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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. Derham Cole Jr., Circuit Court Judge

Appellate Case No. 2026-000768

Stéfanie Seixas-Mikelus, M.D.,

Appellant,

v.

Tenet Healthcare Corporation, Tenet Physician Resources, LLC, and East Cooper Physician Network, LLC,

Respondents.

FINAL BRIEF OF RESPONDENTS

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: */s/ A. Mattison Bogan*
A. Mattison Bogan
SC Bar No. 72629
Donna O. Tillis
SC Bar No. 101879
Caroline A. Warner
SC Bar No. 104280
Morgan E. Spires
SC Bar No. 105197
1320 Main Street, 17th Floor
Columbia, SC 29201
(803) 799-2000
matt.bogan@nelsonmullins.com
donna.tillis@nelsonmullins.com
caroline.warner@nelsonmullins.com
morgan.spires@nelsonmullins.com

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COUNTER-STATEMENT OF ISSUES ON APPEAL

I. Did the circuit court correctly conclude Arbitrator Kristine Cato satisfied any applicable disclosure obligations, and Appellant failed to establish evident partiality under the governing framework?

II. Did the circuit court properly consider Appellant's selection of Arbitrator Cato, her failure to independently investigate, and her failure to object?

III. Did the circuit court appropriately deny Appellant's request for post-award discovery?

INTRODUCTION

This appeal concerns the narrow and well-established question of evident partiality in arbitration. Unable to satisfy the demanding standard, Appellant Stéfanie Seixas-Mikelus, M.D. attempts to reframe her claim as concerning the adequacy of the arbitrator's disclosures. That reframing is inconsistent with the Federal Arbitration Act ("FAA") and the South Carolina Uniform Arbitration Act ("SCUAA"). Neither body of law recognizes purportedly incomplete disclosures as a standalone basis for vacatur of an arbitration award, nor does it permit the circuit court to set aside an arbitration award simply because a party believes the arbitrator should have provided additional information. This information was publicly available, as demonstrated by Appellant's belated attempts to inject the information into this dispute after its conclusion.

Disclosures from an arbitrator are relevant only insofar as they bear upon the ultimate question of evident partiality in a particular case. By focusing on the adequacy of Arbitrator Kristine Cato's disclosure, Appellant seeks to create a new, non-statutory ground for vacatur that is not recognized by the FAA or the SCUAA. The proper standard for evident partiality remains whether the objective facts would require a reasonable person to conclude that the arbitrator was partial to one party. *Crouch Constr. Co. v. Causey*, 405 S.C. 155, 169, 747 S.E.2d 482, 489 (2013); *ANR Coal Co. v. Cogentrix of N.C., Inc.*, 173 F.3d 493, 500 (4th Cir. 1999). This standard requires the circuit court to consider: (1) the extent and character of the arbitrator's personal interest in the

proceeding; (2) the directness of the relationship between the arbitrator and the allegedly favored party; (3) the connection of such relationship to the arbitration itself; and (4) the proximity of the relationship to the arbitration proceeding. *Crouch*, 405 S.C. at 169, 747 S.E.2d at 489.

Prior to Arbitrator Cato's appointment in the underlying arbitration, she disclosed the relationship upon which Appellant's main post-hearing challenge is based. Specifically, Arbitrator Cato disclosed that her husband Harry Cato "is a government relations consultant and contracts with Nelson Mullins to perform some governmental relations consulting for some of their clients, although NOT the defendant in this matter. He is not an attorney and provides consulting and lobbying work only." (R. pp. 269–70). Although Appellant selected Arbitrator Cato as her ***first choice*** and received this disclosure before Arbitrator Cato's appointment, she failed to ask a single follow-up question, failed to object before the relevant deadline, and proceeded through nearly two years of arbitration before receiving an unfavorable award. It was only after the unfavorable award was entered that Appellant challenged Arbitrator Cato's impartiality. Our courts do not allow a party to attempt to hold such a purported "ace card" only to later try to reverse an unfavorable result.

Arbitration exists to provide the parties with a final, efficient, and cost-effective means of resolving disputes. Appellant now seeks to undo years of arbitration proceedings and to obtain a second opportunity before a different arbitrator based upon an attenuated, disclosed relationship and a board appointment involving a non-party entity with no connection to the arbitration. Neither allegation satisfies the demanding evident partiality standard. Accordingly, this Court should affirm the circuit court's order denying Appellant's motion for vacatur and granting Respondents' motion to confirm the arbitral award.

STATEMENT OF THE CASE

In March 2019, Appellant entered into a Physician Employment Agreement ("Agreement") with Respondent East Cooper Physician Network, LLC ("ECPN").[1] Pursuant to the Agreement—which contained a mandatory arbitration provision governing employment-related disputes and a provision allowing ECPN to terminate her without cause—Appellant began her employment as a urologist on June 1, 2019. (R. pp. 138–76). On December 11, 2020, ECPN notified Appellant of her termination without cause under the Agreement. (R. p. 179). Her employment ceased on March 12, 2021. (*Id.*).

In July 2021, Appellant initiated arbitration against Respondents before the American Arbitration Association ("AAA"). (R. pp. 181–232). She sought damages in excess of $2.5 million for breach of contract, breach of implied covenant of good faith and fair dealing, and wrongful termination. (*Id.*). As part of the arbitrator-selection process, AAA circulated a list of potential arbitrators and their qualifications. (R. pp. 249–57). Appellant identified Arbitrator Cato as her first choice. (R. pp. 259–64).

On September 1, 2021, AAA distributed Arbitrator Cato's disclosure and established a one-week deadline within which the parties could submit any objections to her appointment. (R. p. 266). The disclosures conveyed the following information that Appellant now challenges:

> 3. Have you had any professional or social relationship with counsel for any party in this proceeding or the firms for which they work?
>
> Answer: NO . . . .
>
> 5. Have you had any professional or social relationship of which you are aware with any relative of any of the parties to this proceeding, or any relative of counsel to this proceeding, or any of the witnesses identified to date in the proceeding?

[1] Respondents Tenet Healthcare Corporation and Tenet Physician Resources, LLC had no employment relationship with Appellant. (*See* R. pp. 138–72, 234–37).

Answer: NO . . . .

10. Are you a member of any organization that is not listed on your panel biography that may be relevant to this arbitration?

Answer: NO . . . .

14. **Are there any connections, direct or indirect, with any of the case participants that have not been covered by the above questions?**

Answer: YES

Comments: **Indirectly. My husband is a government relations *consultant* and *contracts* with Nelson Mullins to perform some governmental relations consulting for some of their clients, although NOT the defendant in this matter. He is *not an attorney* and provides *consulting and lobbying* work only. This will not affect my ability to act impartially in this matter.**

15. Are you aware of any other information that may lead to a justifiable doubt as to your impartiality or independence or create an appearance of partiality?

Answer: NO

(R. pp. 268–70 (emphasis added)).

