

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
J. Derham Cole, Jr., Circuit Judge

Court of Common Pleas Case No. 2023-CP-10-03391
Appellate Court 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 REPLY BRIEF OF APPELLANT

ROSEN HAGOOD, LLC

James A. Bruorton, IV (SC Bar 71300)
Elizabeth F. Nicholson (SC Bar 102334)
40 Calhoun Street, Suite 450
Charleston, SC 29401
(843) 577-6726 telephone
(843) 724-8036 facsimile
cbruorton@rosenhagood.com
enicholson@rosenhagood.com

&

WALKER GRESSETTE & LINTON, LLC

G. Trenholm Walker (SC Bar 5777)
66 Hasell Street
Charleston, SC 29401

RECEIVED

Oct 26 2026

SC Court of Appeals

(843) 727-2208 telephone
(843) 727-2238 facsimile
walker@wgflaw.com

Counsel For Appellant

Other Counsel of Record:

Donna O. Tillis, Esquire
Caroline A. Warner, Esquire
A. Mattison Bogan, Esquire
Morgan E. Spires, Esquire
Nelson Mullins Riley & Scarborough LLP
1320 Main Street, 17th Floor
Columbia, SC 29201
Donna.tillis@nelsonmullins.com
Carolina.warner@nelsonmullins.com
Matt.bogan@nelsonmullins.com
Morgan.spires@nelsonmullins.com

Counsel for Respondents

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Appellant Dr. Stéfanie Seixas-Mikelus (“Appellant”) respectfully submits this Reply Brief in support of her appeal in this matter.

INTRODUCTION

Respondents attempt to recast Appellant's preserved evident-partiality claim as a new, freestanding challenge to the adequacy of Arbitrator Kristine Cato's disclosures. The record shows otherwise. From the Motion to Vacate through this appeal, Appellant has maintained that Arbitrator Cato's incomplete disclosure concerning her husband's compensated relationship with Respondents' counsel's law firm, together with her failure to supplement her disclosures after accepting an appointment to the Lexington Medical Center ("LMC") Board of Directors while the arbitration remained pending, are material facts supporting statutory vacatur for evident partiality. At a minimum, those facts warranted limited discovery before the circuit court resolved the disputed relationships through untested post-award affidavits. The only expert opinion submitted below, Barbara M. Seymour's affidavit, concluded that the disclosures were materially incomplete and that Arbitrator Cato had a continuing obligation to disclose her LMC Board appointment, directly contradicting Respondents' position that no further disclosure was required. R. at 98-99. (Seymour Aff. ¶ 5).

Respondents nevertheless argue that Appellant did not preserve that claim, abandoned it by organizing her Initial Brief around the disclosure errors rather than repeating the four *Crouch* factors in sequence, knowingly waived objections to facts that were not fully disclosed, and failed to make a sufficient showing to obtain any discovery. None of those arguments supports affirmance. The Motion to Vacate expressly invoked the statutory evident-partiality ground and the four-factor test; Respondents addressed the same test with the lower court; and the circuit court ruled on it. R. at 15, 20, 34-36, 115-117, 121-132, 6-9. The remaining questions concern

the governing legal standards, the legal effect of the undisclosed facts, and whether the circuit court could accept the arbitrator's post-award explanations while foreclosing the limited inquiry necessary to test them.

ARGUMENT

I. Respondents Improperly Characterize the Appeal as Presenting Only Factual Findings Reviewed for Clear Error.

Respondents contend that clear-error review controls because the circuit court recited the evident-partiality standard adopted in *Crouch Construction Co. v. Causey*, 405 S.C. 155, 747 S.E.2d 482 (2013). That characterization is incomplete. Orders granting or denying vacatur are reviewed de novo as to legal rulings, while subsidiary historical findings may be reviewed for clear error. See *ANR Coal Co. v. Cogentrix of N.C., Inc.*, 173 F.3d 493, 497 (4th Cir. 1999); see also *Crouch*, 405 S.C. at 162-63, 747 S.E.2d at 486 (reviewing de novo the legal standard governing evident partiality).

