless errors. The 'at your request' condition is dispositive: without it, the percentage fee cannot attach, and the hourly conversion is mandatory. The hourly conversion is dispositive: without time records, the proven fee is zero under Rule 1.5 and Glasscock. The Panel's errors were not decorative; they were the sole basis for the Award. Remove any one of them, and the Award collapses to $0.00.

For the reasons stated, this Court should reverse the judgment of the Circuit Court, vacate the Award of the Fee Disputes Board, find that Section 7 converted to an hourly rate upon withdrawal, find that Respondent failed to meet his burden of proof, and modify the award to $0.00., or, in the alternative, remand with instructions to apply Paragraph 7 as written and to require documented hours at $300.00 per hour.

Respectfully submitted,

September 30, 2026 s/ Andrei Savenkov

Andrei Savenkov, Pro Se
112 Robin Hood Road
Taylors, South Carolina 29687
(864) 346-7390
a.savenkov@icloud.com