After receiving Arbitrator Cato's disclosure, Appellant did not request clarification from Arbitrator Cato, AAA, Respondents, or Respondents' counsel. Nor did Appellant seek additional information regarding the disclosed relationship. Appellant also failed to object to Arbitrator Cato's appointment before the objection deadline. Thus, on September 14, 2021, AAA confirmed Arbitrator Cato's appointment to the parties via email. (R. p. 276). The arbitration proceeded for nearly two years without any challenge from Appellant as to Arbitrator Cato's impartiality.

Following extensive discovery, motions practice, a merits hearing, post-hearing briefing, and supplemental submissions by both sides, Arbitrator Cato issued a final award on May 26, 2023. (R. pp. 239–47). Arbitrator Cato rejected Appellant's claims, denied her request for damages, and entered judgment in favor of Respondents. (*Id.*).

Appellant filed a motion to vacate the arbitration award in the Charleston County Court of Common Pleas, advancing a single basis for vacatur: evident partiality based on Arbitrator Cato's purportedly insufficient disclosure regarding her husband's consulting relationship with Nelson Mullins and alleged failure to disclose her March 2023 appointment to the Lexington Medical Center ("LMC") Board of Directors. (R. pp. 15–40). Appellant also requested limited discovery and an evidentiary hearing. (*Id.*).

Respondents opposed the motion and moved to confirm the arbitration award. (R. pp. 109–36, 289–96). Relative to the Nelson Mullins relationship, Respondents argued Arbitrator Cato disclosed the relationship before she was appointed, Appellant waived any objection by failing to raise the issue before or during arbitration, and there was no evident partiality as a matter of law. Respondents further argued Arbitrator Cato's relationship with LMC, a non-party wholly unrelated to the arbitration, also could not establish evident partiality as a matter of law.

On December 18, 2024, the circuit court held a hearing on the parties' competing motions. (*See generally* R. pp. 524–86). Following the hearing, the circuit court entered a written order denying Appellant's motion to vacate and granting Respondents' motion to confirm. (*See generally* R. pp. 4–14). The circuit court found the facts presented by Appellant did not establish evident partiality, Arbitrator Cato's disclosure was sufficient, and post-award discovery was unwarranted. (R. pp. 6–10). Appellant filed a timely notice of appeal. (R. pp. 587–603).

STANDARD OF REVIEW

Judicial review of an arbitration award is extremely limited. Under both the FAA and the SCUAA, a circuit court may vacate an arbitration award only on the narrow grounds authorized

by those statutes, and the court must confirm the award unless it is vacated, modified, or corrected. 9 U.S.C. §§ 9–10; S.C. Code Ann. §§ 15-48-120 to -130.[2]

As a threshold matter, Appellant overstates the scope of de novo review applicable in this appeal.[3] Appellate courts reviewing orders granting or denying motions to vacate an arbitration award frequently describe the standard of review as de novo. *See, e.g.*, *Jones v. Dancel*, 792 F.3d 395, 401 (4th Cir. 2015) ("We review de novo the district court's denial of a motion to vacate an arbitration award."); *Ctr. for Excellence in Higher Educ., Inc. v. Accreditation All. of Career Schs. & Colls.*, 166 F.4th 452, 457 (4th Cir. 2026) ("Similarly, the denial of a motion to vacate an arbitration award is reviewed de novo."). Even still, the Fourth Circuit has repeatedly explained that, in reviewing a judgment confirming an arbitration award, though legal rulings are reviewed de novo, underlying factual findings are reviewed for clear error. *Wachovia Sec., LLC v. Brand*, 671 F.3d 472, 478 (4th Cir. 2012); *Constellium Rolled Prods. Ravenswood, LLC v. United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union AFL-CIO/CLC*,

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[2] Although Appellant relied on S.C. Code Ann. § 15-48-130(a)(2) of the SCUAA in her motion to vacate, the Agreement provides the FAA applies to resolve disputes between Appellant and ECPN. (R. pp. 297–337). As the circuit court noted, the South Carolina Supreme Court adopted the FAA's standard for evident partiality in *Crouch*, 405 S.C. at 155, 747 S.E.2d at 482. (R. p. 5). Hence, the analysis is the same under both the FAA and the SCUAA.

[3] Appellant cites *Crouch* for the proposition that "[w]hether the circuit court applied the correct legal standard in determining the existence of evident partiality presents a question of law, which this Court reviews de novo." Appellant's Br. at 8. In *Crouch*, the Supreme Court reviewed de novo the circuit court's adoption of an "appearance of bias" standard for evaluating claims of evident partiality under the SCUAA. *Crouch*, 405 S.C. at 162–63, 747 S.E.2d at 486. The Court rejected such standard as inconsistent with the SCUAA's "strong language . . . requiring arbitral bias to be 'evident[.]'" *Id.* at 168, 747 S.E.2d at 488. The Court instead adopted the FAA standard from *ANR Coal* and held that a party seeking vacatur on the ground of evident partiality must demonstrate "a reasonable person would have to conclude that an arbitrator was partial to the other party to the arbitration." *Id.* (citing *ANR Coal*, 173 F.3d at 500). In this case, however, the circuit court applied the *Crouch* standard for evident partiality. (R. pp. 5–6). The issue on appeal, therefore, is whether the facts identified by Appellant satisfy that demanding evident-partiality standard. That issue is reviewed for clear error, as noted below.

18 F.4th 736, 739 (4th Cir. 2021) ("On appeal from a denial of vacatur, we review the district court's legal rulings de novo and factual findings for clear error.").

Here, Appellant does not contend the circuit court employed the wrong legal standard. Rather, Appellant challenges the circuit court's determination that the facts presented failed to establish evident partiality. This Court must therefore review the circuit court's denial of vacatur for clear error. Under the clear-error standard, reversal is appropriate only if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Harvey*, 532 F.3d 326, 336–37 (4th Cir. 2008).

Separately, decisions concerning discovery and evidentiary matters are committed to the sound discretion of the trial court and will not be disturbed absent a showing of abuse of discretion. *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 576, 813 S.E.2d 292, 309 (Ct. App. 2018) (quoting *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 536, 787 S.E.2d 485, 495 (2016)).

ARGUMENT

I. The circuit court correctly concluded that Arbitrator Cato satisfied any applicable disclosure obligations, and Appellant failed to establish evident partiality.

The circuit court properly denied Appellant's motion to vacate because Appellant failed to establish evident partiality, the only potentially applicable basis for vacatur asserted in this appeal. As previously noted, judicial review of an arbitration award is narrowly circumscribed, and a party seeking vacatur based upon evident partiality bears the "heavy burden" of establishing objective facts demonstrating that a reasonable person would have to conclude the arbitrator was partial to one party. *Crouch*, 405 S.C. at 168–69, 747 S.E.2d at 489. Appellant failed to satisfy that burden.

