2018 IL App (1st) 172337-U

FOURTH DIVISION
December 27, 2018

No. 1-17-2337

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

BARBARA MCKINZIE,	)	Appeal from
	)	the Circuit Court
Petitioner-Appellant,	)	of Cook County
	)	
v.	)	
	)	2017 L 000260
ALPHA KAPPA ALPHA SORORITY, INC.,	)	
	)	Honorable
Respondent-Appellee.	)	Patrick J. Sherlock,
	)	Judge Presiding

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Reyes and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* Petitioner's motion to vacate arbitration award properly denied where petitioner did not show that the arbitrator exceeded her authority or committed any gross errors of law.

¶ 2 Petitioner, Barbara McKinzie, appeals from the trial court's denial of her motion to vacate an arbitration award in favor of respondent, Alpha Kappa Alpha Sorority, Inc. (AKA).

¶ 3 The record shows that petitioner served as the "Supreme Basileus," or president, of AKA from July 2006 to July 2010. In 2013, AKA filed a complaint against petitioner in the circuit court of Cook County alleging breaches of fiduciary duty and fraud, however, petitioner

successfully moved to dismiss the complaint, noting that the sorority had an arbitration policy which required all lawsuits related to AKA to "go through the AKA Arbitration process."

¶ 4 Thereafter, in December 2013, AKA filed a demand for arbitration pursuant to the sorority's arbitration policy, alleging that during petitioner's time as president, she "embezzled in excess of $1 million from [AKA]." AKA raised three causes of action—breach of fiduciary duties, conversion, and unjust enrichment—and sought, among other things, restitution and punitive damages.

¶ 5 A thirteen-day arbitration hearing ensued, during which the arbitrator heard testimony from twenty witnesses and received approximately 100 exhibits. The following facts are taken from the arbitrator's interim and final awards.

¶ 6 The disputed issues generally involved a stipend that was paid to petitioner by the sorority. Although the role of president of AKA was an unpaid position, AKA's Constitution and Bylaws provided for a stipend to be paid to the president when funds were available in the budget. No president prior to petitioner had sought or received a stipend.

¶ 7 Anticipating that the AKA directorate would approve the payment of a stipend to her, in 2006, petitioner began making plans to use the stipend to fund a retirement pension trust for herself. By May 2007, she consulted with pension experts at a pension management services firm, and a consultant providing insurance and annuity services, to fashion such a pension fund. Petitioner told them that she required that the plan pay her future monthly benefits of $4000 per month, for life, with payments beginning at her planned retirement in January 2014. She also wanted the fund to be fully funded during her four year presidential term, *i.e.*, before July 2010.

¶ 8 The consultants reviewed petitioner's requests and the legal requirements for individual pension plans. They determined that she required a "defined benefit plan" and that tax laws

required that the plan only be funded from income earned by her from an unincorporated business that she owned as a sole proprietor. She was also required to have sufficient taxable income such that the contributions to fund the plan could be paid and deducted from that income. Based on petitioner's request that the plan pay a benefit of $4000 per month beginning January 2014, an actuary could calculate the amounts of contributions necessary to fund the benefit, and the amount of self-employment income and income tax needed to comply with tax laws.

¶ 9 For each year of petitioner's term as president, the necessary sums included: an annual contribution based upon certain assumptions about investment income to enable the plan to pay the specified monthly benefits when they became due; earned income from a sole proprietorship in an amount sufficient under the tax laws to pay the annual plan contribution and pay the income tax on the earned income; an amount to cover petitioner's federal and state income tax liability resulting from the earned income; and administrative fees. Petitioner also planned that AKA would purchase a life insurance policy for the benefit of the sorority—which would allow it to recoup some of the costs of the plan upon her death—and that the premiums for the life insurance plan would be paid for by AKA. Petitioner intended that AKA would pay all of these sums each year during her four year term as president.

¶ 10 Due to the rapid funding of the plan, and the fact that petitioner's planned retirement date was only seven years after the plan's creation, the costs to AKA to implement the plan were "very large." In June 2007, one of the consultants provided petitioner with a memo, referred to during the arbitration as the "McLeary Memo" which outlined the pension plan, and estimated the cost would exceed $800,000. The actual cost to AKA, however, proved to be far higher than estimated—approximately $1,600,000.

