

withdrawing the stipulation to liability and Izazaga would now contest liability.

After the arbitration hearing on the case, the arbitrator found in favor of Casaclang and awarded her \$7,820. Subsequently, Izazaga filed a request for a trial de novo.

Casaclang moved to strike Izazaga's request arguing that he did not participate in the arbitration proceedings in good faith because he did not respond to any of her discovery requests and he did not attend the arbitration hearing. Further, Casaclang argued that Izazaga failed to participate in good faith because he stipulated to liability in his arbitration brief, but changed his position during the arbitration hearing and contested liability without appearing in person or by telephone at the hearing, effectively preventing Casaclang from questioning him about liability.

Izazaga opposed Casaclang's motion arguing that his failure to respond to Casaclang's discovery requests and his absence at the hearing were insufficient grounds to strike his request for a trial de novo. In his opposition, Izazaga did not address the impact of his changed position regarding liability during the arbitration hearing.

The district court granted Casaclang's motion. It concluded that Izazaga's conduct impeded the arbitration proceedings and compromised Casaclang's ability to form an arbitration strategy such that he failed to participate in good faith. Accordingly, it entered judgment upon the arbitrator's award.¹

¹In his appellate briefing, Izazaga does not make any argument that the district court's order entering judgment upon the arbitrator's award was in error. Accordingly, we will not review this order on appeal. *See Powell*

Izazaga appeals from the district court's order granting Casacang's motion to strike. He argues the district court abused its discretion by granting Casacang's motion because his conduct exceeded the threshold for good faith participation.

Under NAR 22(A), "[t]he failure of a party or attorney to either prosecute or defend a case in good faith during the arbitration proceedings shall constitute a waiver of the right to request a trial de novo." While the power to sanction a party is ordinarily reviewed for an abuse of discretion, "a somewhat heightened standard of review" is applied to sanctioning orders that terminate legal proceedings. *Chamberland v. Labarbera*, 110 Nev. 701, 704, 877 P.2d 523, 525 (1994) (quoting *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990)). All sanctioning orders under NAR 22(A) "must be accompanied by specific written findings of fact and conclusions of law by the district court describing what type of conduct rose to the level of failed good faith participation." *Id.* at 705, 877 P.2d at 525.

In *Chamberland*, the Nevada Supreme Court held that the defendant-appellant in a similar rear-end collision personal injury case did not "fail[] to participate in good faith during arbitration" when he did not conduct any discovery or attend the arbitration hearing. *Id.* There, the court reasoned that the defendant-appellant contended his decision not to participate in discovery or attend the hearing was "tactical" because he was not contesting liability and the damages and expenses alleged were "modest." *Id.* Accordingly, the court reversed the district court's order

v. Liberty Mut. Fire Ins. Co., 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) ("Issues not raised in an appellant's opening brief are deemed waived.").

granting the plaintiff-respondent's motion to strike the defendant-appellant's request for a trial de novo and concluded that imposing case-ending sanctions for his strategic decisions was an abuse of discretion. *Id.* at 705-06, 877 P.2d at 525.

Here, like the defendant-appellant in *Chamberland*, Izazaga did not attend the arbitration hearing and he had also stipulated to liability. However, unlike the defendant-appellant in *Chamberland*, Izazaga withdrew his stipulation to liability during the arbitration hearing without making himself available for questioning, compromising Casaclang's ability to respond to his new position.

Moreover, while the defendant-appellant in *Chamberland* did not participate in discovery, Izazaga *did* participate in discovery—he served written discovery on Casaclang, received responses from Casaclang, and deposed Casaclang. In contrast, Izazaga refused to respond to Casaclang's written discovery requests.

In *Casino Properties, Inc. v. Andrews*, the Nevada Supreme Court concluded that “good faith” in arbitration meant “meaningful participation.” 112 Nev. 132, 135, 911 P.2d 1181, 1182 (1996). There, it held that the defendants' failure to respond to the plaintiff's discovery requests until “ten days before the arbitration hearing . . . amounted to a lack of meaningful participation because it compromised [the plaintiff's] ability to depose the proper parties and form an adequate arbitration strategy.” *Id.* at 135, 911 P.2d at 1183.


Here, Izazaga never responded to Casaclang's written discovery requests at any point during the arbitration proceedings. Thus, Izazaga's conduct was more egregious and his participation less “meaningful” than the defendants' conduct and participation in *Casino Properties*.

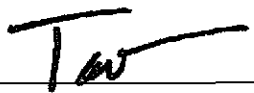
During the proceedings below, the district court found that Izazaga stipulated to liability three times in his late-filed arbitration brief and that he withdrew that stipulation during the arbitration hearing without personally attending that hearing. It concluded that Izazaga's conduct was more egregious than the conduct of the appellant-defendant in *Chamberland* because Izazaga contested liability at the arbitration hearing without attending that hearing, making himself available for questioning at that hearing, or responding to any of Casaclang's written discovery requests such that he impeded the arbitration proceedings and compromised Casaclang's "ability to form an adequate arbitration strategy." Thus, it concluded that Izazaga failed "to participate in the arbitration proceedings in good faith" and "therefore [Izazaga] is not entitled to a trial de novo."


The evidence supports the district court's "specific written findings of fact and conclusions of law" describing Izazaga's lack of good faith participation. *Chamberland*, 110 Nev. at 705, 787 P.2d at 525. Thus, we conclude the district court did not abuse its discretion by granting Casaclang's motion to strike Izazaga's request for a trial de novo because Izazaga did not participate in the arbitration proceedings in "good faith." *See Casino Props.*, 112 Nev. at 135-36, 911 P.2d at 1182-83 (concluding, in affirming a district court order striking a request for a trial de novo where a certain disclosure was made less than two weeks before the arbitration, that "[t]he late date of appellants' disclosure amounted to a lack of meaningful participation because it compromised respondents' ability to

depose the proper parties and form an adequate arbitration strategy”).²
Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Adriana Escobar, District Judge
Thomas J. Tanksley, Settlement Judge
EAD Law Group LLC
Atkinson Watkins & Hoffmann LLP
Eighth District Court Clerk

²Izazaga waived his remaining arguments—concerning the propriety of the district court considering his mid-hearing withdrawal of his stipulation to liability and the appropriateness of resolving discovery disputes via a motion to strike a request for a trial de novo—by not raising them in the district court proceedings below. Accordingly, we will not consider them for the first time on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.”).