A. Arbitrator Cato satisfied any applicable disclosure obligations.

1. Appellant's disclosure-based argument is not preserved.

In Appellant's motion to vacate, she described the issue for the circuit court's consideration as whether Arbitrator Cato's "misleading and incomplete disclosure of critical facts pertinent to her bias and evident partiality constitute a basis for vacating the award entered by her in favor of Respondents[.]" (R. p. 20). Appellant based her legal argument on the factors for evident partiality established by the Fourth Circuit in *ANR Coal* and adopted by the South Carolina Supreme Court in *Crouch*. (*See* R. pp. 35–37).

The circuit court properly characterized the parties' competing motions as "present[ing] the question of whether the mutually agreed-upon [Arbitrator Cato] demonstrated evident partiality in favor of . . . Respondents such that the underlying arbitral award in favor of Respondents must be vacated." (R. p. 4). The circuit court analyzed this question under the *ANR Coal* and *Crouch* framework[4] but ultimately found neither Arbitrator Cato's relationship with Nelson Mullins—which was disclosed—nor her appointment to the LMC Board of Directors "met the onerous burden required" to satisfy the evident-partiality standard. (R. p. 6).

Noticeably absent from Appellant's principal brief, however, is any substantive discussion of the *ANR Coal* and *Crouch* factors. Appellant's Br. at 12–20. Rather, Appellant argues—for the first time on appeal—that an incomplete disclosure alone constitutes an independent ground for vacatur. *See id.* at 1, 20 (arguing Arbitrator Cato breached her duty to "make complete and

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[4] *See ANR Coal*, 173 F.3d at 500 ("A court should examine four factors to determine if a claimant has demonstrated evident partiality [under the FAA]: (1) the extent and character of the personal interest, pecuniary or otherwise, of the arbitrator in the proceeding; (2) the directness of the relationship between the arbitrator and the party [she] is alleged to favor; (3) the connection of that relationship to the arbitration; and (4) the proximity in time between the relationship and the arbitration proceeding."); *see also Crouch*, 405 S.C. at 168–69, 747 S.E.2d at 489 (adopting the *ANR Coal* standard for assessing claims of evident partiality under the SCUAA).

meaningful disclosures" and framing the issue raised in this appeal as "whether the circuit court erred as a matter of law by concluding that Arbitrator Cato fulfilled her affirmative disclosure obligations without first determining whether the disclosures themselves were complete, accurate, and sufficient to permit an informed evaluation of neutrality"). In other words, Appellant asks this Court to adopt a disclosure-based ground for vacatur that is untethered to the evident-partiality standard. This theory is unpreserved and cannot be considered by this Court. *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) ("It is well-settled that an issue cannot be raised for the first time on appeal[] but must have been raised to and ruled upon by the trial court to be preserved for appellate review.").

Appellant's heavy reliance on the purported deficiencies in Arbitrator Cato's disclosure underscores the critical weakness in her claim of evident partiality. Even assuming Appellant's disclosure-based argument was preserved—which it is not—the Court should nevertheless reject Appellant's challenges for the reasons set forth below.

2. Arbitrator Cato sufficiently disclosed her husband's indirect relationship with Nelson Mullins in September 2021.

"[A]n arbitrator is not required to provide the parties with h[er] complete and unexpurgated business biography" or "disclose interest[s] or relationships that are merely trivial." *Crouch*, 405 S.C. at 164, 747 S.E.2d at 486 (internal quotation marks omitted). As the Fourth Circuit cautioned in *ANR Coal*, imposing such an expansive disclosure requirement would make it unnecessarily difficult to secure experienced and qualified arbitrators and would encourage losing parties to comb through an arbitrator's background after an adverse award in search of disclosure criticisms that have no bearing on actual impartiality. 173 F.3d at 499–500. Instead, the focus is on whether the existence of a relationship would objectively support a reasonable conclusion of partiality. *Id.*; *Crouch*, 405 S.C. at 168, 747 S.E.2d at 489.

Here, before AAA confirmed Arbitrator Cato's appointment, she disclosed that her husband had performed consulting work involving Nelson Mullins. (R. pp. 269–70). Appellant does not contend this disclosure was false. (*See* R. p. 531, lines 1–8 ("We're not suggesting that what [Arbitrator Cato] says in her disclosures is a lie. What we're suggesting is that there are material facts that were left out that should have been disclosed . . . in a supplemental disclosure . . . .")). Nor could she reasonably do so, as the undisputed evidence establishes there is no employment relationship between Mr. Cato and Nelson Mullins, no social relationship between the Catos and the attorneys representing Respondents, and no involvement by Mr. Cato in this arbitration. (R. pp. 512–13, 522–23). Mr. Cato is not an attorney; rather, he is an independent contractor who performs government relations work through his independent consulting firm. (R. p. 522). His activities are entirely separate from the legal work performed by Nelson Mullins. (R. pp. 512–13, 522–23).

Arbitrator Cato disclosed the existence of the very relationship about which Appellant now complains: "My husband is a governmental relations consultant and contracts with Nelson Mullins to perform some governmental relations consulting for some of their clients, although NOT the defendant in this matter. He is not an attorney and provides consulting and lobbying work only." (R. pp. 269–70). Appellant's criticism rests on the premise that Arbitrator Cato materially understated the nature and length of her husband's relationship with Nelson Mullins. (R. pp. 98–99). The undisputed evidence, however, demonstrates the September 2021 disclosure accurately described the relationship that actually existed.

Mr. Cato attested he is not and has never been an employee of Nelson Mullins but instead operates Blue Moon Strategies, LLC ("Blue Moon"), an independent consulting firm that performs contract work for some of Nelson Mullins's clients while also maintaining separate clients of its

own. (R. p. 522). Mr. Cato receives a Form 1099 rather than employee compensation from Nelson Mullins, he receives no employee benefits, he has no employment agreement with the firm, and he is free to work for other clients. (R. p. 522). Further, Mr. Cato works only with the firm's governmental-relations group, does not work with litigation attorneys, has very limited contact with Nelson Mullins attorneys generally, and has no personal or professional relationship with Respondents' former lead counsel. (R. pp. 522–23). Arbitrator Cato similarly confirmed that her husband is not a lawyer, does not have an exclusive relationship with Nelson Mullins, works through his own business, and has no involvement with the firm's litigation teams. (R. pp. 512–13).

Thus, Arbitrator Cato's disclosure accurately conveyed the essential facts relevant to any conflict analysis: Mr. Cato is a government-relations consultant, he contracts with Nelson Mullins to perform consulting work for some of its clients, he is not an attorney, and his work is limited to consulting and lobbying services.

Although Appellant faults the disclosure for not specifying the duration of Mr. Cato's relationship with Nelson Mullins or identifying the industries of clients for whom he consulted, neither omission renders the disclosure misleading. The disclosure expressly states Mr. Cato performs consulting work for some of Nelson Mullins's clients, while also making clear those clients do not include Respondents. (R. pp. 269–70). Likewise, the fact that Mr. Cato's relationship with Nelson Mullins existed for approximately ten years does not alter its character as an independent consulting arrangement rather than an employment relationship. The omitted details identified by Appellant simply provide additional background concerning a relationship that was already disclosed; they do not transform the disclosed relationship into a materially different one. An arbitrator's disclosure obligation is satisfied when she fairly discloses the

existence and nature of the relationship so that the parties may evaluate whether further inquiry is warranted. Arbitrator Cato did exactly that, and Appellant elected not to ask a single follow-up question before selecting her to serve as arbitrator.