¶ 11 In July 2007, at two closed session meetings, the AKA directorate discussed the subject of paying petitioner, who was a certified public accountant (CPA), for her services to the sorority. On July 14, 2007, a finance committee meeting preceded the first closed session meeting, during which the treasurer told the committee that petitioner had asked her to present the issue of receiving a one-time payment to compensate her for savings she claimed to have generated over the past year as a result of her financial expertise and skill. Petitioner informed the treasurer that she had generated savings of approximately $1,600,000. There was disagreement among the attendees as to whether petitioner had actually performed the work that resulted in the savings. No specific payment amount was proposed, and the committee decided to wait until the November finance committee meeting to make a decision.

¶ 12 Later that same day, the directorate met in a closed executive session. Minutes from the session indicate that the treasurer "recited some discussion from the finance committee regarding the valuable services [petitioner] had rendered in helping to resolve various financial issues, with a total savings of $1,650,000." The directorate then had "additional discussion focused on providing a percentage of the savings as compensation for professional services rendered." A motion was made, seconded and passed by nearly unanimous vote, stating that petitioner "be provided an amount of $250,000 *** to be paid from the General Fund" for "the unusual amount of time provided and for professional services rendered in resolving complex financial issues using her vast experience as a CPA." Petitioner was present, but did not vote.

¶ 13 The next day, on July 15, 2007, the directorate met again in a closed executive session. One of the items presented for discussion was "Implementation of a Stipend for the Supreme Basileus." Two sets of minutes existed for this meeting, although the existence of two sets of minutes was not explained by any witness. The motion was described in the first set of minutes

as to "implement the stipend for the Supreme Basileus *** by capitalization of a retirement trust fund equal to approximately a $4,000/month benefit over her 4-year term retroactive to July 2006" and in the second set of minutes, as "a retirement trust fund equal to approximately a $4000/month stipend over *** [petitioner]'s 4-year-term be capitalized retroactive to July 2006." The motion passed unanimously. Petitioner was present, but did not vote.

¶ 14 Witnesses who were called to testify about the July 15, 2007, meeting stated that they were not informed of the details of the retirement trust fund. No questions were asked and no information was presented about the plan's details or cost other than what appears in the minutes. Some members assumed that the plan's cost would equal $192,000, which they calculated by multiplying $4000 per month by her 48 month presidential term. Some attendees explained their vote in favor of the motion by reference to the $192,000 figure.

¶ 15 Petitioner, however, disagreed that $192,000 was an estimate of cost, and believed that the directorate voted for a retirement benefit, without regard to its cost. Petitioner believed that after the meeting, she "did nothing more than [assure] that the Board vote was implemented."

¶ 16 The pension plan was established thereafter, on or about December 4, 2007. Total payments of $345,000 were required by the end of 2007.

¶ 17 Petitioner's conduct to establish the plan was accomplished with the assistance of the pension consultants, the AKA executive director, and the AKA chief financial officer (CFO). Petitioner instructed the CFO to keep the checks, their amounts, and other information about the plan expenses secret from others in the sorority, including the treasurer. This was accomplished by creating separate computer accounts that were not accessible to persons other than petitioner, the CFO, and the executive director. Most, if not all, of the checks relating to the pension plan were not shown in the sorority's regular accounting records. Petitioner refused to allow the

treasurer to sign any of the checks, and all checks were signed by petitioner and the executive director. In 2010, petitioner required all lawyers and pension consultants to sign a confidentiality agreement prohibiting them from discussing the plan. The pension plan was funded at a cost of approximately $1.6 million to AKA.

