

TJ Kik

IN THE SUPERIOR COURT OF NEW JERSEY - APPELLATE DIVISION
APPELLATE DIVISION DOCKET NUMBER: A-002768-24 TEAM 01

ALEJANDRO PEREZ AND CATHY PEREZ, husband and wife,

Plaintiffs / Appellants

vs

GABRIEL H. HALPERN, ESQ, an attorney at law of the State of New Jersey;
PILNLIS HALPERN, LLP, attorneys at law of the State of New Jersey;
DANIEL N. EPSTEIN, ESQ., an attorney at law of the State of New Jersey;
EPSTEIN OSTROFF, LLC, attorneys at law of the State of New Jersey; and DOES
1 through 10.

Defendants / Respondents

BRIEF OF APPELLANTS

RECEIVED
APPELLATE DIVISION

KK JUN 25 2025

SUPERIOR COURT
OF NEW JERSEY

Appeal from the judgment of Hon. Kevin P. Kelley, J.S.C.,
Entered on the 25th day of April, 2025
In the Superior Court of Bergen County
At Case No. BER-L-6186-21

Alejandro Perez and Cathy Perez
236 Mable Ann Avenue
Franklin Lakes, New Jersey 07417
Tel: (201) 906 5167
Email: federalstatecasesperez@gmail.com

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1,2, and 3.

PROCEDURAL HISTORY 3, and 4.

STATEMENT OF FACTS 4,5,6,7,8,9,10,11 and 12.

STANDARD OF REVIEW 12 and 13.

LEGAL ARGUMENT 3,14,14,15,16,17,18,19,20,21,22,23,24,25 and 26.

I. THE ARBITRATION AWARD MUST BE VACATED BECAUSE THE ARBITRATOR EXCEEDED HIS AUTHORITY BY RELYING ON AN UNRELATED COURT RULING TO DISMISS PLAINTIFFS' CLAIMS. Pages 13-16.

II. THE ARBITRATOR'S REFUSAL TO HEAR MATERIAL EVIDENCE VIOLATED PLAINTIFFS' RIGHT TO A FAIR HEARING AND WARRANTS VACATUR. Pages 16-19.

III. THE ARBITRATION AWARD WAS PROCURED BY UNJUST MEANS AND IGNORED APPLICABLE LAW. Pages 19-21.

IV. PLAINTIFFS INCURRED SIGNIFICANT, UNNECESSARY FINANCIAL HARM DUE TO MR. EPSTEIN'S NEGLIGENCE AND THE FLAWED ARBITRATION PROCESS. Pages 21-24.

V. THE LOWER COURT ERRED IN CONFIRMING THE ARBITRATION
AWARD BY UNDERESTIMATING THE SEVERITY OF THE
ARBITRATOR'S ERRORS AND MISAPPROPRIATING DEFERENCE
Pages 24-26.

CONCLUSION

26 and 27.

TABLE OF CITATIONS

Cases	Pages
<i>AT&T Mobility LLC v. Concepcion</i> , 563 U.S. 333, 352 (2011)	. . . . 13.
<i>AT&T Technologies, Inc. v. Communications Workers of America</i> , 475 U.S. 643, 651 (1986)	. . . . 14.
<i>AT&T Technologies</i> , 475 U.S. at 650-51.	. . . . 15.
<i>Consolidated Rail Corp. v. United Transp. Union</i> , 210 F.3d 258, 262 (3d Cir. 2000)	. . . . 18.
<i>Exxon Shipping Co. v. Exxon Seamen’s Union</i> , 801 F. Supp. 1379 (D.N.J. 1992)	. . . . 2.
<i>Minkowitz v. Israeli</i> , 433 N.J. Super. 111, 136 (App. Div. 2013)	. . . . 13.
<i>Tretina Printing, Inc. v. Fitzpatrick & Assocs., Inc.</i> , 135 N.J. 349, 358 (1994)	. . . . 13.
<i>Vitarroz Corp. v. G. Willi Food International Ltd.</i> , 637 F. Supp. 2d 238 (D.N.J. 2009)	. . . . 1.
Constitutional Provisions / Statutes	
<i>N.J.S.A. 2A:23B-1 et seq</i>	. . . . 12.
<i>N.J.S.A. 2A:23B-23(a)</i>	. . . . 4, and 9.
<i>N.J.S.A. 2A:23B-23(a)(1)</i>;	. . . . 12,13, and 17.

<i>N.J.S.A. 2A:23B-23(a)(1), (3).</i>	. . . . .19.
<i>N.J.S.A. 2A:23B-23(a)(3).</i>	. . . . .1, and 12.
<i>N.J.S.A. 2A:23B-23(a) and -24(a)(3), (4).</i>	. . . . .2.
<i>N.J.S.A. 2A:23B-23(a)(4).</i>	. . . . .11 and 12.
<i>9 U.S.C. § 1 et seq.</i>	. . . . .12.
<i>9 U.S.C. § 10(a).</i>	. . . . .4 and 9.
<i>9 U.S.C. § 10(a)(1)</i>	. . . . .12.
<i>9 U.S.C. § 10(a)(1),(4).</i>	. . . . .19.
<i>9 U.S.C. § 10(a)(3).</i>	. . . . .1,12,16, and 17.
<i>9 U.S.C. § 10(a)(4).</i>	. . . . .11,12, and 13.
<i>Federal Arbitration Act (FAA).</i>	. . . . .4, 9,10, 12,16, and 19.

TABLE OF JUDGMENT(S), ORDER(S), RULING(S), AND DECISION(S)
ON APPEAL

<u>DOCUMENT NAME</u>	<u>DATE</u>	<u>APPENDIX PAGE</u>
Order	April 25, 2025,	1a.

TABLE OF CONTENT
APPENDIX A

ORDER	APRIL 25, 2025.	1a.
APPEAL NOTICE	MAY 6, 2025.	3a.
INFORMATION STATEMENT	MAY 6, 2025.	6a.
AMERICAN ARBITRATION AWARD	JANUARY 28, 2025	10a.
RETAINER EPSTEIN OSTROVE		11a.
LEGAL MALPRACTICE EXPERT REPORT		14a.
DAMAGES		27a.
DAMAGES RESTORING MATTER		33a.
AUGUST 3, 2017, CONSENT ORDER UNDERLYING MATTER		34a.
ORDER MEDIATION		36a.
ORDER DATED SEPTEMBER 2020 DENIED REINSTATEMENT		37a.
ORDER AND OPINION DENIED EPSTEIN TO SEAL RECORD AND DENIED STAY		38a.
ORDER DATED APRIL 3, 2025 , ORDER GRANTED PLAINTIFFS MOTION RECONSIDERATION RESTORING MATTER BACK TO TRIAL LIST.		47a.

PRELIMINARY STATEMENT

This appeal arises from the trial court’s order dated April 25, 2025, denying Appellants’ motion to vacate an arbitration award and granting Respondent’s cross-motion to confirm that award. The underlying arbitration concerned serious claims of legal malpractice brought by Appellants Alejandro and Cathy Perez against Respondents Daniel N. Epstein, Esq. and the law firm of Epstein Ostroff, LLC. Rather than evaluating the merits of Appellants’ malpractice claims, the arbitrator dismissed the matter in its entirety based on judicial findings made in an unrelated case involving different parties and different legal counsel—specifically, Judge Ostuni’s ruling in the Halpern matter.