Question 14 on the disclosure form is a catch-all provision intended to capture indirect relationships not covered elsewhere in the form. By identifying and describing the nature of her husband's consulting relationship with Nelson Mullins, Arbitrator Cato provided the parties with sufficient information to evaluate the connection and pursue any follow-up inquiry they deemed necessary. AAA circulated the disclosure to all parties, invited objections, and advised that any challenge would be resolved under the AAA Rules. (R. p. 266). No party objected, and AAA confirmed Arbitrator Cato's appointment. (R. p. 276). Appellant cannot now transform additional details about an already-disclosed relationship into a purported insufficient disclosure.

3. Arbitrator Cato was not required to disclose her appointment to the LMC Board of Directors in March 2023.

Appellant also argues that Arbitrator Cato should have supplemented her disclosure after her March 2023 appointment to the LMC Board of Directors, relying principally on Question 10 of the AAA disclosure form, which asks, "Are you a member of any organization that is not listed on your panel biography that may be relevant to this arbitration?" (R. pp. 99, 269). That argument misconstrues Question 10.

Question 10 does not impose a continuing obligation to disclose every new professional, civic, charitable, or industry affiliation acquired during the course of arbitration. Rather, it is limited to organizations that "may be relevant to this arbitration." (R. p. 269). LMC was not relevant to the arbitration because it was not a party, affiliate, witness, customer, vendor, or stakeholder in the arbitration. It did not have a relationship with any participant, and it did not possess an interest in the outcome of the proceeding.

The United States Supreme Court has cautioned against converting disclosure obligations into a requirement that arbitrators provide a "complete business biography" or disclose every professional affiliation accumulated over the course of a career. *Commonwealth Coatings Corp. v. Cont'l Cas. Co.*, 393 U.S. 145, 151–52 (1968) (White, J., concurring). Similarly, the Fourth Circuit has warned that an expansive disclosure mandate would make it difficult for parties to obtain qualified arbitrators, given that experienced professionals inevitably develop industry contacts and organizational affiliations. *ANR Coal*, 173 F.3d at 500–01.

Here, Appellant's position improperly conflates industry experience with bias. Parties frequently select arbitrators because they possess expertise and familiarity with the industries in which the dispute arises. Arbitrator Cato's service on the board of a healthcare institution reflects such professional experience; it does not create bias toward every healthcare employer appearing before her. Because LMC had no connection to the parties, counsel, witnesses, claims, or outcome of this proceeding, Arbitrator Cato was not required to disclose her appointment to the LMC Board of Directors.

4. Disclosure deficiencies do not independently warrant vacatur.

Even if Appellant's disclosure-based argument was preserved and Arbitrator Cato's disclosure was somehow deficient, neither the FAA nor the SCUAA recognizes such deficiencies as an independent ground for vacatur.

Appellant cites *Renaissance Enterprises, Inc. v. Ocean Resorts, Inc.*, 310 S.C. 395, 426 S.E.2d 821 (1992), in support of her broad assertion that, "[w]hen neutrality is reasonably called into question, confirmation of the award is no longer discretionary." Appellant's Br. at 12. *Renaissance Enterprises*, however, did not concern arbitrator disclosures, evident partiality, post-award discovery, or a request to investigate a purported conflict. It is therefore inapposite.

Appellant heavily relies upon *Commonwealth Coatings*, 393 U.S. at 145, to support her proposition that Arbitrator Cato breached her ethical obligation to fully disclose "her husband's decade-long affiliation with [Nelson Mullins.]" Appellant's Br. at 13; *see id.* at 12–14. Appellant insinuates *Commonwealth Coatings* requires the circuit court to "consider[] whether the disclosure accurately conveyed the character, duration, or extent of [Mr.] Cato's professional affiliation with Nelson Mullins or whether additional information should have been disclosed so that the parties could make an informed decision regarding Arbitrator Cato's neutrality." *Id.* at 14. This is a blatant overreading.

Commonwealth Coatings involved an arbitrator who failed to disclose a significant, ongoing financial relationship with one of the parties to the arbitration, which included approximately $12,000 in consulting fees earned over a four-to-five-year period and work performed on the projects involved in the dispute. 393 U.S. at 146–48. It does not stand for the proposition that any alleged deficiency in an arbitrator's disclosure requires vacatur. Rather, it stands for the much narrower proposition that undisclosed relationships may, under appropriate circumstances, constitute evidence of evident partiality. Here, such circumstances are lacking.

The arbitrator in *Commonwealth Coatings* entirely failed to disclose the relationship. *Id.* at 146. By contrast, Arbitrator Cato expressly disclosed her indirect connection to Nelson Mullins. The arbitrator in *Commonwealth Coatings* also personally received significant compensation from a party to the arbitration and had performed services connected to the very subject matter of the dispute. *Id.* at 146. Here, the alleged relationship is significantly more attenuated: it involves (1) the arbitrator's spouse, not the arbitrator herself; (2) a consulting relationship rather than legal

representation; and (3) work that is wholly unrelated to the claims being arbitrated. Even still, Arbitrator Cato appropriately disclosed it.[5]

Appellant cites the affidavit of Barbara M. Seymour to argue that Arbitrator Cato violated the AAA Code of Ethics for Arbitrators in Commercial Disputes and the South Carolina Code of Ethics for Arbitrators in failing to disclose the scope of her husband's relationship with Nelson Mullins. Appellant's Br. at 13–16, 18–19; (R. pp. 98–99). Courts, however, draw a clear distinction between ethical guidance and the statutory standard for vacatur.

In *ANR Coal*, the Fourth Circuit acknowledged Canon II of the AAA Code of Ethics for Arbitrators in Commercial Disputes states "'arbitrators should disclose the existence of interests or relationships that are likely to affect their impartiality or that might reasonably create an appearance that they are biased against one party' and should 'make a reasonable effort to inform themselves of any interests or relationships described in the preceding paragraph.'" 173 F.3d at 497 n.2. Nevertheless, the Court explained, "[t]he Preamble of the Code specifically states that 'it does not form part of the arbitration rules of the [AAA]' and 'does not establish new or additional grounds for judicial review of arbitration awards.'" *Id.* Accordingly, "the [AAA] Code of Ethics itself forecloses any use of such a violation as a basis for vacatur." *Id.*

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[5] *See id.* at 151–52 (White, J., concurring) ("[A]n arbitrator's business relationships may be diverse indeed, involving more or less remote commercial connections with great numbers of people. [She] cannot be expected to provide the parties with [her] complete and unexpurgated business biography. But it is enough for present purposes to hold, as the Court does, that where the arbitrator has a substantial interest in a firm which has done more than trivial business with a party, that fact must be disclosed."); *ANR Coal*, 173 F.3d at 498–99 (opining *Commonwealth Coatings* cannot be read "as recognizing that the failure to comply with a mandatory obligation to disclose all possible conflicts, assertedly like that imposed by AAA [Commercial Arbitration Rule R-19], provides a proper basis under the FAA for vacating an award" (internal quotation marks omitted)); *id.* at 499 (stating "[f]ailure to disclose the sort of attenuated, nonsubstantial relationships at issue here violates neither the teaching of *Commonwealth Coatings* nor AAA Rule [R-]19").