¶ 18 Based on the foregoing facts, the arbitrator entered an "Interim Award" on June 30, 2016. The arbitrator found that petitioner "engaged in a scheme to use sorority funds for her own benefit without the knowledge or approval of either of the Sorority's governing bodies." The arbitrator concluded that petitioner "engaged in a breach of fiduciary duty that continued over a period of years" during which she "intentionally and purposefully failed to disclose material financial information about the Pension Plan." The arbitrator concluded that petitioner owed a duty of loyalty to AKA, including a duty to disclose all material facts about the pension plan to the directorate and sorority officers. The arbitrator found clear and convincing evidence that petitioner breached that duty by failing to disclose material information to the directorate before the July 14 and 15, 2007 meetings. Specifically, petitioner "never revealed the important information she learned from [the consultants]"—that the "only option for her Pension Plan would require substantial payments by the Sorority, including payment of compensation (mislabeled as income from self-employment), income taxes, administrative fees, and life insurance premiums, in addition to the contributions to the Plan." The arbitrator also concluded that following the July 2007 meetings, petitioner's strategy "became one of active concealment of the payments the Sorority was making for her benefit."

¶ 19 The arbitrator further found that the above evidence established that petitioner "converted Sorority funds to pay the plan's cost," and "was unjustly enriched when she caused payments for her benefit to be made without proper approval."

¶ 20 Based upon the findings of breach of fiduciary duty, conversion and unjust enrichment, the arbitrator found that AKA was entitled to recover damages and restitution from petitioner, in the amount of $1,344,000 representing the $1.6 million paid for the pension plan, less the $250,000 stipend approved by the directorate—which AKA accepted responsibility to pay—and the $6000 insurance premium that was refunded when the life insurance policy was cancelled. The arbitrator further found AKA was entitled to recover its attorney fees as punitive damages, and requested AKA submit a petition regarding the fees it incurred.

¶ 21 Finally, the arbitrator found that petitioner was not entitled to any relief on her counterclaims, including a claim for reimbursement of attorney fees. The arbitrator denied her claim for attorney fees "based upon the District of Columbia statute that addresses indemnification of officers of nonprofit corporations" which required "good faith and reasonable belief that conduct was in [the] best interest of the corporation" for indemnification.

¶ 22 Thereafter, AKA submitted a petition regarding its attorney fees and litigation costs, and petitioner filed an objection to those fees and costs. In the October 10, 2016, "Final Award," the arbitrator incorporated all findings and conclusions from the "Interim Award." The arbitrator noted that she had found that AKA was entitled to recover its reasonable and necessary attorney fees and costs, and that those fees and costs "were awarded as punitive damages for the breach of fiduciary duty and conversion." The arbitrator reviewed the bills and supporting documents submitted by AKA and the objections made by petitioner, and found AKA entitled to $295,500 in reasonable attorney fees and costs as punitive damages. The arbitrator found the fees justified "based upon, among other things, [petitioner]'s pattern of deceit of the not-for-profit sorority for her personal gain." Accordingly, the arbitrator awarded AKA $1,344,000 as restitution, and $295,500, as reasonable and necessary costs and attorney fees.

¶ 23 Petitioner moved to vacate that award in the circuit court, arguing that the arbitrator committed a gross error of law in applying Illinois rather than District of Columbia substantive law, that there was "evident partiality by the Arbitrator," and that the arbitrator "exceeded her authority" by ruling on matters involving "AKA's internal affairs."

¶ 24 On August 21, 2017, the circuit court denied petitioner's motion to vacate, finding that petitioner had not met the strict standards under Illinois law for vacating an arbitration award. Regarding petitioner's argument that the arbitrator applied the wrong substantive law by relying on Illinois rather than District of Columbia law, the circuit court noted that prior to rendering her decision, the arbitrator had expressly invited comment regarding which law governing not-for-profit corporations was applicable. In response, petitioner did not argue that District of Columbia law was controlling. Instead, she urged the arbitrator to review the sorority's constitution and bylaws as the controlling authority, and noted that Illinois's laws "may have some applicability." In such circumstances, the circuit court found no gross error by the arbitrator, "when petitioner tacitly encouraged Illinois as the proper law." The court also found that even if there was an error regarding which jurisdiction's laws applied, the laws were essentially equivalent, and the arbitrator would have made the same decision under either statute.

¶ 25 The circuit court further found that petitioner failed to present any evidence of partiality, and failed to identify any possible interest on the arbitrator's part. Finally, the circuit court found petitioner's argument that the arbitrator exceeded her authority in ruling on matters involving the sorority's internal affairs "disingenuous" and "unavailing," because petitioner moved to dismiss the case that AKA initially brought in the circuit court by contending that the matter was subject to the arbitration policy. Accordingly, the court denied petitioner's motion to vacate.