The arbitrator’s reliance on an extraneous and legally irrelevant decision constituted a fundamental departure from the scope of the arbitration and deprived the Appellants of a fair and meaningful adjudication of their claims. Courts have repeatedly held that a refusal to consider core evidence justifies vacatur. *Vitarroz Corp. v. G. Willi Food International Ltd.*, 637 F. Supp. 2d 238 (D.N.J. 2009). This is not merely dissatisfaction with the outcome. It reflects a fundamental denial of a fair process, justifying vacatur under *N.J.S.A. 2A:23B-23(a)(3)* and 9 U.S.C. § 10(a)(3). Courts have further emphasized that “[a]n arbitrator’s award will

not be upheld where it is clear that the award was made without notice and an opportunity to be heard.” *Exxon Shipping Co. v. Exxon Seamen’s Union*, 801 F. Supp. 1379 (D.N.J. 1992).

Appellants timely moved to vacate the arbitration award, citing that the arbitrator exceeded their authority and issued an award that was arbitrary, unjust, and unsupported by any independent evaluation of the actual facts or applicable law. Nevertheless, the trial court summarily denied the motion and granted Respondent’s cross-motion to confirm the flawed award.

The Epstein Ostroff Defendants rely heavily on the “presumption of validity” afforded to arbitration awards. However, that presumption is rebuttable, particularly where—as here—substantial procedural irregularities and clear violations of the statutory scheme are demonstrated. Appellants have more than met their burden under *N.J.S.A. 2A:23B-23(a)* and *-24(a)(3), (4)* to show that the award was not the product of a fair and impartial process.

This appeal challenges the trial court’s decision and seeks reversal of the order confirming the arbitration award. Appellants submit that the arbitrator exceeded the bounds of their power under governing arbitration law and that the trial court’s refusal to intervene under these circumstances constitutes reversible legal error. The

issues presented are critical not only to the integrity of this proceeding but to the proper application of arbitration law and the protection of litigants' due process rights in private dispute resolution.

PROCEDURAL HISTORY

This case arises out of a legal malpractice dispute between Plaintiffs Cathy Perez and Alejandro Perez and their former attorney, Defendant Daniel N. Epstein, Esq., and his law firm, Epstein Ostrove, LLC. In 2018, Defendant Epstein was retained to attempt a settlement and, if unsuccessful, to restore Plaintiffs' underlying property damage lawsuit to the trial calendar. Despite this obligation, Epstein failed to take appropriate action, resulting in the dismissal of the underlying lawsuit.

In 2020, after Mr. Epstein's inaction, Mrs. Perez filed a pro se motion to reinstate the case, which was denied by the Honorable Judge Wilson. That denial was later acknowledged as legally erroneous by Judge Ostuni in a separate action.

In 2021, the Plaintiffs initiated a legal malpractice action against both Epstein and their former attorney Gabriel Halpern. Defendant Epstein moved to compel arbitration based on a clause in his Retainer Agreement. Plaintiffs objected on grounds of unconscionability, but the trial court granted the motion, and the case proceeded to arbitration before the American Arbitration Association (AAA).

Despite fully participating in the arbitration process—including paying

arbitrator fees, expert costs, and legal fees—the arbitration was summarily dismissed on January 28, 2025, by the Honorable Ross R. Anzaldi, J.S.C. (Ret.). *See:* (Appendix A, page 10a.) The arbitrator dismissed the claims by improperly relying on a ruling in Plaintiffs’ separate case against Mr. Halpern, despite the distinct claims and conduct involved.

On February 28, 2025, Plaintiffs filed a Motion to Vacate the Arbitration Award in the Superior Court of New Jersey, Middlesex County, arguing that the award was entered in violation of both New Jersey’s Arbitration Act, N.J.S.A. 2A:23B-23(a), and the Federal Arbitration Act, 9 U.S.C. § 10(a). Specifically, Plaintiffs asserted that the arbitrator exceeded his authority, relied on irrelevant and prejudicial evidence, and denied Plaintiffs a fair hearing on the merits, including the promised appellate review.

On January 28, 2025, the Superior Court denied Plaintiffs’ motion and confirmed the arbitration award, holding that the arbitrator’s decision was entitled to substantial deference and that Plaintiffs failed to meet the high burden for vacatur. Plaintiffs now timely appeal the trial court’s confirmation of the arbitration award.

STATEMENT OF FACTS

This case arises from legal malpractice committed by Defendant Daniel N. Epstein, Esq., and his law firm, Epstein Ostrove, LLC, which resulted in years of

unnecessary litigation, substantial legal expenses, and undue hardship for Plaintiffs Cathy Perez and Alejandro Perez. The legal malpractice stemmed from Mr. Epstein's failure to timely restore Plaintiffs' underlying lawsuit to the trial calendar, despite being explicitly retained for that purpose. After Plaintiffs were forced to arbitrate their claims against Mr. Epstein, the arbitration process itself became fundamentally flawed, culminating in a dismissal that was both legally erroneous and procedurally improper. Plaintiffs now move to vacate the arbitration award, as it was entered in violation of New Jersey law and deprived them of their right to a fair and full hearing on the merits of their claims.

i. The Underlying Legal Malpractice

Plaintiffs originally retained Gabriel Halpern, Esq. to pursue a lawsuit regarding property damage to their home and content due to a flood. However, in 2018, Mr. Halpern transferred the case to Mr. Epstein, who expressly agreed, under his Retainer Agreement, to attempt settlement and, if no settlement was reached, to restore the case to the trial calendar. Despite these obligations, Mr. Epstein failed to take any meaningful action, (he did neither). Two years passed with no settlement and no effort whatsoever by Mr. Epstein to reinstate the case, leaving Plaintiffs' claims in legal limbo. *See Retainer Agreement* (Appendix A, page 11a.-13a).

Under the terms of the Retainer Agreement, Mr. Epstein promised to preserve Plaintiffs' legal rights (see Paragraph 4 of the Agreement), yet he failed to do so. By 2020, Plaintiffs' case remained dormant, and Mrs. Perez herself was forced to file a pro se motion seeking reinstatement of the case. On September 14, 2020, Judge Wilson denied reinstatement, ruling that it was too late to restore the case. This decision, later found to be legally incorrect, effectively extinguished Plaintiffs' ability to recover damages for their original claim and resulted in significant legal fees and costs.

In 2021, Plaintiffs retained new counsel (The law offices of Batya Wernick) to file a legal malpractice lawsuit against both Mr. Epstein and Mr. Halpern. However, Mr. Epstein moved to dismiss the claim against him, arguing that the case must be compelled to *arbitration under the arbitration clause* in his Retainer Agreement (Paragraph 8). Plaintiffs opposed this motion, asserting that the arbitration clause was unethical and unenforceable. Nevertheless, the Superior Court ruled in favor of Mr. Epstein, forcing Plaintiffs to proceed with arbitration before the American Arbitration Association (AAA). *See:* (Appendix A, page 11a.-13a).

ii. The Arbitration Proceedings

Once in arbitration, Plaintiffs fully complied with all procedural requirements, including paying substantial fees for the arbitrator's services, depositions,

transcripts, expert fees, legal malpractice expert's fees, and even a full appellate review before a panel of arbitrators. Plaintiffs reasonably expected that their claims would receive a thorough, impartial review on the merits. However, their arbitration was summarily dismissed on January 28, 2025, by The Honorable Ross R. Anzaldi, J.S.C. (Ret.), without proper consideration of the facts or legal arguments presented.

The dismissal was not based on the merits of Plaintiffs' claims against Mr. Epstein but was instead improperly influenced by a ruling in a *separate* case against Mr. Halpern. Specifically, Judge Nicholas Ostuni, J.S.C., had been presiding over Plaintiffs' legal malpractice case against Mr. Halpern and **ultimately reinstated the underlying lawsuit, acknowledging that the prior ruling by Judge Wilson was erroneous**. However, rather than distinguishing between the separate claims against Mr. Halpern and Mr. Epstein, Arbitrator Anzaldi relied on Judge Ostuni's ruling to dismiss Plaintiffs' arbitration against Mr. Epstein, effectively absolving Mr. Epstein of any responsibility without a full and fair hearing. *See:* (Appendix A, page 10a.).