The South Carolina Code of Ethics for Arbitrators fares no better. In *Crouch*, the Court explained Canon II of the South Carolina Code of Ethics "requires arbitrators to disclose the existence of interests or relationships that are likely to affect their impartiality or suggest that they are biased against one party or favorable to another." 405 S.C. at 164, 747 S.E.2d at 486. But the Court distinguished a mere ethical breach from the factual circumstances justifying vacatur:

> While an arbitrator's failure to disclose a material conflict of interest may constitute an ethical violation, the issue of whether such nondisclosure is unethical is separate and distinct from the issue of whether an arbitration award must be vacated due to evident partiality. To have an award set aside, it is not enough merely to aver that an arbitrator violated the Code of Ethics without any showing that the complained-of violation "created a substantial danger of an unjust result."

Id. at 164, 747 S.E.2d at 487 (quoting *Merit Ins. Co. v. Leatherby Ins. Co.*, 714 F.2d 673, 682–83 (7th Cir. 1983)).[6]

Appellant does not suggest Arbitrator Cato's appointment to the LMC Board of Directors in March 2023 independently requires vacatur. *See* Appellant's Br. at 19 ("Appellant does not contend that Arbitrator Cato's appointment to the [LMC Board of Directors] automatically required her disqualification."); *see also id.* ("Appellant does not contend that the appointment itself conclusively establishes evident partiality . . . ."). Nevertheless, the dispositive question is whether the undisclosed (or under-disclosed) information suggests a material relationship such that "a reasonable person would have to conclude" the arbitrator was partial. *Crouch*, 405 S.C. at 169,

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[6] Courts routinely reject evident-partiality challenges where the allegedly omitted facts merely provide additional background regarding a relationship that has already been disclosed. In *Power Services Associates, Inc. v. UNC Metcalf Servicing, Inc.*, the United States District Court for the Northern District Court of Georgia held that, once an AAA arbitrator disclosed his law firm's substantial representation of a party's parent company, he was not required to separately disclose a decades-old personal representation because the original disclosure sufficiently alerted the parties to the nature of the relationship and triggered any duty of further inquiry. 338 F. Supp. 2d 1375, 1383–85 (N.D. Ga. 2004). Likewise, in *Dealer Computer Services, Inc. v. Michael Motor Co.*, the Fifth Circuit held that a disclosure need only place the parties on notice of a potential relationship, and parties who receive that notice cannot later complain that additional details were not volunteered. 485 F. App'x 724, 727–29 (5th Cir. 2012).

747 S.E.2d at 489. Accordingly, even if Appellant could identify an ethically incomplete disclosure (which she has not done in any event), she would still have to prove through objective facts that a reasonable person would have to conclude Arbitrator Cato was partial to Respondents. For the reasons set forth below, she has failed to do so.

B. The circuit court correctly determined that Appellant failed to establish evident partiality under the governing framework.

Appellant's principal brief entirely fails to provide any substantive analysis of the evident-partiality framework.[7] She has therefore abandoned any challenge to the circuit court's finding in this regard. *See generally Lindsay v. Lindsay*, 328 S.C. 329, 338, 491 S.E.2d 583, 588 (Ct. App. 1997) ("It is a fundamental rule of law that an appellate court will affirm a ruling by a lower court if the offended party does not challenge that ruling. Failure to challenge the ruling is an abandonment of the issue and precludes consideration on appeal. The unchallenged ruling, right or wrong, is the law of the case and requires affirmance." (citation modified)).

Even if Appellant sufficiently challenged the circuit court's dispositive analysis based on the arguments set forth in her motion to vacate, she has nevertheless failed to carry the "heavy burden" of establishing evident partiality. *Crouch*, 405 S.C. at 168–69, 747 S.E.2d at 489; *ANR Coal*, 173 F.3d at 501.

As noted above, to determine whether evident partiality exists, courts examine four factors: (1) the extent and character of the arbitrator's personal interest in the proceeding; (2) the directness of the relationship between the arbitrator and the allegedly favored party; (3) the connection of

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[7] Appellant appears to suggest the framework is irrelevant. *See* Appellant's Br. at 17 ("According to Ms. Seymour, the issue was . . . whether the disclosure accurately and sufficiently described [Mr. Cato's relationship with Nelson Mullins] so the parties could intelligently evaluate whether to object before the arbitration commenced. . . . ***Whether those additional facts ultimately establish evident partiality is not the point.***" (emphasis added)). The Court should not be so persuaded.

such relationship to the arbitration; and (4) the proximity in time between the relationship and the arbitration proceeding. *Crouch*, 405 S.C. at 169, 747 S.E.2d at 489; *ANR Coal*, 173 F.3d at 500. "When considering each factor, the court should determine whether the asserted bias is 'direct, definite and capable of demonstration rather than remote, uncertain or speculative' and whether the facts are sufficient to indicate 'improper motives on the part of the arbitrator.'" *ANR Coal*, 173 F.3d at 500 (quoting *Consol. Coal Co. v. Local 1643, United Mine Workers of Am.*, 48 F.3d 125, 129 (4th Cir. 1995)). The movant "must put forward facts that ***objectively*** demonstrate such a degree of partiality that a [reasonable] person could assume that the arbitrator had improper motives." *Id.* (emphasis added). Here, all four factors demonstrate the complete absence of evident partiality.

First, Arbitrator Cato did not have a personal interest in the arbitration proceeding. There is no evidence that Arbitrator Cato possessed any private, pecuniary, or professional interest in the arbitration or its outcome. Appellant does not contend that Arbitrator Cato had any ownership interest in Respondents, represented them, received compensation from them, or stood to benefit from the disposition of any claim in the arbitration. The undisputed evidence establishes the opposite. Arbitrator Cato confirmed that neither the arbitration itself, her husband's relationship with Nelson Mullins, nor her position on the LMC Board of Directors had any bearing on her work as a neutral arbitrator or her consideration of the evidence presented in this matter.[8] (R. pp. 269–

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[8] LMC had no financial or other interest in the outcome of the dispute. Appellant attempts to overcome this absence of a connection by characterizing LMC as a healthcare entity that allegedly competes with Respondents. Appellant's Br. at 5. However, LMC serves the Columbia and Lexington County market, and this arbitration arose from the employment of a physician in Charleston County. In any event, a generalized overlap within the healthcare industry reflects industry experience, not bias toward a particular party. *See ANR Coal*, 173 F.3d at 500 (holding that parties often "prefer a tribunal knowledgeable about the subject matter of their dispute to a generalist court with its austere impartiality but limited knowledge of the subject matter"); *JCI Commc'ns, Inc. v. Int'l Bhd. of Elec. Workers, Loc. 103*, 324 F.3d 42, 51 (1st Cir. 2003) ("That the

70, 514). Likewise, Mr. Cato's affidavit confirms he is not an attorney, he is the sole member of Blue Moon, and he performs governmental-relations consulting through that independent company. (R. p. 522). Mr. Cato does not have an employment relationship with Nelson Mullins, does not receive any employee benefits from Nelson Mullins, and merely provides non-legal services to some of its clients on an independent contractor basis. (R. p. 522).