¶ 26 The circuit court confirmed the arbitration award, and entered judgment for AKA on August 31, 2017. Petitioner timely filed a notice of appeal on September 19, 2017, and this court has jurisdiction to consider this appeal pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 27 In this court, petitioner raises several arguments as to why her motion to vacate the arbitration award should have been granted. Petitioner contends that the arbitration award must be vacated because the arbitrator committed "gross errors of law." Specifically, petitioner maintains that the arbitrator improperly applied Illinois substantive law, when she should have applied that of the District of Columbia, and that petitioner's conduct would not have amounted to a breach of fiduciary duty under District of Columbia law. She alternatively contends that if District of Columbia law does not apply, the arbitrator "misapplied the law" in finding that she breached her fiduciary duty to AKA. Petitioner also asserts that the arbitrator "exceeded her authority" by awarding punitive damages, by denying her counterclaim for reimbursement of attorney fees, and by "disregarding" AKA's internal governance laws.

¶ 28 The "Illinois Arbitration Act embodies a legislative policy favoring enforcement of agreements to arbitrate future disputes." *Salsitz v. Kreiss*, 198 Ill. 2d 1, 13 (2001). Like the legislature, our courts also favor arbitration because it is "an effective, expeditious, and cost-efficient method of dispute resolution." *Id.*; *Yorulmazoglu v. Lake Forest Hospital*, 359 Ill. App. 3d 554, 564 (2005) (noting that arbitration is "easier, quicker, and more economical" than litigation). As a result, "judicial review of an arbitrator's award is extremely limited, more limited than appellate review of a trial." *Anderson v. Golf Mill Ford, Inc.* 383 Ill. App. 3d 474, 479 (2008); *Yorulmazoglu*, 359 Ill. App. 3d at 564; *Herricane Graphics v. Blinderman Construction Co.*, 354 Ill. App. 3d 151, 155 (2004). " 'Limited judicial review fosters the long-

accepted and encouraged principle that an arbitration award should be the end, not the beginning of litigation.' " *Yorulmazoglu*, 359 Ill. App. 3d at 564, quoting *Perkins Restaurants Operating Co. v. Van Den Bergh Foods, Co.*, 276 Ill. App. 3d 305, 309 (1995). "When parties agree to submit a dispute to arbitration for a binding and nonappealable decision, they bargain for finality." *Yorulmazoglu*, 359 Ill. App. 3d at 564. The point of arbitration is to provide a quick and economical alternative to litigation, not to add yet another round before entering the district and appellate courts. *Id.*

¶ 29 Our supreme court has instructed the appellate and trial courts that "wherever possible" we must "construe arbitration awards so as to uphold their validity." *Salsitz*, 198 Ill. 2d at 13; see also *Anderson*, 383 Ill. App. 3d at 479 (we "must" construe awards, wherever possible, to uphold them). A court will grant a petition to vacate an arbitration award only in extraordinary circumstances. *Yorulmazoglu*, 359 Ill. App. 3d at 564. The burden is on the challenger to prove by clear and convincing evidence that an award was improper. *Galasso v. KNS Companies, Inc.*, 364 Ill. App. 3d 124, 130 (2006).

¶ 30 Section 12(a) of the Arbitration Act (710 ILCS 5/12(a) (West 2016)) lists the following five circumstances which will justify the vacatur of an arbitration award:

> "(1) The award was procured by corruption, fraud or other undue means;
>
> (2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any one of the arbitrators or misconduct prejudicing the rights of any party;
>
> (3) The arbitrators exceeded their powers;
>
> (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or

> otherwise so conducted the hearing * * * as to prejudice substantially the rights of a party; or
>
> (5) There was no arbitration agreement and the issue was not adversely determined in proceedings [to compel or stay arbitration] and the party did not participate in the arbitration hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by the circuit court is not ground for vacating or refusing to confirm the award."