This dismissal was manifestly unjust because Plaintiffs' claims against Mr. Epstein were entirely distinct from those against Mr. Halpern. The core allegation against Mr. Epstein was his negligent failure to restore the case to the trial calendar in a timely manner, *which resulted in years of additional litigation and*

unnecessary legal expenses. A significant financial hardship. Even though Judge Ostuni later reinstated the case, **this did not erase the harm** already inflicted by Mr. Epstein's negligence, nor did it eliminate the substantial fees and costs Plaintiffs incurred in arbitrating a claim that should have been litigated in court.

iii. The Financial Harm Suffered by Plaintiffs

As a direct result of Mr. Epstein's malpractice and the subsequent arbitration, Plaintiffs were forced to expend tens of thousands of dollars in legal fees and costs.

The following is a summary of the expenses incurred:

- Legal Malpractice Expert – Anthony Ambrosio, Esq.: \$2,500.00
- Expert Metro claim adjustors \$7500.00
- Deposition Transcripts (Multiple Witnesses): \$3,328.50
- Appearance Fees for Expert Witness (Mr. Wickstrom, Esq.):
\$1,725.00
- Court Filing Fees: \$250.00
- Service Fees (Subpoenas and Complaint Service): \$433.00
- AAA Arbitration Fees: Approximately \$7,000.00
- Attorney's Fees for Arbitration: \$56,976.00
- **Total Legal Fees and Costs: \$75,212.50**

These costs were entirely avoidable but for Mr. Epstein's negligence and his

insistence on forcing the matter into arbitration. Had Mr. Epstein acted diligently in restoring the case in 2018, Plaintiffs would have never needed to file a pro se motion, initiate a legal malpractice lawsuit, or endure the extensive arbitration process that followed. *See Expert Report:* (Appendix A, pages 14a. 28a) (14a). also *See:* (33a.).

iv. Grounds for Vacating the Arbitration Award

The arbitration award must be vacated under N.J.S.A. 2A:23B-23(a) and the Federal Arbitration Act (FAA), 9 U.S.C. § 10(a), both of which provide relief where: the arbitrator exceeded his authority by improperly relying on a separate, unrelated court ruling to dismiss Plaintiffs' claims, the arbitrator refused to hear material evidence, including expert testimony regarding Mr. Epstein's negligence, in violation of AAA procedural rules, the arbitration process was fundamentally unfair, as Plaintiffs paid for a full appeal before a panel of arbitrators, which was never conducted.

Given these egregious procedural and substantive errors, the arbitration award should have been vacated, and the Court should have either remanded the case for a new arbitration hearing before a different arbitrator or restore Plaintiffs' claims to the Superior Court, where they should have been litigated from the outset.

The arbitration process in this case was tainted by legal error, procedural unfairness, and a failure to properly consider the merits of Plaintiffs' claims.

Mr. Epstein's negligence caused significant harm, and the arbitration award unjustly shielded him from liability. Plaintiffs have already suffered years of delay and *unnecessary financial hardship due to Mr. Epstein's misconduct*. They should not be further denied justice due to an arbitrator's erroneous dismissal based on an unrelated legal ruling. Accordingly, for the reasons set forth herein, Plaintiffs respectfully request that this Court vacate the arbitration award and restore their claims for a full and fair hearing on the merits.

v. The Lower Court's Ruling and Its Fundamental Flaws

The lower court ruled that the arbitration award could not be vacated because an arbitrator's decision is entitled to "considerable deference." The court held that under New Jersey law and the Federal Arbitration Act (FAA), it may only vacate an award if the arbitrator engaged in corruption, fraud, or other undue means, exceeded his authority, failed to provide adequate notice, or improperly denied a request for adjournment. Finding that Plaintiffs allegedly failed to present adequate supporting proofs, the court confirmed the award. This ruling, however, is fundamentally flawed for several reasons:

- **Misapplication of the Legal Standard for Vacatur:** The court incorrectly concluded that Plaintiffs failed to provide sufficient supporting proof to warrant vacatur. Plaintiffs submitted detailed evidence that Arbitrator Anzaldi

exceeded his powers by relying on a separate, unrelated court ruling (involving Mr. Halpern) to dismiss claims against Mr. Epstein. This was not simply a matter of judicial deference—it was a clear example of an arbitrator deciding issues not properly before him, in direct violation of N.J.S.A. 2A:23B-23(a)(4) and 9 U.S.C. § 10(a)(4).

- **Failure to Address Arbitrator’s Refusal to Hear Evidence:** The lower court did not meaningfully address the Plaintiffs’ argument that the arbitrator refused to hear critical material evidence, including expert testimony on legal malpractice, which violates AAA rules and constitutes grounds for vacatur under both New Jersey and federal arbitration law. This omission denied Plaintiffs a fair opportunity to present their case.
- **Undue Deference Despite Procedural Irregularities:** While courts must generally give deference to arbitral decisions, such deference is not absolute. The court abdicated its responsibility to scrutinize serious procedural failures simply by invoking the general principle of deference. The court’s reasoning ignored the mandatory vacatur provisions designed to safeguard parties from precisely the kind of procedural injustice that occurred here.

By failing to apply the correct legal standard to the facts presented and ignoring multiple grounds for vacatur established in the record, the lower court effectively

insulated a flawed arbitration process from judicial review. Plaintiffs respectfully submit that this was legal error and that the award should be vacated to preserve the integrity of the arbitration system and to ensure a fair adjudication of their claims.

STANDARD OF REVIEW

Judicial review of arbitration awards is governed by both the New Jersey Arbitration Act, N.J.S.A. 2A:23B-1 et seq., and, where applicable, the Federal Arbitration Act (“FAA”), 9 U.S.C. § 1 et seq. While courts generally afford arbitration awards a degree of deference, that deference is not absolute. An appellate court may vacate an arbitration award where the arbitrator:

- **Exceeded his or her powers or acted without proper authority** (N.J.S.A. 2A:23B-23(a)(4); 9 U.S.C. § 10(a)(4));
- **Refused to hear material evidence**, or conducted the hearing in a manner that substantially prejudiced a party’s rights (N.J.S.A. 2A:23B-23(a)(3); 9 U.S.C. § 10(a)(3));
- **Rendered an award procured by corruption, fraud, or undue means** (N.J.S.A. 2A:23B-23(a)(1); 9 U.S.C. § 10(a)(1)); or
- **Manifestly disregarded the law**, a judicially recognized ground for vacatur under both federal and New Jersey law.

Although the scope of review is limited, it is not a “rubber stamp.” Courts must vacate an award where the arbitrator’s conduct is so egregiously flawed that it denies the parties a fundamentally fair hearing. *Tretina Printing, Inc. v. Fitzpatrick & Assocs., Inc.*, 135 N.J. 349, 358 (1994). The court must intervene when an arbitrator disregards the terms of the contract, ignores material evidence, or bases the decision on legally irrelevant or improper considerations.

Whether an arbitration award should be vacated is a question of law, subject to de novo review. See *Minkowitz v. Israeli*, 433 N.J. Super. 111, 136 (App. Div. 2013); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 352 (2011) (noting courts must determine whether arbitration complied with basic due process principles).

Accordingly, this Court must closely examine whether the arbitration process complied with statutory and procedural safeguards and whether the arbitrator’s dismissal of Plaintiffs’ claims warrants vacatur under the applicable legal standards.