This appeal presents legal and mixed questions, not merely a request to reweigh historical facts. Appellant challenges whether the circuit court properly evaluated the disclosure deficiencies as evidence of statutory evident partiality; whether an incomplete disclosure shifted to Appellant a duty to investigate facts the arbitrator did not fairly disclose; whether Appellant knowingly waived an objection to facts she did not possess; and whether the court could rely on post-award affidavits to resolve material questions while denying any opportunity to test those affidavits. The circuit court's citation to *Crouch* does not insulate its application of that standard from appellate review. To the extent the relevant historical facts are undisputed, whether those facts satisfy the governing standard is a legal question this Court reviews without deference.

II. Appellant's Evident-Partiality Claim Was Preserved with the Lower Court and Has Not Been Abandoned on Appeal.

A. The ground Appellant advances on appeal is the identical ground presented to the lower court.

Respondents argue that Appellant raises for the first time on appeal a freestanding, nonstatutory ground for vacatur based solely on deficient disclosures. Respondents' Initial Brief at 8-9. The record refutes that argument. Appellant's Motion to Vacate stated at its outset that the Award was affected by the Arbitrator's "bias and evident partiality." R. at 15. Its statement of the issue asked whether the Arbitrator's "misleading and incomplete disclosure of critical facts pertinent to her bias and evident partiality" required vacatur. R. at 20. Its legal argument then expressly invoked *ANR Coal* and listed all four factors used to determine evident partiality. R. at 35-36.

Respondents' own Opposition confirms that this was the issue presented. It organized its response around the four-factor analysis and applied each factor to the Harry Cato/Nelson Mullins relationship and the LMC Board appointment. R. at 115-117, 121-132. The circuit court likewise distinguished an ethical disclosure violation from statutory evident partiality and applied the *ANR Coal* factors to both asserted relationships. R. at 6-9. The same issue was therefore raised, contested, and decided by the lower court.

Appellant does not contend that every incomplete disclosure independently requires vacatur. The completeness and accuracy of the disclosures matter because they identify the objective facts that must be evaluated under the statutory evident-partiality standard and determine whether Appellant had sufficient information to make a knowing objection. *Crouch* itself recognizes that nondisclosure may be probative of evident partiality even though nondisclosure alone is not dispositive. 405 S.C. at 169-70, 747 S.E.2d at 489-90. Appellant's

advancement below of the disclosure obligation therefore supports the preserved statutory claim; it does not create a new ground for vacatur.

B. The Initial Brief did not abandon the four-factor evident-partiality analysis.

Respondents next contend that Appellant abandoned the circuit court's evident-partiality ruling because the Initial Brief did not repeat the four factors in Respondents' preferred sequence. Respondents' Initial Brief at 18–19 & n.7. But the Initial Brief challenges the circuit court's treatment of the same relationships and explains why the omitted information was material to the neutrality analysis. Its facts correspond to each factor.

First, as to the extent and character of the personal interest, Arbitrator Cato's spouse maintained an ongoing compensated relationship with Respondents' counsel's law firm throughout the arbitration. Appellant's Initial Brief at 15–16; R. at 8, 522. Second, the relationship was materially less attenuated than the relationship in *Crouch*: it ran from the Arbitrator through her spouse to the law firm representing the parties who prevailed before her. Mr. Cato worked from firm office space, used a firm email address, and was publicly identified by the firm as a Government Relations Consultant. Appellant's Initial Brief at 15–16; R. at 72–73, 81, 83–84, 522. Third, the relationship connected to an actual participant in the arbitration (Respondents' counsel's firm) and was accompanied by a later-arising healthcare-board appointment while the proceeding remained pending. Appellant's Initial Brief at 18–19; R. at 31–32, 514. Fourth, the compensated relationship continued throughout the arbitration, and the LMC appointment occurred before the final award issued. Appellant's Initial Brief at 15–18; R. at 49, 514, 522.

These facts do not establish partiality merely by their existence. They are the objective circumstances the Court must evaluate together under *Crouch*. The Initial Brief's organization

around the circuit court's disclosure and waiver errors did not relinquish the statutory claim those facts support.