¶ 31 In addition to the above statutory bases, a court may also vacate an award where " 'a gross error of law or fact appears on the face of the award.' " *First Health Group Corp. v. Ruddick*, 393 Ill. App. 3d 40, 53 (2009) (quoting *Anderson*, 383 Ill. App. 3d at 479). However, "[t]o vacate an award based on a gross error of law, a reviewing court must be able to conclude from the award's face, that the arbitrator was so mistaken as to the law that, if apprised of the mistake, he would have acted differently." *Herricane*, 354 Ill. App. 3d at 156. "Gross errors in judgment or gross mistakes of law or fact are not grounds for vacating an award unless the errors are apparent upon the face of an award." *Id*. The party moving to vacate the award must present clear, strong, and convincing evidence that the award was improper. *Sloan Electric v. Professional Realty & Development Corporation*, 353 Ill. App. 3d 614, 621 (2004).

¶ 32 Petitioner's main contention in this appeal is that the arbitration award should be vacated because the arbitrator committed "gross errors of law." Petitioner specifically contends that the arbitrator improperly applied Illinois substantive law, when she should have applied that of the District of Columbia, under which her conduct would not have amounted to a breach of fiduciary duty.

¶ 33 We conclude, however, that petitioner waived consideration of this issue, and consented to the use of Illinois law before the arbitrator. The record shows that the arbitrator was aware that a choice-of-law decision may have been required, and communicated with the parties regarding their positions. Specifically, the arbitrator said to the parties, "I am aware that both Illinois and the District of Columbia have comprehensive statutes governing not-for-profit corporations such as AKA. Either or both of the statutes may apply to certain issues in this case. I would like to know the parties' positions about application of those statutes." In response, petitioner made no suggestion that District of Columbia law was controlling. Instead, she urged the arbitrator to review the sorority's constitution and bylaws as the controlling authority, and noted that Illinois's laws "may have some applicability." Accordingly, if the arbitrator made an error in applying Illinois law, petitioner invited it, and cannot challenge it in this appeal. *Ruddick*, 393 Ill. App. 3d at 49 (citing *People v. Bush*, 214 Ill. 2d 318, 332 (2005) (when a party "procures, invites or acquiesces" to a ruling, even if the ruling is improper, he cannot contest the ruling on appeal)).

¶ 34 Nonetheless, even if we were to reach this issue, we would find no gross error of law on the award's face that would warrant its vacatur. Petitioner's specific contention is that District of Columbia law requires that officers and directors have a duty to disclose only "material information" and that the information contained in the McLeary Memo was not material to the AKA directorate. Petitioner maintains that directorate was voting on the implementation of the pension plan, and a "discussion of cost was not significant to the [sorority] members." Accordingly, petitioner maintains that her conduct in failing to disclose the McLeary Memo cannot support a breach of fiduciary duty under District of Columbia law, "thereby negating the basis for the arbitrator's award."

¶ 35 Initially, we note that a choice-of-law determination is required only when a difference in law will make a difference in the outcome. *Townsend v. Sears, Roebuck & Co.*, 227 Ill. 2d 147, 155 (2007). It is only after such a conflict between laws is established that the analysis turns to which law should be applied. *Bridgeview Health Care Ctr., Ltd. v. State Farm Fire & Casualty Co.*, 2014 IL 116389, ¶ 14, citing *Townsend*, 227 Ill. 2d at 157. In this case, petitioner argues that her conduct in failing to disclose the McLeary Memo would not meet the District of Columbia's "materiality" requirement because the information in that memo was not material to the AKA directorate when they voted on the pension plan. Petitioner, however, acknowledges that Illinois also has a "materiality" requirement, and that the arbitrator found the information she failed to disclose to be material. In these circumstances, we find no conflict between the laws of Illinois and the law of the District of Columbia, so as to require a choice-of-law analysis.