Second, Arbitrator Cato did not have a direct relationship with Respondents. Appellant's theory depends entirely on the following chain of attenuated connections, several steps removed from the parties themselves: (1) Mr. Cato performs independent consulting work through his own independent company; (2) Mr. Cato's company performs some consulting work for a select number of Nelson Mullins's clients; and (3) a Nelson Mullins attorney whose office is on a different floor than Mr. Cato's office—which he infrequently visits—represents Respondents. However, the governing inquiry concerns the directness of the relationship between the ***arbitrator*** and the allegedly favored ***party***. *ANR Coal*, 173 F.3d at 500.[9]

The undisputed evidence establishes no such relationship existed between Arbitrator Cato and Respondents. Arbitrator Cato attested she has never socialized with Respondents' former lead counsel and had never met her before the arbitration hearing in this matter. (R. p. 513). Arbitrator Cato further stated that neither she nor her husband socialize with attorneys at Nelson Mullins.

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arbitrators came from the same industry does not in itself approach evident partiality."). Moreover, Appellant fails to identify any ruling, decision, or aspect of the arbitration that was affected by Arbitrator Cato's service on the LMC Board of Directors. Instead, Appellant argues only that the appointment should have been disclosed and that the omission created an appearance of partiality. Appellant's Br. at 18–20. However, South Carolina has expressly rejected an appearance-of-bias standard. *See Crouch*, 405 S.C. at 166–69, 747 S.E.2d at 488–89.

[9] To the extent Appellant relies on Arbitrator Cato's service on the LMC Board of Directors, neither LMC nor its Board of Directors was a party, witness, or participant in the arbitration.

(*Id.*).[10] Mr. Cato likewise attested he does not know Respondents' former lead counsel, has no personal or professional relationship with her, and has very limited contact with any attorneys at Nelson Mullins. (R. p. 523). Moreover, Mr. Cato's affidavit rebuts Appellant's assertion that he was employed by Nelson Mullins. (*See* R. p. 522). He confirmed that Blue Moon has always maintained clients separate from Nelson Mullins, that he is free to work for others, and that he merely rents limited office space from the firm. (R. p. 522). Arbitrator Cato similarly confirmed Mr. Cato's work is not exclusive to Nelson Mullins, and he continues to perform work for other entities outside of the firm. (R. p. 513).[11]

The relationship at issue is therefore substantially more attenuated than the one rejected in *Crouch*, where the Supreme Court found no evident partiality despite a connection between the brother of the arbitrator's law partner and a non-party that was connected to the underlying dispute. 405 S.C. at 170–73, 747 S.E.2d at 490–91. If the relationship in *Crouch* was too remote to justify vacatur on the basis of evident partiality, the relationship here certainly fails for the same reason.

Third, to the extent Arbitrator Cato had some direct relationship with Respondents, the relationship had no connection to the arbitration. The record contains no evidence connecting Mr. Cato or any of his consulting activities to the arbitration itself. Mr. Cato attested that he has no

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[10] Arbitrator Cato recalled "an initial happy hour more than ten years ago with some members of the lobbying team when [Mr. Cato] first began his association with Nelson Mullins." (R. p. 513). Appellant failed to present any evidence suggesting Respondents' former lead counsel was present at the happy hour or that she was a member of the lobbying team. (*See* R. pp. 74–79 (online biography of Respondents' former lead counsel)).

[11] Inasmuch as Appellant relies upon Arbitrator Cato's service on the LMC Board of Directors to support a relationship to Respondents, any finding that such relationship is direct and connected to the arbitration would be speculative. This is especially true considering Arbitrator Cato was appointed to this role after she made preliminary determinations regarding the legal issues presented. (*See* R. pp. 513–14).

knowledge of the factual or legal issues involved in the arbitration. (R. p. 523). There is no allegation that he advised Respondents, communicated with their counsel about the arbitration, reviewed filings, or had any involvement whatsoever in the proceeding. Similarly, Arbitrator Cato stated her husband's work with Nelson Mullins is confined to governmental-relations matters, and he does not work with the firm's litigation teams. (R. pp. 512–13). Mr. Cato further explained that the office space he rents is located on a separate floor occupied exclusively by governmental-relations team members and administrative staff, and he does not have security access to other floors. (R. p. 522). Thus, even accepting as true Appellant's characterization of the direct nature of the relationship between Arbitrator Cato and Respondents, there is no connection between that relationship and the claims at issue in the arbitration. Under *ANR Coal* and *Crouch*, the absence of that nexus is fatal to Appellant's claim of evident partiality.

Finally, the mere fact that Mr. Cato had an independent contractor relationship with Nelson Mullins during this arbitration is insufficient to demonstrate bias in light of Arbitrator Cato's lack of personal interest in the proceeding, the indirect relationship between herself and Respondents, and the disconnect between such relationship and the arbitration.[12] The relevant question is whether Arbitrator Cato's attenuated relationship with Respondents objectively demonstrates a predisposition in their favor. *Crouch*, 405 S.C. at 169–71, 747 S.E.2d at 489–90. Given the foregoing analysis, the answer is resoundingly no.

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[12] There is also a lack of proximity relative to the LMC connection, as Arbitrator Cato had already determined the legal issues—which presumably include her finding that Appellant failed to satisfy her burden on any claim—before her appointment to the Board of Directors. (*See* R. pp. 513–14). Although the parties provided limited testimony regarding damages on the same day that Arbitrator Cato attended her first Board of Directors meeting, given Arbitrator Cato's legal conclusions, Arbitrator Cato had already determined Appellant was unentitled to damages. In any event, Arbitrator Cato testified her "voluntary position with LMC has and had no bearing on [her] work as an arbitrator with AAA generally[] or with respect to this proceeding." (R. p. 514).

Ultimately, Appellant never identifies any objective fact suggesting that Arbitrator Cato harbored bias toward Respondents or possessed improper motives. Instead, Appellant asks this Court to infer partiality from an attenuated relationship involving Arbitrator Cato's husband—who is not employed by Nelson Mullins, had no involvement in the arbitration, and has no relationship with Respondents—and her appointment to an unrelated, non-party Board of Directors after she had informally decided the legal issues in this proceeding. The *Crouch* Court rejected precisely this form of post-award speculation, cautioning that evident partiality requires far more than conjecture arising from a remote relationship. 405 S.C. at 172–74, 747 S.E.2d at 491–92.