Respondents also isolate a single sentence from the Initial Brief, “[w]hether those additional facts ultimately establish evident partiality is not the point”, to argue Appellant disclaimed the evident-partiality framework altogether. Respondents' Initial Brief at 18 n.7 (quoting Appellant's Initial Brief at 17). Read in context, that sentence addresses the arbitrator's disclosure obligation, not the statutory vacatur standard: it explains that the inadequacy of a disclosure does not turn on whether the omitted facts would themselves independently prove partiality. The very next sentence confirms as much: “those facts demonstrate why Appellant contends Arbitrator Cato's disclosure was materially incomplete.” Appellant's Initial Brief at 17. A single sentence addressing the scope of the disclosure obligation cannot be read to abandon the statutory evident-partiality claim that the remainder of Appellant's Initial Brief's Argument I develops through the same four factors addressed above.

C. *Staubes* confirms preservation, and *Crouch* does not compel affirmance.

An issue is preserved when it was raised to and ruled upon by the trial court, including when it was "effectively raised and ruled upon" through the parties' submissions and the order considered as a whole. *Staubes v. City of Folly Beach*, 339 S.C. 406, 412-13, 529 S.E.2d 543, 546 (2000). That standard is satisfied here. Appellant invoked statutory evident partiality and the four-factor test; Respondents briefed all four factors; and the circuit court ruled on all four factors as applied to both asserted relationships. R. at 35-36, 115-117, 121-132, 6-9.

Lindsay v. Lindsay, 328 S.C. 329, 338, 491 S.E.2d 583, 588 (Ct. App. 1997), does not compel a different result. *Lindsay's* abandonment rule applies only when “the offended party does not challenge that ruling” at all. *Id.* Appellant's Initial Brief expressly challenged the circuit

court's denial of limited discovery and an evidentiary hearing as an independent basis for reversal, in addition to challenging the evident-partiality ruling itself. Appellant's Initial Brief at 24–29. *Lindsay*'s law-of-the-case rule has no application where, as here, the ruling was in fact challenged.

Crouch is also distinguishable on the facts Respondents invoke. The arbitrator there was unaware of the relationship, which ran through his law partner's brother to a nonparty entity, and the record contained no evidence that the relationship could have affected his decision. 405 S.C. at 170-73, 747 S.E.2d at 490-91. Here, Arbitrator Cato knew of her spouse's compensated association with Respondents' counsel's firm and elected to characterize it as an "indirect" consulting arrangement without disclosing the duration and other facts Appellant contends were material. R. at 52-53, 98-99, 512-513, 522. The asserted relationship is therefore materially less attenuated than the relationship in *Crouch*. Whether the total circumstances meet *Crouch*'s demanding standard is the merits question preserved for appellate review, not a basis to find the claim abandoned.

III. Commonwealth Coatings Supports Meaningful Disclosure, but Appellant Does Not Rely on an Appearance-of-Bias Standard.

Respondents correctly observe that deficient disclosures are not an independent statutory ground for vacatur and that South Carolina has rejected a mere appearance-of-bias standard. Appellant does not argue otherwise. *Crouch* requires objective facts from which a reasonable person would have to conclude that the arbitrator was partial. 405 S.C. at 168-69, 747 S.E.2d at 489. Nondisclosure is relevant to that inquiry but is not alone dispositive. *Id.* at 169-70, 747 S.E.2d at 489-90.

Commonwealth Coatings Corp. v. Continental Casualty Co., 393 U.S. 145 (1968), remains instructive concerning the purpose of timely disclosure. Justice White explained that

substantial relationships should be disclosed at the outset, when the parties remain free to accept or reject the arbitrator with knowledge of the relationship, rather than after the award. *Id.* at 151-52 (White, J., concurring). That principle does not reduce *Crouch*'s statutory standard to an impression of possible bias. It instead explains why the Court must examine the facts not fairly conveyed by the disclosure when deciding materiality, waiver, and evident partiality under *Crouch*.