¶ 36 The face of the award confirms that the arbitrator concluded that petitioner owed a duty of loyalty, including a duty to "disclose all material facts about the Pension Plan to the Directorate and to Sorority officers." The arbitrator then found that petitioner "failed to disclose *material* information to the Directorate before the meetings on July 14 and 15, 2007." (Emphasis added). Petitioner did not reveal "the important information she learned from [the consultants] in advance of those meetings," specifically, that "the only option for her Pension Plan would require substantial payments by the Sorority, including payment of compensation (mislabeled as income from self-employment), income taxes, administrative fees, and life insurance premiums, in addition to the contributions to the Plan." Accordingly, since the arbitrator ruled on the materiality of the information that petitioner failed to disclose, we cannot conclude that the arbitrator would not have acted differently if she were to have applied District of Columbia law. *Herricane*, 354 Ill. App. 3d at 156 (to find a gross error of law on the face of an arbitration

award, "a reviewing court must be able to conclude from the award's face, that the arbitrator was so mistaken as to the law that, if apprised of the mistake, he would have acted differently."); see also *Halperin v. Halperin*, 750 F.3d 668, 672 (7th Cir. 2014) ("A fiduciary has a duty to inform his beneficiary of facts material to the fiduciary relationship[.] *** A failure to comply with the duty to inform that prevents the beneficiary from learning something the fiduciary is duty-bound to communicate to him (such as that the fiduciary is stealing from him!) is concealment, and is fraudulent because it is taking advantage of the beneficiary's dependence on the fiduciary.")

¶ 37 We also reject petitioner's alternative contention that the arbitrator "misapplied the law" in finding that she breached her fiduciary duty to AKA. In so arguing, petitioner relies on authority stating that a court may vacate an arbitration award where it is shown that the arbitrator deliberately disregarded what they knew to be the law. *TruServ Corp. v. Ernst & Young, LLP*, 376 Ill. App. 3d 218, 225 (2007) ("an arbitration award may be subject to vacatur for misapplication of the law where it is shown that the arbitrators deliberately disregarded what they knew to be the law."). Petitioner asserts that the information in the McLeary Memo was not material, and accordingly, she was not required to disclose it, because it was "an estimate and financial projection that evinced the consultant's opinion regarding the potential costs of the Pension Plan." Petitioner cites one case from Illinois and two from the District of Columbia for the propositions that a fiduciary has no duty to disclose "opinions," as opposed to "facts," and that "financial projections or estimates" are considered to be "opinions." Accordingly, she contends that the arbitrator "deliberately disregarded the law regarding the general non-duty to disclose financial projections or estimates."

¶ 38 As the appellate court has previously noted, the "manifest disregard of the law" standard provides an "almost nonexistent standard of review" that is "virtually impossible to meet." *Tim Huey Corp. v. Global Boiler & Mechanical, Inc.*, 272 Ill. App. 3d 100, 106 (1995).

> "[T]o vacate an arbitration award for manifest disregard of the law, there must be something beyond and different from mere error in law or failure on the part of the arbitrators to understand or apply the law; it must be demonstrated that the majority of arbitrators deliberately disregarded what they knew to be the law in order to reach the result they did." (Citations omitted) *Id.* at 107.

¶ 39 It is "almost impossible to ascertain what an arbitrator knew to be the law, because the arbitrator is not required to give reasons, let alone legal analysis, for his decisions." *Id.* Moreover, even if it could be shown what the arbitrator knew, "it would be equally difficult to show that he intentionally disregarded it, as opposed to determining that the principle did not apply in the case before him." *Id.*

¶ 40 Even assuming that petitioner's characterization of the law is accurate, and that the arbitrator failed to conclude that the McLeary Memo was a "financial projection" that was not required to be disclosed, there is no evidence that the arbitrator's failure to so conclude was based on a deliberate disregard of the law. We note that petitioner does not claim to have raised this issue before the arbitrator. In such circumstances, we cannot ascertain whether the arbitrator knew the law, and if so, whether she determined that it did not apply to this case. Moreover, the arbitrator's finding that petitioner breached her fiduciary duties to AKA was not based solely on the McLeary Memo. The arbitrator also concluded that petitioner breached her fiduciary duty by "with[o]ld[ing] not only preliminary information about the cost of the Plan, but also the actual Plan costs as they became known to her."