ARGUMENT

I. THE ARBITRATION AWARD MUST BE VACATED BECAUSE THE ARBITRATOR EXCEEDED HIS AUTHORITY BY RELYING ON AN UNRELATED COURT RULING TO DISMISS PLAINTIFFS’ CLAIMS

Arbitrators derive their authority exclusively from the arbitration agreement and the issues submitted to them. Under both New Jersey law and the Federal

Arbitration Act (“FAA”), an arbitration award may be vacated if the arbitrator exceeds the scope of his or her authority by deciding issues beyond those submitted or by basing the award on factors irrelevant to the parties’ dispute. *See* N.J.S.A. 2A:23B-23(a)(1); 9 U.S.C. § 10(a)(4); *AT&T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643, 651 (1986). This doctrine protects parties from arbitrary or unfair rulings that stray beyond the agreed-upon scope of arbitration.

Here, the arbitrator, The Honorable Ross R. Anzaldi, J.S.C. (Ret.), exceeded his authority by relying on an unrelated judicial ruling to summarily dismiss Plaintiffs’ claims. Specifically, Arbitrator Anzaldi relied heavily on Judge Nicholas Ostuni’s decision in the legal malpractice case against Mr. Halpern to conclude that Plaintiffs’ claims against Mr. Epstein lacked merit. This reliance was improper for multiple reasons:

First, the claims against Mr. Epstein and Mr. Halpern are legally and factually distinct. Plaintiffs’ malpractice claims against Mr. Epstein center on his failure to timely restore their underlying lawsuit to the trial calendar, despite his contractual obligations and explicit retention for that purpose. In contrast, the claims against Mr. Halpern concern different aspects of legal representation and procedural history. The arbitrator failed to acknowledge these critical distinctions and instead treated the two

separate claims as interchangeable, which is contrary to the evidence and law.

Second, Judge Ostuni's ruling addressed only the reinstatement of the underlying case in the context of Mr. Halpern's representation and explicitly recognized that Judge Wilson's prior denial was legally erroneous. It did not address or absolve Mr. Epstein of his own independent duty to act diligently in restoring the case. Arbitrator Anzaldi's failure to independently evaluate the merits of Plaintiffs' claims against Mr. Epstein and his reliance on the Halpern-related ruling constituted an unauthorized delegation of his adjudicative function to the courts in a separate matter.

Third, by treating the judicial ruling in the Halpern case as dispositive of the claims against Mr. Epstein, the arbitrator ignored the contractual and statutory duties owed by Mr. Epstein under the Retainer Agreement and applicable law. Arbitrators are required to apply the governing legal standards to the claims before them, not rely on extraneous rulings involving different parties and claims. This approach conflicts with the well-established principle that arbitration awards must "draw their essence from the agreement" and remain "within the scope of the submission." *AT&T Technologies*, 475 U.S. at 650-51.

Fourth, the arbitrator's decision to summarily dismiss Plaintiffs' claims on this improper basis deprived Plaintiffs of a full and fair hearing on the merits.

Plaintiffs submitted substantial evidence, including expert testimony and detailed factual proofs, that Mr. Epstein's negligence caused them significant harm. Yet the arbitrator failed to consider these facts and instead issued a blanket dismissal based on an unrelated ruling.

Courts have consistently vacated arbitration awards where arbitrators relied on irrelevant or extrinsic material outside the scope of the parties' dispute. Because Arbitrator Anzaldi exceeded his authority by improperly relying on an unrelated judicial ruling to dismiss Plaintiffs' claims against Mr. Epstein, the arbitration award must be vacated and the matter remanded for a new hearing or restoration to the Superior Court.

II. THE ARBITRATOR'S REFUSAL TO HEAR MATERIAL EVIDENCE VIOLATED PLAINTIFFS' RIGHT TO A FAIR HEARING AND WARRANTS VACATUR

Fundamental to the integrity of arbitration is the arbitrator's duty to provide a fair opportunity for all parties to present their evidence and arguments. Arbitration, while generally more flexible than court proceedings, is not a carte blanche for arbitrators to disregard procedural fairness or to deny parties the opportunity to prove their claims. Under both New Jersey law and the Federal Arbitration Act ("FAA"),

an arbitration award may be vacated if the arbitrator refused to hear material evidence or otherwise conducted the proceedings in a fundamentally unfair manner. *See* N.J.S.A. 2A:23B-23(a)(1); 9 U.S.C. § 10(a)(3).

Here, the arbitrator's refusal to consider crucial evidence—including expert testimony and other material proofs supporting Plaintiffs' claims—constitutes a clear violation of Plaintiffs' right to a fair hearing. Plaintiffs meticulously complied with all procedural requirements and submitted substantial evidence to establish Mr. Epstein's negligence and the resulting harm. This evidence included, but was not limited to:

- Expert legal opinions by Anthony Ambrosio, Esq., detailing the standard of care and the breaches committed by Mr. Epstein;
- Deposition transcripts of witnesses knowledgeable about the handling and procedural history of the underlying lawsuit;
- Documentary evidence demonstrating Plaintiffs' repeated efforts to have their case restored to the trial calendar; and
- Financial records substantiating the significant legal fees and expenses incurred due to Mr. Epstein's malpractice and the arbitration process itself.

Despite the timely submission and relevance of this evidence, the arbitrator summarily dismissed the Plaintiffs' claims without adequately considering or weighing the proofs. Plaintiffs were thereby denied the meaningful opportunity to present their case and contest the defenses raised by Mr. Epstein. Such conduct is antithetical to the basic principles of justice and fairness that underpin arbitration.

The refusal to admit or consider material evidence not only prejudiced Plaintiffs but also deprived the arbitrator of the ability to make an informed, reasoned decision based on the full factual record. Arbitrators must base their awards on the evidence presented; to do otherwise undermines the arbitration process and constitutes grounds for vacatur.

The refusal to admit or consider material evidence not only prejudiced Plaintiffs but also deprived the arbitrator of the ability to make an informed, reasoned decision based on the full factual record. Arbitrators must base their awards on the evidence presented; to do otherwise undermines the arbitration process and constitutes grounds for vacatur. *See Consolidated Rail Corp. v. United Transp. Union*, 210 F.3d 258, 262 (3d Cir. 2000)

Moreover, Plaintiffs paid significant arbitration fees and attorney's fees—totaling over \$70,000—expecting a fair adjudication of their claims. The arbitrator's improper denial of their evidentiary submissions rendered these expenditures futile

and imposed an unjust financial burden on Plaintiffs.

Arbitration awards must reflect a fair adjudication on the merits, not a summary dismissal based on incomplete or improperly considered evidence. Because the arbitrator refused to hear material evidence critical to Plaintiffs' claims, the award violates fundamental due process principles and must be vacated.

III. THE ARBITRATION AWARD WAS PROCURED BY UNJUST MEANS AND IGNORED APPLICABLE LAW

Arbitration awards must be grounded in a fair process and must adhere to applicable legal standards. When an award is procured by unjust means—such as misapplication of the law, bias, or procedural irregularities—it warrants vacatur under both New Jersey law and the Federal Arbitration Act. Specifically, courts may vacate an award if it was procured by “corruption, fraud, or other undue means,” or where the arbitrator “exceeded [their] powers” by failing to apply governing law. *See* N.J.S.A. 2A:23B-23(a)(1), (3); 9 U.S.C. § 10(a)(1), (4). In this case, the arbitration award was fundamentally unjust and legally flawed for multiple reasons:

A. Reliance on an Unrelated Court Ruling Contrary to Legal Standards

As previously discussed, the arbitrator improperly relied on the ruling in Plaintiffs' separate malpractice case against Mr. Halpern—a ruling that did not pertain to Mr. Epstein's distinct malpractice claims—to dismiss Plaintiffs'

arbitration. This misapplication of law disregarded the fundamental principle that claims against separate defendants must be evaluated independently, especially where the facts and legal duties differ significantly. By collapsing the two claims into one and effectively absolving Mr. Epstein without a full hearing, the arbitrator exceeded his authority and ignored controlling legal standards governing malpractice claims and arbitration procedures.