Nor does the fact that Arbitrator Cato identified the existence of some relationship end the inquiry. A disclosure permits an informed decision only if it fairly conveys the nature of the relationship material to the conflict analysis. The question here is not whether Arbitrator Cato was required to provide a complete biography. It is whether describing her spouse's compensated, decade-long association with Respondents' counsel's firm only as an indirect periodic consulting arrangement fairly disclosed the later-discovered long-term direct employment by Respondents' counsel's firm now relied upon to defeat vacatur. R. at 25, 33, 52-53, 72-73, 81, 83-84, 98-99.

Respondents are correct that *Renaissance Enterprises, Inc. v. Ocean Resorts, Inc.*, 310 S.C. 395, 426 S.E.2d 821 (1992), did not involve arbitrator disclosure or evident partiality. Appellant does not rely on *Renaissance* as creating a separate disclosure-based ground for vacatur. The applicable evident-partiality analysis is supplied by *Crouch*, *ANR Coal*, and *Commonwealth Coatings*.

IV. The AAA Rules Do Not Establish Waiver of Material Facts That Were Not Adequately Disclosed.

Respondents rely on AAA Employment/Workplace Arbitration Rules R-16 and R-39 to argue that Appellant waived any objection by failing to object within seven days of the September 2021 disclosure. Respondents' Initial Brief at 25–27. But Rule R-39 applies when a

party proceeds with knowledge that a rule or requirement has not been followed. It does not establish knowing waiver of material facts that were not fairly disclosed or of a later-arising relationship that was never disclosed.

ANR Coal is directly instructive. Although the party there did not object after receiving the arbitrator's initial disclosures, the Fourth Circuit held it had not waived objections to relationships first learned after the award. 173 F.3d at 501 n.5. Appellant similarly contends that she did not learn the full nature and duration of the Harry Cato/Nelson Mullins relationship, or the LMC appointment, until after the award. R. at 93-96 (Dr. Seixas-Mikelus Aff. ¶¶ 8–17). A waiver-by-silence rule presupposes information sufficient to permit a knowing objection; it cannot be used to assume the adequacy of the very disclosure being challenged.

Thomas v. State provides an analogous application of the same principle. An earlier waiver of a potential conflict did not waive a later actual conflict the defendant did not know when she gave the waiver. 346 S.C. 140, 144-45, 551 S.E.2d 254, 256-57 (2001). *Thomas* did not arise in arbitration and is not offered as controlling arbitration authority. It confirms the more general point established directly in *ANR Coal*: a party does not knowingly waive an objection to material circumstances learned only after the relevant objection period.

Respondents' inquiry-notice authorities do not excuse the disclosure at issue here. In *Power Services Associates, Inc. v. UNC Metcalf Servicing, Inc.*, 338 F. Supp. 2d 1375, 1381-82 (N.D. Ga. 2004), the arbitrator disclosed a current, substantial representation of a party's parent company, and the only undisclosed fact was a single, unrelated personal representation from decades earlier; the court excused that omission because the undisclosed fact was too remote to matter, not because any disclosure forecloses further inquiry regardless of its accuracy. The relationship Appellant challenges here is the opposite of remote: an ongoing, compensated,

decade-plus affiliation that continued throughout the arbitration itself. R. at 8, 81, 522. *Dealer Computer Services, Inc. v. Michael Motor Co.*, 485 F. App'x 724, 727-28 (5th Cir. 2012) (unpublished, not precedent except as permitted by 5th Cir. R. 47.5), is similarly distinguishable: the arbitrator's disclosure there was accurate as far as it went, and the additional detail the objecting party lacked was independently available through the AAA's own agreed-upon online disclosure system. Appellant does not contend that she was excused from investigating independently available information; she contends that the disclosure she received affirmatively described a direct, decade-plus, compensated relationship as merely an "indirect" consulting arrangement. R. at 52-53, 98-99.

V. The LMC Appointment Could Not Be Resolved Through the Arbitrator's Untested Account of Her Internal Decisional Timeline.

Respondents argue that the LMC appointment required no disclosure because LMC was not a party or participant and because Arbitrator Cato had already reached preliminary legal conclusions before her appointment. Respondents' Initial Brief at 13–14, 21–22 & n.12. Appellant does not contend that service on a healthcare board automatically establishes partiality. The point is that the appointment arose while the arbitration remained pending and before the final award, yet Arbitrator Cato did not supplement her disclosure so the parties and AAA could evaluate the development contemporaneously. R. at 31-32, 49, 95-96, 99, 514.