The circuit court's finding of no evident partiality is consistent with recent, albeit unpublished, authority applying this standard. *See, e.g.*, *Hewlette v. Hewlette*, No. 2022-001093, 2024 WL 4973459, at *1 (S.C. Ct. App. Dec. 4, 2024) (rejecting an evident partiality claim where the alleged relationship was based on speculative assertions about connections to the arbitrator's law firm and emphasizing the absence of evidence showing any personal involvement by the arbitrator himself); *Morgan Stanley Private Bank, N.A. v. Randall*, No. 3:24-CV-00187, 2025 WL 439836, at *4 (W.D.N.C. Feb. 7, 2025) (rejecting an evident partiality claim based upon an indirect and distant relationship). These decisions reinforce the principle recognized in *ANR Coal* and *Crouch* that evident partiality cannot be established by speculation, inferences, or remote relationships disconnected from the arbitrator's actual conduct. As a matter of law, the circuit court properly found there is no evidence of evident partiality to justify vacatur under either the FAA or the SCUAA.

II. The circuit court properly considered Appellant's selection of Arbitrator Cato, her failure to independently investigate, and her failure to object.

Appellant repeatedly argues the circuit court concluded that she "waived" any challenge to Arbitrator Cato by proceeding with the arbitration. Appellant's Br. at 10–11, 20–24. This is a

mischaracterization of the circuit court's order, which never held that Appellant's claim failed solely because of waiver and did not rely on waiver as an independent ground for denying vacatur. (R. pp. 8–10).

Instead, the circuit court considered the undisputed circumstances surrounding Arbitrator Cato's selection, the disclosure she provided during the AAA arbitrator-selection process, and Appellant's decision to proceed without seeking clarification, conducting further inquiry, or objecting. That was entirely proper. As the Fourth Circuit recognized in *ANR Coal*, a party's willingness to proceed with arbitration despite knowledge of a relationship can "severely undercut" a subsequent claim of evident partiality. 173 F.3d at 501; *see also Cook Indus., Inc. v. C. Itoh & Co. (Am.)*, 449 F.2d 106, 107–08 (2d Cir. 1971) (explaining a party may not remain silent despite knowledge of relevant facts and later attack an arbitration award); *JCI Commc'ns*, 324 F.3d at 51–52 (determining an evident-partiality claim was unavailable where the party possessed sufficient information to object before arbitration but failed to do so).

Appellant's reliance on *Thomas v. State*, 346 S.C. 140, 551 S.E.2d 254 (2001), in support of her waiver argument is misplaced. *See* Appellant's Br. at 22–23. In *Thomas*—which arose from an application for postconviction relief, not an arbitration demand—the Court held an initial waiver of a potential conflict did not waive a later-arising conflict that was materially different from the conflict originally disclosed. *Id.* at 144–45, 551 S.E.2d at 256–57. There, the conflict arose only after the prosecution offered a plea arrangement placing the jointly represented spouses' interests in direct opposition, creating a conflict that was not contemplated by the original waiver. *Id.* By contrast, the relationship here was disclosed before Arbitrator Cato's appointment, no new

conflict arose, and Appellant had a full opportunity to investigate or object before the arbitration proceeded.[13]

A. Appellant received notice of the relationship and had a full opportunity to investigate.

The record establishes that Appellant selected Arbitrator Cato as her preferred arbitrator. Arbitrator Cato then disclosed that her husband performed governmental-relations consulting work involving Nelson Mullins, and AAA provided a period during which the parties could submit objections or seek additional information. According to an email with Arbitrator Cato's disclosure form, Appellant had seven days to advise AAA of any objections to Arbitrator Cato's appointment. (R. p. 266); *see also* AAA Employment/Workplace Arbitration Rule R-16(a) ("Failure on the part of a party or a representative to comply with the requirements of this Rule may result in the waiver of the right to object to an arbitrator in accordance with Rule R-39."); AAA Employment/Workplace Arbitration Rules and Mediation Procedures at Rule R-39 ("Any party who proceeds with the arbitration after knowledge that any provision or requirement of these Rules has not been followed, and who fails to state an objection in writing, shall be deemed to have waived the right to object.").

The circuit court properly relied on those facts. Once Appellant was placed on notice of the relationship, she had ample opportunity to investigate further and raise any concerns before the arbitration process began. The law does not permit a party to remain silent despite knowledge of potentially relevant information, proceed through arbitration, await the outcome, and challenge the arbitrator only after receiving an unfavorable award. Such a rule would undermine the finality of arbitration and encourage unfair and strategic behavior. *ANR Coal*, 173 F.3d at 501.

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[13] To the extent Appellant's claim rests upon Arbitrator Cato's appointment to the LMC Board of Directors, she was not required to disclose that relationship for the reasons set forth above.

Appellant's own affidavit confirms that neither she nor her counsel believed the disclosure raised any issue requiring further inquiry at the time it was made. Appellant admitted "nothing was disclosed to me, nor my legal counsel, that would have given me concern that Arbitrator Cato could not be a fair and impartial arbitrator." (R. pp. 93–94). It was only after Appellant received an adverse award that she developed what she described as a "gut feeling" that "something was not right" and asked her counsel to investigate whether there was "some connection" between Arbitrator Cato and Respondents' former lead counsel. (R. p. 94). Thus, Appellant's own evidence confirms that the concerns underlying her challenge arose only after she lost at arbitration.

Equally important, the AAA process afforded Appellant a full and fair opportunity to investigate before the arbitration moved forward. AAA Employment/Workplace Arbitration Rule R-16 contemplates that parties will review arbitrator disclosures, evaluate potential conflicts, investigate concerns, and raise objections before appointment. The purpose of the arbitrator-selection process is to allow parties to make informed decisions regarding proposed arbitrators. Further, evaluating disclosures and determining whether additional inquiry is warranted is the responsibility of parties and their counsel, not the arbitrator, AAA, or the opposing party.

Once Arbitrator Cato disclosed her husband's relationship with Nelson Mullins, it became Appellant's responsibility to assess that information, conduct whatever investigation she believed appropriate, and raise any concerns before agreeing to proceed. The information Appellant claims should have resulted in disqualification was publicly available and could have been discovered through ordinary diligence long before the merits hearing. The information Appellant cites was online and open to all at the time of the selection of the arbitrator. Having received notice of the relationship and an opportunity to investigate, Appellant cannot now complain that information readily available to her was not uncovered until after an adverse award.

Courts routinely reject evident partiality claims where the complaining party possessed sufficient information to trigger inquiry but failed to investigate further. *See, e.g.*, *ANR Coal*, 173 F.3d at 501; *Cook Indus.*, 449 F.2d at 107–08; *JCI Commc'ns*, 324 F.3d at 51–52; *Positive Software Sol., Inc. v. New Century Mortg. Corp.*, 476 F.3d 278, 283 (5th Cir. 2007) (en banc). This Court should do the same.