B. Failure to Apply New Jersey Arbitration Law

New Jersey law mandates that arbitration proceedings comply with fundamental notions of fairness and due process. The arbitrator's dismissal, without hearing critical evidence or allowing Plaintiffs to fully develop their case, violated these principles. Moreover, the arbitrator failed to consider statutory requirements that preserve Plaintiffs' rights to a hearing on the merits absent extraordinary circumstances such as fraud or corruption—which are absent here.

C. Procedural Irregularities Undermining the Integrity of the Award

The arbitrator's procedural errors—including denying Plaintiffs' requests for adjournment to prepare further evidence and failing to conduct the full appellate review Plaintiffs timely requested—are additional “unjust means” that taint the award. These procedural missteps deprived Plaintiffs of a meaningful opportunity to be heard and improperly shortened the proceedings to Plaintiffs' detriment.

D. Manifest Injustice and Prejudice to Plaintiffs

The cumulative effect of these legal and procedural errors was manifest injustice. Plaintiffs were left without a remedy for Mr. Epstein's admitted negligence, despite having satisfied their burden to present supporting evidence and comply with procedural rules. The award not only failed to provide relief but also unjustly shielded Mr. Epstein from accountability, undermining public confidence in the arbitration process.

Because the award was procured through unjust means and ignores essential legal principles, this Court must vacate the arbitration award. Plaintiffs respectfully request that the Court set aside the award and either remand for a new arbitration hearing before an impartial arbitrator or restore Plaintiffs' claims to the Superior Court for a full hearing on the merits.

IV. PLAINTIFFS INCURRED SIGNIFICANT, UNNECESSARY FINANCIAL HARM DUE TO MR. EPSTEIN'S NEGLIGENCE AND THE FLAWED ARBITRATION PROCESS

The arbitration award fails to account for the substantial financial harm Plaintiffs have suffered as a direct result of Defendant Mr. Epstein's legal malpractice and the subsequent flawed arbitration proceedings. This harm underscores the necessity of vacating the award and granting Plaintiffs the

opportunity to pursue their claims through a proper forum.

A. Extensive Legal Fees and Costs Incurred as a Result of Mr. Epstein's Negligence

Mr. Epstein's failure to timely restore Plaintiffs' underlying lawsuit to the trial calendar triggered a cascade of unnecessary legal proceedings, including pro se filings, a separate legal malpractice action, and ultimately arbitration. This sequence led to Plaintiffs incurring tens of thousands of dollars in avoidable legal expenses. These include, but are not limited to:

- Fees for legal malpractice experts and deposition transcripts;
- Appearance fees for expert witnesses;
- Court filing and service fees; and
- Substantial arbitration fees and attorney's fees.

Had Mr. Epstein fulfilled his contractual and professional obligations by diligently pursuing Plaintiffs' claims in 2018, these significant financial burdens would have been avoided.

B. Additional Financial Harm from the Flawed Arbitration Process

The arbitration itself imposed further financial strain. Plaintiffs complied fully with procedural requirements, paid substantial fees for arbitration services, and bore the costs of appeals before a panel of arbitrators. Despite this, the arbitrator

summarily dismissed their claims without adequate consideration of evidence or legal arguments. This outcome not only deprived Plaintiffs of their day in court but also rendered their financial investments in arbitration futile.

C. Prejudice Resulting from the Arbitration Award's Denial of Recovery

The arbitration award's dismissal effectively extinguished Plaintiffs' ability to recover damages for the original property damage claims and the subsequent harm caused by Mr. Epstein's malpractice. This denial of relief compounds Plaintiffs' financial injury by foreclosing any meaningful remedy for the losses they sustained. The award, therefore, perpetuates an injustice, allowing Mr. Epstein's negligence to go unremedied while Plaintiffs shoulder the financial consequences.

D. Equitable Considerations Favor Vacatur and Remand

Equity demands that Plaintiffs not be penalized for Mr. Epstein's misconduct and the arbitration process's failings. Vacating the arbitration award would provide Plaintiffs the opportunity to fully litigate their claims and seek appropriate compensation for their losses. This remedy aligns with principles of fairness and justice, ensuring that Plaintiffs are not left to bear the significant financial burden of another's negligence and procedural errors.

In light of the foregoing, the Court should recognize the substantial, unnecessary financial harm Plaintiffs have suffered and vacate the arbitration award.

Plaintiffs respectfully request that this matter be remanded for a new arbitration hearing before a different arbitrator or reinstated to Superior Court for a full and fair adjudication of their claims.

V. THE LOWER COURT ERRED IN CONFIRMING THE ARBITRATION AWARD BY UNDERESTIMATING THE SEVERITY OF THE ARBITRATOR'S ERRORS AND MISAPPROPRIATING DEFERENCE

The lower court's decision to confirm the arbitration award reflects a fundamental misunderstanding of the scope of judicial deference owed to arbitration decisions and a failure to properly scrutinize the manifest errors committed by the arbitrator. While courts traditionally give considerable deference to arbitration awards, such deference is not absolute and does not shield awards that are the product of serious procedural and substantive defects.

A. Misapplication of the Standard for Vacatur

The lower court applied an overly restrictive standard for vacating arbitration awards, focusing exclusively on extreme grounds such as corruption, fraud, or clear excess of arbitrator powers. This narrow interpretation disregards well-established legal principles permitting vacatur where fundamental unfairness, denial of due process, or reliance on improper legal bases occur. The arbitrator in this case exceeded his authority by relying on an unrelated court ruling, denied Plaintiffs the

opportunity to present critical evidence, and issued a dismissal without due consideration of the merits — all of which fall squarely within recognized grounds for vacatur.

B. Inadequate Consideration of Procedural and Substantive Errors

The court's deference failed to acknowledge the procedural irregularities that infected the arbitration. Arbitrator Anzaldi's refusal to consider material evidence, including expert testimony, and summary dismissal of claims without a fair hearing, constitute clear violations of Plaintiffs' right to a fair adjudicative process. These are not trivial errors but fundamental flaws that undermine the integrity of the arbitration and justify judicial intervention.

C. Failure to Distinguish Between Judicial Review of Arbitrator's Findings and Deference to Procedural Fairness

Judicial deference is generally reserved for an arbitrator's factual and legal findings within the scope of their authority. It does not extend to protecting awards procured through procedural improprieties or manifest disregard of the law. The lower court conflated these distinct considerations, mistakenly equating procedural errors with discretionary judgment calls. This error improperly insulated the arbitration award from meaningful review.

D. The Importance of Judicial Oversight to Prevent Unjust Outcomes

Allowing arbitration awards to stand despite clear procedural unfairness and legal error contradicts the purpose of judicial review — to ensure that arbitration serves as a fair and equitable alternative to litigation. This Court must correct the lower court's error by recognizing that the arbitrator's misconduct and misapplication of the law warrant vacatur to uphold the principles of justice and due process.

In summary, the lower court erred by overextending deference to an arbitration award tainted by serious legal and procedural defects. Plaintiffs respectfully request this Court to vacate the award and provide appropriate relief to ensure a fair adjudication of their claims.