Respondents' chronology depends on Arbitrator Cato's post-award affidavit concerning when she internally reached preliminary legal conclusions. R. at 513-514 (Cato Aff. ¶¶ 15–16). The record instead shows that Arbitrator Cato was elected to LMC's Board on March 1, 2023, attended her first Board meeting when the arbitration reconvened for additional damages testimony, and did not issue the Final Award until May 26, 2023. R. at 5, 49, 514; Respondents' Initial Brief at 22 n.12. Post-hearing briefing was not completed until April 20, 2023. R. at 31-

32. As a matter of common sense, her formal election and attendance at a first Board meeting would have been preceded by notice of her selection and her agreement to serve. The timing and extent of that pre-election involvement remain unknown precisely because Appellant was denied the limited discovery necessary to examine Arbitrator Cato's assertion that the appointment could not have affected her deliberations. R. at 9-10. The Circuit Court should not have treated an untested statement about the arbitrator's internal decisional process as dispositive while denying the limited inquiry necessary to evaluate it.

VI. Dr. Seixas-Mikelus's Affidavit Does Not Establish a Post-Hoc Challenge to an Adequately Disclosed Relationship.

Respondents quote Dr. Seixas-Mikelus's statement that she had a "gut feeling that something was not right" to portray this challenge as a reaction to an unfavorable award. Respondents' Initial Brief at 26. Read in context, the affidavit does not support that characterization. Paragraph 9 describes her reaction to Arbitrator Cato's demeanor during the hearing. Paragraph 8 separately states that Dr. Seixas-Mikelus later learned that the disclosures were inaccurate, incomplete, and misleading, and paragraphs 10 through 17 identify the information learned after the award. R. at 93-96 (Dr. Seixas-Mikelus Aff. ¶¶ 8–17).

The statutory claim does not rest on Dr. Seixas-Mikelus's subjective impression. It rests on the objective relationships, the information disclosed and omitted, and the circuit court's decision to resolve those matters without permitting limited discovery. Respondents therefore cannot convert a contextual statement about the hearing into proof that Appellant knowingly accepted the material circumstances later discovered.

VII. The Circuit Court Should Not Have Denied Limited Discovery and an Evidentiary Hearing While Relying on Untested Post-Award Affidavits.

Respondents characterize Appellant's requested discovery as a fishing expedition and argue that post-award discovery requires clear evidence of impropriety. Respondents' Initial Brief at 28–30. Appellant did not seek to reopen merits discovery. She sought limited inquiry concerning identified relationships and specific assertions used to defeat vacatur: the nature and duration of Mr. Cato's compensated association with Nelson Mullins; his office, email, access, and contacts at the firm; any relationship with counsel involved in the arbitration; and the timing and circumstances of Arbitrator Cato's LMC appointment. R. at 25, 36-40, 385, 536-538, 544-555.

Those matters were material because Respondents and Arbitrator Cato relied on post-award affidavits to characterize the relationships as remote and immaterial. The Circuit Court accepted those affidavits to find that Mr. Cato was merely an independent contractor, lacked relevant contacts or access, had no involvement in the arbitration, and that the LMC appointment arose only after Arbitrator Cato had reached preliminary legal conclusions. R. at 5, 8-9, 512-514, 522-523. Appellant was not permitted to test any of those assertions because her motion to conduct limited discovery was denied. R. at 9-10.

Requiring conclusive proof of partiality before permitting the limited discovery necessary to examine the identified relationships creates a circular standard. Appellant produced more than a generalized suspicion: the original disclosure, public descriptions of Mr. Cato's role and affiliation, evidence concerning his office and firm email, the post-award affidavits, the timing of the LMC appointment, and Barbara Seymour's affidavit explaining the significance of the omitted information. R. at 51-53, 72-73, 81, 83-84, 93-96, 98-99, 512-514, 522-523. The requested inquiry was directed to concrete factual questions raised by that evidence.