B. Appellant's conduct properly informs the evident partiality analysis.

Whether described as a waiver or failure to object, Appellant's conduct remains significant. It undermines the substance of her evident-partiality argument and her assertion that the disclosed relationship would cause a reasonable person to conclude that Arbitrator Cato was biased. Her own affidavit shows she chose to wait until after the hearing to ask for any further investigation by her lawyers.

If the disclosed relationship truly would cause a reasonable person to question Arbitrator Cato's impartiality, one would expect Appellant to have raised that concern when the disclosure was made, not after an unfavorable result. The circuit court was therefore entitled to consider the fact that Appellant received the disclosure, neglected to investigate, failed to object, participated in nearly two years of arbitration proceedings, and challenged Arbitrator Cato only after losing.

Accordingly, even though the circuit court never stated that Appellant "waived" her claim, it properly considered Appellant's knowledge of the disclosed relationship, her opportunity to investigate, and her failure to object as part of the evident-partiality analysis. Those undisputed facts substantially undermine Appellant's claim and provide additional support for this Court to affirm the circuit court.

III. The circuit court correctly denied Appellant's request for post-award discovery.

The circuit court acted well within its discretion in denying Appellant's request for post-award discovery and an evidentiary hearing. Neither the FAA nor the SCUAA creates a right to

discovery in proceedings to vacate an arbitration award. Instead, courts permit discovery into alleged arbitrator bias only when the movant first presents objective evidence creating a reasonable basis to believe impropriety occurred. *See Van Pelt v. UBS Fin. Servs.*, No. 3:05CV477, 2006 WL 1698861, at *2–3 (W.D.N.C. June 14, 2006) (explaining discovery is appropriate only upon "clear evidence of impropriety"); *Midwest Generation EME, LLC v. Continuum Chem. Corp.*, 768 F. Supp. 2d 939, 957 (N.D. Ill. 2010) (recognizing that a party seeking discovery must provide more than conclusory allegations of partiality).

Here, Appellant failed to meet that threshold. Instead, she sought discovery based on the hope that additional investigation might uncover evidence supporting her bias theory. Courts reject such requests as "remote, circular, and speculative." *Van Pelt*, 2006 WL 1698861, at *3. In fact, Appellant issued broad subpoenas to non-parties—including Arbitrator Cato, Mr. Cato, Nelson Mullins, and LMC—seeking a wide range of materials unrelated to any identified evidence of bias. Rather than targeting a concrete factual dispute, the requests reflected an effort to search for a basis to support an evident partiality claim after the award had been issued. Such requests amounted to scorched-earth discovery attempts or a fishing expedition rather than a narrowly tailored effort based on objective evidence.

The circuit court also correctly found that additional discovery was unnecessary because the relevant facts were already in the record, which included Arbitrator Cato's disclosure; affidavits from Appellant, Ms. Seymour, Arbitrator Cato, and Mr. Cato; publicly available information; and the AAA filings and correspondences. Courts routinely deny post-award discovery where the existing record permits resolution of the challenge, recognizing arbitration-review proceedings are intended to remain summary in nature. *See, e.g., O.R. Sec., Inc. v. Pro. Plan. Assoc., Inc.*, 857 F.2d 742, 748–49 (11th Cir. 1988). Here, the circuit court expressly concluded the record was sufficient

to determine whether Appellant had satisfied her burden of showing evident partiality and thus appropriately declined to permit additional discovery or schedule an evidentiary hearing. (R. p. 9).

The same reasoning applies to Appellant's discovery requests concerning LMC. As the circuit court found, LMC "had no role whatsoever in the underlying arbitration," and Appellant identified no connection between the dispute and Arbitrator Cato's service on the Board of Directors. (R. p. 9). Given LMC was not a party, witness, participant, or otherwise interested in the arbitration, additional discovery concerning the hospital could not establish the direct, definite, and non-speculative partiality required by *Crouch* and *ANR Coal*.

Nor do Appellant's cited authorities support discovery in these circumstances. In *William C. Vick Construction Co. v. North Carolina Farm Bureau Federation*, for example, the court permitted discovery only after the movant produced substantial evidence that the arbitrator failed to disclose numerous significant personal, social, business, and professional relationships with counsel for one of the parties. 472 S.E.2d 346, 349 (N.C. Ct. App. 1996). Here, by contrast, Arbitrator Cato disclosed the disputed relationship before AAA confirmed her appointment, Appellant never objected, and Appellant did not identify any other direct relationship or financial interest.

Oncology & Hematology Associates of South Carolina, LLC v. South Carolina Department of Health & Environmental Control, 387 S.C. 380, 692 S.E.2d 920 (2010), and *Biltrite Building Co. v. Adams*, 193 S.C. 142, 7 S.E.2d 857 (1940), also support the circuit court's ruling. Both of these cases caution against expansive discovery untethered to a concrete factual basis. *Oncology & Hematology Associates* specifically rejected "scorched-earth" discovery requests that were "not remotely relevant" to the issue before the tribunal. 387 S.C. at 389, 692 S.E.2d at 925. Likewise,

Biltrite recognized courts disfavor discovery that amounts to a "fishing expedition" and approved discovery only after a specific factual showing justified the requested examination. 193 S.C. at 142, 7 S.E.2d at 863.

Samples v. Mitchell, also cited by Appellant, involved discovery misconduct and did not address post-award arbitration discovery, evident partiality, or the threshold showing required to obtain discovery from an arbitrator. 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997). It is therefore inapplicable.

Finally, considerations of fairness strongly support the circuit court's ruling. Appellant received the challenged disclosure before Arbitrator Cato's appointment, participated in the arbitrator-selection process, engaged in extensive discovery during the arbitration, received a full merits hearing, and then received a full hearing on her motion to vacate. Arbitration does not entitle a disappointed party to conduct expansive post-award discovery in search of a basis to overturn an unfavorable result. Because Appellant failed to present objective evidence of evident partiality and because the existing record was sufficient to resolve the issue as a matter of law, the circuit court properly denied her requests for discovery and an evidentiary hearing.

CONCLUSION

For the foregoing reasons, Respondents respectfully request this Court affirm the circuit court's order denying Appellant's motion to vacate and granting Respondents' motion to confirm the arbitration award.

(signature page to follow)

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: */s/ A. Mattison Bogan*

A. Mattison Bogan
SC Bar No. 72629
Donna O. Tillis
SC Bar No. 101879
Caroline A. Warner
SC Bar No. 104280
Morgan E. Spires
SC Bar No. 105197
1320 Main Street, 17th Floor
Columbia, SC 29201
(803) 799-2000
matt.bogan@nelsonmullins.com
donna.tillis@nelsonmullins.com
caroline.warner@nelsonmullins.com
morgan.spires@nelsonmullins.com

Attorneys for Respondents Tenet Healthcare Corporation, Tenet Physician Resources, LLC, and East Cooper Physician Network, LLC

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