CONCLUSION

WHEREFORE, Plaintiffs Appellants respectfully request that this Court:

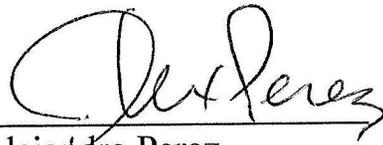
- Vacate the arbitration award entered in favor of Defendant Daniel N. Epstein, Esq. and Epstein Ostrove, LLC;
- Remand this matter either for a new arbitration hearing before a different and impartial arbitrator or, alternatively, restore Plaintiffs' claims to the Superior Court for a full and fair adjudication on the merits;
- Award Plaintiffs their costs and reasonable attorneys' fees incurred in

pursuing this appeal and the underlying arbitration;

- Grant any other relief that the Court deems just and proper to ensure Plaintiffs receive a fair opportunity to vindicate their legal rights.

DATED: June 24, 2025,

Respectfully Submitted,



Alejandro Perez
Appellant Pro Se



Cathy Perez
Appellant Pro Se

ALEJANDRO PEREZ and CATHY
PEREZ,

Appellants / Appellants,

v.

GABRIEL H. HALPERN, ESQ., PINILIS
HALPERN, LLP, DANIEL N. EPSTEIN,
ESQ., and EPSTEIN OSTROFF, LLC,

Defendants/
Respondents

SUPERIOR COURT OF NEW
JERSEY
APPELLATE DIVISION
DOCKET NO.: A-002768-24

ON APPEAL FROM:
SUPERIOR COURT OF NEW
JERSEY
LAW DIVISION
BERGEN COUNTY

Docket No.: BER-L-6186-21

RESPONDENTS' BRIEF IN OPPOSITION TO APPELLANT'S APPEAL

LEWIS BRISBOIS BISGAARD & SMITH, LLP

One Riverfront Plaza

Suite 800

Newark, N.J. 07102

Tel: (973) 577-6260

LBBS File No.: 213-2117

Attorneys for Respondents Daniel N. Epstein, Esq.,
and Epstein Ostrove, LLC (i/p/a Epstein Ostroff, LLC)

On the Brief

Meredith Kaplan Stoma, Esq., (Id. No. 026051991)

On the Brief

Jessica Rabkin, Esq., (Id. No. 157102015)

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

COUNTERSTATEMENT OF FACTS AND PROCEDURAL HISTORY 2

LEGAL ARGUMENT

 I. LEGAL STANDARD 9

 II. THE ARBITRATOR DID NOT EXCEED HIS AUTHORITY 11

 III. THE ARBITRATOR CONSIDERED ALL MATERIAL EVIDENCE AND
 PROVIDED A FAIR HEARING 13

 IV. THE ARBITRATION PROCESS WAS JUST AND NO MANIFEST
 DISREGARD OF THE LAW OR PROCEDURE OCCURRED 14

 V. APPELLANTS FAIL TO DEMONSTRATE UNDUE FINANCIAL HARM
 OR PROCEDURAL MISCONDUCT 16

 VI. THE TRIAL COURT PROPERLY CONFIRMED THE ARBITRATION
 AWARD 17

CONCLUSION 19

TABLE OF AUTHORITIES

Cases	Page(s)
<u>Alejandro and Cathy Perez v. Tim Jerema, et al.</u> , Docket No. BER-L-10143-15	1, 3, 6
<u>Bd. of Educ. of the Alpha v. Alpha Educ. Ass'n</u> , 190 N.J. 34	18
<u>Bound Brook Bd. of Educ. v. Ciripompa</u> , 228 N.J. 4 (2017)	10, 11
<u>Curran v. Curran</u> , 453 N.J. Super. 315 (App. Div. 2018)	10
<u>Delaney v. Dickey</u> , 244 N.J. 466 (N.J. 2020)	5, 6
<u>Johnson v. Johnson</u> , 204 N.J. 529 (2010)	9, 15
<u>Linden Bd. of Educ. v. Linden Educ. Ass'n ex rel. Mizichko</u> , 202 N.J. 268 (2010)	18
<u>Martindale v. Sandvik, Inc.</u> , 172 N.J. 275 (2002)	18
<u>Minkowitz v. Israeli</u> , 433 N.J. Super. 111 (App. Div. 2013)	9, 18, 19
<u>Tretina Printing, Inc. v. Fitzpatrick & Assocs.</u> , 135 N.J. 349 (1994)	18
<u>Twp. of Wyckoff v. PBA Local</u> 409 N.J. Super. 344 (App. Div. 2009)	18, 19
 Statutes	
Consumer Fraud Act	3
N.J.S.A. 2A:23B-1 to -32	10
<u>N.J.S.A. 2A:23B-23(a)</u>	<i>passim</i>
New Jersey Arbitration Act	12
New Jersey Arbitration Act	15

NJAA..... 9, 14, 15

Similarly, under the New Jersey Arbitration Act, N.J.S.A. 2A:23B-15(a)..... 13

Other Authorities

N.J. Court Rules, cmt. 3.3.3 10

N.J.S.A. 2A:23B-1 2, 8

New Jersey Court Rule 1:20A 4

Rule 35..... 11, 13

PRELIMINARY STATEMENT

This appeal arises from the trial court’s order dated April 25, 2025, which denied the motion of Appellants, Alejandro and Cathy Perez (“Appellants”), to vacate the January 28, 2025, arbitration award issued by the Honorable Ross R. Anzaldi (“the arbitrator”), and granted the cross-motion of Respondents, Daniel N. Epstein, Esq., and Epstein Ostrove, LLC (incorrectly pled as Epstein Ostroff, LLC) (“Respondents”), to confirm that award.

The underlying arbitration concerned Appellants’ legal malpractice claims against Respondents, stemming from their representation of Appellants in the matter of Insurance Restoration Specialists, Inc. v. Alejandro and Cathy Perez / Alejandro and Cathy Perez v. Tim Jerema, et al., Docket No. BER-L-10143-15 (the “underlying matter”). Initially, Appellants retained the Halpern Defendants to represent them in a legal dispute arising from a 2014 flood in their home. Following various procedural developments—including a consent order for mediation and a motion for partial summary judgment—the case was marked “closed” in 2017. The Halpern Defendants withdrew in 2018, after which Appellants retained the Respondents, executing a retainer agreement that included a binding arbitration clause.

The Respondents attempted to resolve the underlying matter without reinstating it to the trial calendar. However, Appellants terminated the attorney-client relationship in 2020. Acting pro se, they unsuccessfully moved to reinstate the case. Disregarding advice to appeal, they instead filed malpractice and breach of contract claims against both law firms in the Superior Court of New Jersey. The court dismissed the claims against Epstein Ostrove based on the arbitration clause, and the matter proceeded to arbitration.

Appellants continued to pursue claims against Respondents and the Halpern

Defendants. Thereafter, in 2024, Appellants successfully moved to reinstate the underlying matter, thereby undermining their malpractice claims. The underlying court in a well-reasoned decision, subsequently dismissed the claims against the Halpern Defendants, finding that no damages remained, as Appellants could now pursue their original claims. Judge Ostuni emphasized that any alleged losses could be addressed in the reinstated action.

Following this, the Respondents moved to dismiss the arbitration claims. In January 2025, the arbitrator dismissed those claims, relying on Judge Ostuni's findings in the Law Division action. Nevertheless, Appellants moved to vacate the arbitration award, continuing to pursue claims that both courts and the arbitrator had deemed meritless.