¶ 41 Keeping in mind the deference afforded to the arbitrator, the arbitration award demonstrates that the arbitrator considered the arguments and evidence presented by the parties, before concluding that petitioner breached her fiduciary duties to AKA. In particular, the arbitrator found that prior to the directorate's vote, petitioner failed to disclose information she had learned about the potential cost of the pension plan to AKA, and after the vote, petitioner engaged in a scheme to prevent other members of the sorority from learning about the cost of the retirement plan and the payments made for petitioner's benefit. In these circumstances, we find no gross error of law, and no showing that the arbitrator deliberately disregarded the law.

¶ 42 Petitioner next contends that the arbitration award should be vacated because the arbitrator "exceeded her powers" in three different ways: (1) by "interfering" in the "management and affairs" of the sorority; (2) by awarding AKA attorney fees as punitive damages; and (3) by denying petitioner's request for reimbursement of her own attorney fees.

¶ 43 When considering such claims, we start with "the presumption that the arbitrator did not exceed his [or her] authority." *Galasso*, 364 Ill. App. 3d at 130. "The arbitrators' authority is limited by the unambiguous contract language," and an arbitrator exceeds his or her authority by ignoring the plain language of the contract. *Shearson Lehman Brothers, Inc. v. Hedrich,* 266 Ill. App. 3d 24, 29 (1994). Before vacating an arbitration award, a court must find that "all fair and reasonable minds would agree that the construction of the contract made by the arbitrator was not possible under a fair reading of the contract." (Internal quotation marks omitted.) *Rauh v. Rockford Products Corp.*, 143 Ill. 2d 377, 392 (1991).

¶ 44 Petitioner asserts that the arbitrator exceeded her authority by "disregard[ing] AKA's internal governance laws" and "interfering" in the "management and affairs" of the sorority. Specifically, petitioner maintains that the arbitrator was "barred from interfering in AKA's

policy, specifically, the authorization and implementation of the Pension Plan" because that pension plan was "squarely within the purview of the 'management and internal affairs' of the Sorority." Petitioner points out that AKA's Constitution and Bylaws "allow remuneration" for the role petitioner held, and the directorate voted for the plan. Accordingly, petitioner contends that the arbitrator was not authorized to rule on issues regarding "AKA's governance and the Pension Plan."

¶ 45 We conclude, however, that petitioner forfeited consideration of this issue, by consenting to the authority of the arbitrator to consider this issue. *Ruddick*, 393 Ill. App. 3d at 49 (citing *People v. Bush*, 214 Ill. 2d 318, 332 (2005) (when a party "procures, invites or acquiesces" to a ruling, even if the ruling is improper, he cannot contest the ruling on appeal)).

¶ 46 In petitioner's motion to dismiss AKA's complaint in the circuit court, petitioner requested that the complaint be dismissed "as the claimed dispute between the parties is subject to Illinois statutory arbitration law and the valid and enforceable due process and arbitration policies of the organization." Thereafter, petitioner participated in the arbitration, without challenging the arbitrator's authority to consider the matter. It was only after the arbitrator issued the award adverse to petitioner, that she attempted to raise a challenge to the arbitrator's authority to hear the matter. Accordingly, petitioner cannot now contest the arbitrator's authority to consider this issue. *Id.*

¶ 47 Petitioner's last two claims, regarding attorney fees that were granted to AKA, and denied to petitioner, are also forfeited. Petitioner argues first that the arbitrator exceeded her authority by awarding punitive damages to AKA. She contends that the parties' arbitration agreement is silent on whether punitive damages could be awarded, and that an arbitrator may not award punitive damages unless he or she is specifically authorized to do by the arbitration

agreement. AKA responds that petitioner waived this argument, because she did not raise it prior to her appellant's brief in this court.

¶ 48 We agree with AKA that petitioner waived this issue. To preserve for judicial review the issue of whether a claim was subject to arbitration, a party must object "to the arbitration proceedings in a timely manner." *Salsitz*, 198 Ill. 2d at 17; *Anderson*, 383 Ill. App. 3d at 479. An objection should occur "at the earliest possible moment" to save the time and expense of a possibly unwarranted arbitration. *Tri-City Jewish Center v. Blass Riddick Chilcote*, 159 Ill. App. 3d 436, 439 (1987). A party must object to the arbitrability of a claim "no later than the filing of the answer." *Anderson*, 383 Ill. App. 3d at 479. If a party objects in a timely manner, the issue will be preserved for judicial review, even if the party then participates in the subsequent arbitration proceeding. *Salsitz*, 198 Ill. 2d at 18.

