

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVE LEIBOWITZ, AN INDIVIDUAL;
AND BARBARA ANN STRZELEC, AN
INDIVIDUAL,
Appellants,
vs.
SANDRA HUNT, AN INDIVIDUAL,
Respondent.

No. 70094

FILED

DEC 27 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Appellants Steve Leibowitz and Barbara Ann Strzelec appeal from a district court order granting a motion to confirm arbitration award. Eighth Judicial District Court, Clark County; William D. Kephart, Judge.

This action arises from a dispute regarding the beneficiary designation on a decedent's investment account. The parties herein submitted to private binding arbitration to resolve their claims. The arbitrator found in favor of respondent Sandra Hunt and awarded her the disputed 25 percent interest in the investment account as well as attorney fees and punitive damages.¹ The district court confirmed the judgment.

On appeal, Leibowitz and Strzelec argue that the arbitrator's award should be vacated because the arbitrator failed to notify the parties of a prior attorney-client relationship with opposing counsel, and manifestly disregarded the law by finding Leibowitz to be a "caregiver."² Appellants

¹We do not recount the facts except as necessary to our disposition.

²Leibowitz and Strzelec also argue that the arbitrator's award of attorney fees was not based on substantial evidence. However, the record shows that Hunt provided several documents supporting her request for attorney fees, and the arbitrator indicated he examined the *Brunzell* factors

also argue that the district court improperly entered the arbitration award by awarding \$45,000 in punitive damages against Strzelec and finding Strzelec jointly and severally liable for certain damages.

This court reviews a district court's confirmation of an arbitration award de novo. *Sylver v. Regents Bank, N.A.*, 129 Nev. 282, 286, 300 P.3d 718, 721 (2013). However, judicial review of an arbitration award is extremely limited, and is "nothing like the scope of an appellate court's review of a trial court's decision." *Health Plan of Nev., Inc. v. Rainbow Med., LLC*, 120 Nev. 689, 695, 100 P.3d 172, 176 (2004). The party seeking to vacate an arbitration award must prove "by clear and convincing evidence the statutory or common-law grounds relied upon for challenging the award." *Id.*

We first address whether the arbitrator was evidentially partial. NRS 38.241(1)(b) requires a court to vacate an arbitration award if the arbitrator demonstrated evident partiality. In order to show evident partiality, the party need not show actual bias; instead they must show only that the arbitrator failed to disclose a relationship that demonstrates a reasonable impression of partiality. *Thomas v. City of N. Las Vegas*, 122 Nev. 82, 98, 127 P.3d 1057, 1068 (2006).

On this point, the record is unclear as to whether the arbitrator specifically disclosed that he represented Hunt's counsel in a recently concluded matter, although the record shows the arbitrator did disclose his long-standing professional relationships with their respective attorneys, and all parties agreed to move forward. Nonetheless, the parties failed to provide a transcript of the arbitration proceedings on appeal, the only

in making that determination. *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

support for the parties' positions regarding whether the arbitrator disclosed his recent representation of Hunt's counsel comes from their competing affidavits as to what the arbitrator did or did not disclose. And under these circumstances, appellants cannot clearly and convincingly show that the arbitrator failed to disclose this relationship. *See Health Plan of Nev. Inc.*, 120 Nev. at 695, 100 P.3d at 178 (2004) (stating this court applies a clear and convincing evidence standard to determine whether an award should be vacated).

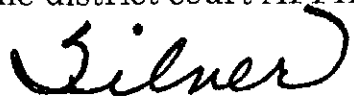
We next address whether the arbitrator manifestly disregarded the law by finding Leibowitz to be a caregiver. An award may be vacated at common law if it is arbitrary or capricious, or if the arbitrator manifestly disregards the law. *WPH Architecture, Inc. v. Vegas VP, LP*, 131 Nev. ___, ___, 360 P.3d 1145, 1147 (2015). However, manifest disregard only occurs when an arbitrator "recognizes that the law absolutely requires a given result and nonetheless refuses to apply the law correctly." *Bohlmann v. Printz*, 120 Nev. 543, 547, 96 P.3d 1155, 1158 (2004), *overruled on other grounds by Bass-Davis v. Davis*, 122 Nev. 442, 452 n.32, 134 P.3d 103, 109 n.32 (2006).


Here, the record does not show the arbitrator manifestly disregarded the law by finding Leibowitz to be a caregiver as defined under Nevada law. NRS 155.0935 defines a caregiver as "a person who provides health or social services to a dependent adult for remuneration other than a donative transfer pursuant to this chapter or the reimbursement of expenses." Leibowitz traveled from Florida to Las Vegas to care for Toni, providing her with health services. More specifically, Toni executed a power of attorney allowing Leibowitz to make her healthcare decisions. Thus, Leibowitz and Strzelec fail to prove by clear and convincing evidence that

the arbitrator disregarded the law by concluding Leibowitz was a caregiver under these facts.

Finally, Leibowitz and Strzelec assert that the district court erred by finding them jointly and severally liable and by awarding punitive damages. Leibowitz and Strzelec contend that punitive damages are improper where there are no underlying damages awarded against Strzelec. This argument is belied by the record, which shows the arbitrator awarded Hunt damages against both Leibowitz and Strzelec. In addition, the district court did not err by finding Leibowitz and Strzelec jointly and severally liable for the damages because the arbitrator found that Leibowitz and Strzelec were joint tortfeasors on Hunt's claims of fraud, conspiracy, conversion, and intentional interference with economic advantage, and thus, each is responsible for the entire amount of the judgment. *Univ. of Nev. v. Tarkanian*, 110 Nev. 581, 593, 879 P.2d 1180, 1187-88 (1994) (“[W]here two or more defendants combine to cause a single, indivisible injury, courts have generally held each defendant responsible for the entire amount of the judgment.”); *holding modified on other grounds by Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 114 Nev. 823, 963 P.2d 465 (1998). Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. William D. Kephart, District Judge
Michael H. Singer, Settlement Judge
Law Office of S. Don Bennion
Marquis Aurbach Coffing
Naomi R. Arin
Eighth District Court Clerk