Respondents mischaracterize the purpose of Barbara Seymour's affidavit. Appellant does not contend that an ethical violation identified by Ms. Seymour independently requires vacatur or that her opinion conclusively establishes evident partiality. Rather, the affidavit explains why the omitted information was material to an informed evaluation of Arbitrator Cato's impartiality and why the identified relationships warranted further inquiry. R. at 98-99 (Seymour Aff. ¶ 5). Although the circuit court stated that the existing record was sufficient, its order did not meaningfully address Ms. Seymour's explanation of the disclosure deficiencies or her conclusion that Arbitrator Cato's continuing disclosure obligation extended to the LMC Board appointment. R. at 7, 9-10, 99. That evidence, considered together with the public descriptions of Mr. Cato's affiliation and the competing post-award affidavits, provided an objective and particularized basis for limited discovery not mere speculation.

William C. Vick Construction Co. v. North Carolina Farm Bureau Federation, 472 S.E.2d 346, 349 (N.C. Ct. App. 1996), is not limited to cases involving a particular number of relationships. Its relevant principle is that discovery may be warranted to investigate significant relationships that were not adequately disclosed. There, the trial court permitted the arbitrator's deposition on the movant's objective basis for a reasonable belief that misconduct had occurred (expressly after finding that the one relationship already known at that point did not itself constitute evidence of a substantial undisclosed relationship) and it was only through that deposition that numerous additional undisclosed relationships came to light. 472 S.E.2d at 348–49. Unlike Appellant, the movant in *Vick* had objected to the arbitrator's appointment before the arbitration proceeded; that fact bears on the ultimate weight of the evidence later developed, not on whether an objective basis existed to permit the inquiry in the first place. 472 S.E.2d at 347. The numerosity Respondents emphasize was thus the product of discovery, not a precondition

for obtaining it. Respondents' generalized authorities disfavoring irrelevant or abusive civil discovery do not answer whether a court may accept an arbitrator's and her spouse's affidavits as dispositive while preventing narrowly tailored examination of their material assertions.

Crouch itself confirms that discovery is an available tool in evident-partiality cases: “A circuit court, of course, has the discretion to grant discovery where warranted.” *Crouch*, 405 S.C. at 172 n.13, 747 S.E.2d at 491 n.13. *Crouch* distinguished itself only because the challengers there “did not seek to conduct discovery.” *Id.* Appellant did. R. at 15, 36-40, 535-540. Respondents do not dispute that the denial of discovery is reviewed for abuse of discretion, not de novo. (Resp. Br. at 7 (citing *Hodge v. UniHealth Post-Acute Care of Bamberg, LLC*, 422 S.C. 544, 576, 813 S.E.2d 292, 309 (Ct. App. 2018)). Under that standard, a circuit court abuses its discretion when it forecloses the factual development necessary to apply the very test it purports to apply.

At minimum, the existing record presented a sufficient factual basis for limited discovery and an evidentiary hearing. The circuit court's contrary ruling prevented development of the evidence necessary to apply *Crouch* and then relied on that undeveloped record to conclude Appellant had not met her burden. R. at 6, 8-10. That was an abuse of discretion and independently requires reversal and remand.

CONCLUSION

For the foregoing reasons and those stated in Appellant's Initial Brief, the Court should reverse the order confirming the arbitration award and direct that the award be vacated. Alternatively, the Court should reverse the denial of Appellant's request for limited discovery and an evidentiary hearing, vacate the order confirming the award, and remand for consideration of the Motion to Vacate on a fully developed record.

Respectfully submitted,

s/Elizabeth F. Nicholson

James A. Bruorton, IV (SC Bar No. 71300)

Elizabeth F. Nicholson (SC Bar No. 102334)

ROSEN HAGOOD, LLC

40 Calhoun Street, Suite 450

Charleston, SC 29401

(843) 577-6726

cbruorton@rosenhagood.com

enicholson@rosenhagood.com

&

G. Trenholm Walker (SC Bar 5777)

WALKER GRESSETTE & LINTON, LLC

66 Hasell Street

Charleston, SC 29401

(843) 727-2208 telephone

(843) 727-2238 facsimile

walker@wgflaw.com

Counsel For Appellant

October 26, 2026
Charleston, South Carolina