The trial court's April 25, 2025, order properly denied Appellants' motion to vacate the arbitration award and granted Respondents' cross-motion to confirm it. The court correctly relied on N.J.S.A. 2A:23B-1 et seq., finding that the arbitrator's decision was entitled to substantial deference and that Appellants failed to present any evidence warranting vacatur. Appellants did not overcome the presumption of validity afforded to the arbitrator's award. The arguments raised in this appeal have already been presented to, and properly rejected by, the trial court and do not constitute valid grounds for reversal.

COUNTERSTATEMENT OF FACTS AND PROCEDURAL HISTORY

Respondents represented Appellants in the matter of Insurance Restoration Specialists, Inc. v. Alejandro and Cathy Perez/Alejandro and Cathy Perez v. Tim Jerema,

et al., docket number BER-L-10143-15 (“underlying matter”).¹ The underlying matter stemmed from flooding that occurred in Plaintiffs’ home in 2014 as a result of a burst pipe.

Prior to retaining the Respondents, Appellants were represented by Gabriel H. Halpern, Esq. and Pinilis Halpern, LLC (collectively referred to as the “Halpern Defendants”). While under the representation of the Halpern Defendants, a consent order was entered on August 3, 2017, removing the underlying matter from the arbitration calendar to allow for mediation. (See Da1). This order required mediation to be completed within sixty days and for the parties to inform the trial court within ninety days whether the matter should proceed to trial. Id.

Thereafter, on November 10, 2017, the Halpern Defendants filed a Motion for Partial Summary Judgment, seeking a finding that Insurance Restoration Specialists violated the Consumer Fraud Act. The hearing on this motion was held on February 2, 2018. (See Da4). The hearing commenced with the Honorable Robert C. Wilson, J.S.C. stating that the case was marked "closed." Id. At the end of the hearing, Judge Wilson instructed his clerk to restore the case to the trial calendar, with a trial date to be set. Id. The Court advised the parties that a trial date would likely be issued no earlier than 45 days. Id. Notwithstanding the same, on March 14, 2018, the Halpern Defendants filed a Motion to Withdraw as Counsel. On the order granting the motion, Judge Wilson wrote,

¹ Insurance Restoration Specialists, Inc. (“IRS”) initiated an action in Small Claims Court against Appellants seeking money allegedly owed by plaintiffs. Appellants filed a counterclaim for breach of contract, personal and property damages. In January 2016, plaintiffs retained defendants Gabriel Halpern and the law firm of Pinilis Halpern, LLP to represent them in connection with a third-party complaint against their homeowner’s insurance company (Travelers) and individual members of the restoration company. The matter was transferred to the Law Division captioned as Insurance Restoration Specialists, Inc. v. Alejandro and Cathy Perez, et al., dkt. no. BER-L-10143-15.

"Court finds good cause for the application and notes the case was closed previously on August 3, 2017." (See Da25).

Thereafter, on June 14, 2018, Appellants retained the Respondents to represent them in the underlying litigation, and both executed the retainer agreement defining the terms of employment of the Respondents. (See Da27). The executed retainer agreement, stated the following:

8. Arbitration. It is our goal to maintain at all times a constructive and positive relationship with You on the matter described above. However, if a dispute arises between us, we believe that a prompt and fair resolution is in the interest of all concerned. To this end, if any controversy or claim arises out of or relating to the Agreement (including any claim of malpractice), we both agree that the dispute shall be submitted to binding arbitration. The arbitration shall be governed by the Rules of the American Arbitration Association and any award by an arbitrator shall be final. **BY SIGNING THIS AGREEMENT, WE BOTH GIVE UP OUR RIGHT TO SUE IN COURT AND GIVE UP OUR RIGHT TO HAVE OUR CASE HEARD BY A JURY.**

In addition to the above, in the event a dispute arises between the Law Firm and You regarding fees, You have the right to submit that dispute under the attorney fee arbitration procedures that exist under New Jersey Court Rule 1:20A. Such fee arbitration does not include legal malpractice or other non-fee claims.

Id. (emphasis in original)

Appellants alleged that during the pendency of the Respondents' representation of them, the Respondents attempted to resolve the matter, rather than restore the matter to the trial calendar. Eventually, after disregarding the legal advice given by the Respondents, Appellants terminated their relationship with the Respondents on June 16, 2020. At the time that the relationship with the Respondents was terminated, Appellant Cathy Perez specifically acknowledged that she was satisfied with the work done on Appellants' behalf and stated that she would be filing a motion to reinstate the Complaint in the underlying litigation on her own.

Subsequently, on July 22, 2020, Appellants, as *pro se* litigants, filed a Motion to Reinstate the Case to the trial calendar. On August 20, 2020, Fidelity/Travelers opposed the Motion to Reinstate, arguing that the failure to timely restore the case did not constitute "exceptional circumstances," which were necessary to warrant reinstatement. On August 31, 2020, Ms. Perez filed a letter brief in further support of the Motion to Reinstate, arguing that exceptional circumstances had been shown to justify reinstatement. However, on September 14, 2020, Judge Wilson denied Ms. Perez's Motion to Reinstate the Case. (See Da30). The Order stated, "Case dismissed August 3, 2017, pursuant to R. 1:13-7 and no exceptional circumstances shown to warrant reinstatement." Id. Thereafter, the Respondents encouraged Appellants to file a motion for reconsideration and appeal the decision, but Appellants chose not to do so.

On September 17, 2021, instead of moving to correct the Court's error in denying reinstatement of their Complaint in the underlying litigation, Appellants filed a meritless Complaint asserting claims for legal malpractice and breach of contract against the Halpern Defendants and Respondents. Despite having voluntarily and knowingly signed an arbitration agreement, Appellants refused to dismiss the Complaint against the Respondents. Consequently, on November 22, 2021, the Respondents filed a motion to dismiss the Complaint in lieu of an answer, arguing that the Complaint lacked subject matter jurisdiction because the retainer agreement expressly provided that any dispute between the parties, including any claim for malpractice, shall be submitted to binding arbitration. (See Da31). Ultimately, the Court cited Delaney v. Dickey, 244 N.J. 466 (N.J. 2020), in finding that the arbitration provision specifically identified legal malpractice claims, and thus, Appellants' legal malpractice claim against the Respondents was

subject to arbitration. (See Da66). Accordingly, by Order dated March 11, 2022, the Honorable Avis Bishop-Thompson, J.S.C., granted the Respondents' motion to dismiss Appellants' Complaint, and the Complaint was dismissed **with prejudice**. Id. (emphasis added)

Thereafter, Appellants continued to pursue their baseless actions against the Halpern Defendants in the Superior Court and against the Respondents in AAA arbitration. During the pendency of both actions, on March 13, 2024, Appellants filed a Motion for Reconsideration of the September 14, 2020, Order denying their Motion to Reinstate the Case. Consequently, on March 18, 2024, the legal malpractice action against the Halpern Defendants was stayed pending resolution of the Motion for Reconsideration filed in the underlying matter. The AAA arbitration against the Epstein Defendants was also stayed. On July 25, 2024, the Honorable Nicholas Ostuni, Sr. granted Appellants' Motion for Reconsideration and restored the underlying matter to the active trial list. (See Da75). Indeed, this provided Appellants with the opportunity to pursue all underlying claims against IRS and Fidelity/Travelers that they had previously asserted were precluded by the actions Halpern Defendants and Respondents. As such, there was no basis for Appellants' claims of malpractice against either of the Defendants.