¶ 49 After petitioner moved to dismiss AKA's complaint in the circuit court for failure to comply with the arbitration agreement, AKA submitted a demand for arbitration, in which it asserted various claims against petitioner, including a request for the arbitrator to award punitive damages. At no time did petitioner object to the arbitrator's authority to impose punitive damages, and in fact, when submitting her post-hearing reply brief, petitioner communicated to the arbitrator that counsel for AKA and petitioner "agreed to and would like to submit attorney fees/billings only in the event that you award attorney fees to a specific party at the conclusion of the case."

¶ 50 Although petitioner claims that she raised this issue in her post-hearing reply brief to the arbitrator, a review of that document proves otherwise. Petitioner's post-hearing reply brief argued that the arbitrator should not have awarded punitive damages because petitioner's conduct was not "reprehensibl[e]" and because there was "no actual harm" to AKA when the

sorority had voted in favor of the fund. Petitioner did not, however, challenge the arbitrator's authority to award such relief at any time, either before the arbitrator or in the circuit court. By failing to object to the arbitrator's consideration of attorney fees as punitive damages, petitioner is bound by that award. See *Craig v. United Automobile Insurance Co.*, 377 Ill. App. 3d 1, 3 (2007) (quoting *Tri-City Jewish Center*, 159 Ill. App. 3d at 439) (" 'Through the operation of waiver, a party may become bound by an award which otherwise would be open to attack.' ")

¶ 51 Petitioner also forfeited consideration of her claim that the arbitrator "exceeded her authority" by denying her counterclaim for reimbursement of attorney fees. Petitioner points to an "Agreement for Establishment of Legal Fund Escrow" entered into in 2009 between AKA and certain members of the AKA directorate, signed by petitioner and the executive director. Petitioner contends that the agreement indicates that her attorney fees must be reimbursed.

¶ 52 We note that petitioner failed to raise this argument in her complaint to vacate the arbitration award before the circuit court. It is well settled that issues not raised in the trial court are deemed waived and may not be raised for the first time on appeal. *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536 (1996).

¶ 53 Moreover, even if we were to review petitioner's claim, we would find no basis on which to conclude that the arbitrator exceeded her authority. We note that the agreement to establish an escrow fund indicates that it was based on a vote of the directorate to create a legal fund escrow for "any potential liability against the current Directorate and other Defendants *named in the Joy Daley lawsuit*" (emphasis added), and for liability for litigation involving certain other named individuals, "which challenges the governance and leadership of" AKA. Petitioner has not explained what "the Joy Daley lawsuit" is, and our review of the record discloses no other information.

¶ 54 As stated above, an arbitrator's authority is limited by "unambiguous contract language," and an arbitrator exceeds his or her authority by ignoring plain language of a contract. *Shearson Lehman Brothers, Inc.*, 266 Ill. App. 3d at 29. To vacate an arbitration award, a court must find that "all fair and reasonable minds would agree that the construction of the contract made by the arbitrator was not possible under a fair reading of the contract." (Internal quotation marks omitted.) *Shearson Lehman Brothers, Inc.*, 266 Ill. App. 3d at 29.

¶ 55 In light of the language of the escrow fund agreement, we do not find the contract language to unambiguously indicate that petitioner's attorney fees must be reimbursed, as would be required to permit the award's vacatur. *Shearson Lehman Brothers, Inc.*, 266 Ill. App. 3d at 29. It was within the arbitrator's authority to interpret the agreement to establish a legal escrow fund, and to determine that it did not apply to petitioner in these circumstances. Accordingly, the arbitrator denied petitioner's counterclaim for reimbursement of her attorney fees based on the District of Columbia statute "that addresses indemnification of officers of nonprofit corporations" and requires "good faith and reasonable belief that conduct was in the best interest of the corporation." See D.C. Code Ann. § 29-406.51 (West 2016). In these circumstances, the arbitrator did not exceed her authority by denying petitioner's request for attorney fees.

¶ 56 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 57 Affirmed.