Accordingly, on October 10, 2024, the Halpern Defendants filed a motion to lift the stay for the purpose of filing a summary judgment motion. By Order dated December 2, 2024, the Court granted the Halpern Defendants' motion to lift the stay and subsequently dismissed all claims against them with prejudice. (See Da125). Ultimately, Judge Ostuni found that no damages could have been suffered by Appellants since the matter was reinstated, and any legal fees or consequential damages they were claiming because of

pursuing the claims against the Halpern Defendants would be restored in the underlying action against IRS and Travelers/Fidelity. (See Da127). Indeed, Judge Ostuni determined that there could be no damage component of Appellants' malpractice actions that survived. Id. Specifically, Judge Ostuni stated:

But we will make them whole as the law should. It shouldn't be all these years that they've been without the money. So we know that I can fix that depending on what the jury tells me is just. So why do we keep this case open? If the -- if the fees and costs associated with your services are consequential damages and not the damages contemplated by the case law with regard to keeping this claim open and the actual damages, we're gonna have a jury decide, I just don't see where the damages component of your malpractice action survives.
Id. at 37-38.

Further, when dismissing the case against the Halpern Defendants, Judge Ostuni stated,

[Halpern] has got an allegation of malpractice that's looming over his head. And now we know, it's unjustified...Why continue that? So that Mr. and Mrs. Perez can hedge their bet? That's not appropriate. The case within the case will be before the jury and it's the case against the direct defendants.
(Id. at 35)

After Judge Ostuni's ruling, the Respondents moved to dismiss the claims against them in AAA arbitration for the same reasons set forth by Judge Ostuni. (See Da175). Appellants, through counsel, opposed this motion. (See Da177). In his Award dated January 28, 2025, the Honorable Ross R. Anzaldi dismissed Appellants' claims in the AAA arbitration, stating, "Respondents' motion to dismiss is granted pursuant to the comments of Judge Nicholas Ostuni and his ruling in the matter of Perez v. Halpern, Bergen County Superior Court, L-6186-21." (See Da178). The parties received the arbitrator's arbitration award on January 28, 2025.

Thereafter, Appellants filed a baseless motion to vacate the arbitration award. (See Da179). Pertinently, they alleged that the arbitrator demonstrated evident partiality and engaged in misconduct by refusing to hear critical evidence, limiting discovery, and restricting witness testimony, thereby denying them a fair opportunity to present their case. Id. Additionally, Appellants asserted that the arbitrator exceeded his authority by issuing an award that disregarded applicable law and contractual terms, and that the findings were unsupported by the record. Id. The motion further claimed that the award violated public policy and cited procedural irregularities, including a lack of transparency in the arbitrator selection process and inadequate notice, which they argued compromised the fairness of the proceedings. Id.

Thereafter, Respondents cross-moved to uphold the arbitrator's award noting that the arbitrator had considered all relevant and material evidence within the scope of his powers under the AAA rules and granted the appropriate relief that he deemed just and equitable. (See Da243). The motion properly pointed to the fact that Appellants agreed to be governed by the AAA rules that the arbitrator adhered to. Id. The trial court's April 25, 2025, order properly denied Appellants' motion to vacate the arbitration award and granted Respondents' cross-motion to confirm it. (See Da482). Indeed, the court correctly relied on N.J.S.A. 2A:23B-1 et seq., finding that the arbitrator's decision was entitled to substantial deference and that Appellants failed to present any evidence warranting vacatur. Appellants did not overcome the presumption of validity afforded to the arbitrator's award. Id. The arguments raised in this appeal were already presented to, and properly rejected by, the trial court and do not constitute valid grounds for reversal.

LEGAL ARGUMENT

POINT I

LEGAL STANDARD

Appellants argue that the trial court erred in confirming the arbitrator's award, citing N.J.S.A. 2A:23B-23(a). They allege that the arbitrator exceeded his authority by improperly relying on an unrelated court decision to dismiss their claims, refused to consider material evidence, and rendered an award procured by unjust means while disregarding applicable law. They further argue that the trial court erred in confirming the award by underestimating the seriousness of the arbitrator's alleged errors and misapplying the standard of judicial deference. However, these same arguments were previously raised before the trial court and were properly rejected. Appellants' claims remain unsubstantiated and fail to meet the legal standards required for vacatur under N.J.S.A. 2A:23B-23(a).

The AAA Rules and the NJAA grant an arbitrator broad discretion over discovery and other procedural matters, including hearings on motions to dismiss. See Minkowitz v. Israeli, 433 N.J. Super. 111, 144, (App. Div. 2013). The NJAA's broad conferral of authority "does not require any particular procedures, mandate discovery, compel the maintenance of a record, command a statement by the arbitrator regarding his findings and conclusions, or an expression of the reasons why he reached the result that he did[.]" unless expressly required under the parties' arbitration agreement. Johnson v. Johnson, 204 N.J. 529, 546 (2010) (citing N.J.S.A. 2A:23B-1 to -32).

"From the judiciary's perspective, once parties contract for binding arbitration, all that remains is the possible need to: enforce orders . . . which have been ignored; confirm

the arbitration award; correct or modify an award; and in very limited circumstances, vacate an award." Curran v. Curran, 453 N.J. Super. 315, 321 (App. Div. 2018) (internal citations omitted) (quoting Minkowitz, 433 N.J. Super. at 134). Otherwise, "the purpose of the arbitration contract . . . would be severely undermined." Ibid. (quoting Minkowitz, 433 N.J. Super. at 134). "Because arbitration is so highly favored by the law, the presumed validity of the arbitration award is entitled to every indulgence, and the party opposing confirmation has the burden of establishing statutory grounds for vacation." Pressler & Verniero, Current N.J. Court Rules, cmt. 3.3.3. on R. 4:5-4 (2020).

N.J.S.A. 2A:23B-1 to - 32, permits a court to vacate an arbitration award for the following limited reasons:

- (1) the award was procured by corruption, fraud, or other undue means;
 - (2) the court finds evident partiality by an arbitrator; corruption by an arbitrator; or misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
 - (3) an arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to section 15 of this act, so as to substantially prejudice the rights of a party to the arbitration proceeding;
 - (4) an arbitrator exceeded the arbitrator's powers;
 - (5) there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection pursuant to subsection c. of section 15 of this act not later than the beginning of the arbitration hearing; or
 - (6) the arbitration was conducted without proper notice of the initiation of an arbitration as required in section 9 of this act so as to substantially prejudice the rights of a party to the arbitration proceeding.
- [N.J.S.A. 2A:23B-23(a)]

Judicial review of an arbitration award is very limited." Bound Brook Bd. of Educ. v. Ciripompa, 228 N.J. 4, 11 (2017) (quoting Linden Bd. of Educ. v. Linden Educ. Ass'n

ex rel. Mizichko, 202 N.J. 268, 276, (2010)). "An arbitrator's award is not to be cast aside lightly. It is subject to being vacated only when it has been shown that a statutory basis justifies that action." Ibid. (quoting Kearny PBA Local # 21 v. Town of Kearny, 81 N.J. 208, 221 (1979)).

In the present case, Appellants have failed to demonstrate that any of the statutory grounds for vacating an arbitration award under N.J.S.A. 2A:23B-23(a) are applicable to the arbitrator's decision. They have not established any valid basis to support vacatur of the arbitration award. Accordingly, there is no legal or factual justification to disturb the arbitrator's January 28, 2025, AAA arbitration award or the trial court's April 25, 2025, Order confirming his award.

POINT II

THE ARBITRATOR DID NOT EXCEED HIS AUTHORITY

Appellants argue that the arbitrator relied on a separate ruling in an unrelated case involving Mr. Halpern to dismiss their claims against Mr. Epstein. They assert that the legal theories and facts underlying their claims against the Halpern Defendants were distinct from those asserted against the Respondents, and therefore, the arbitrator should not have dismissed their claims based on Judge Ostuni's decisions. Appellants also contend that the arbitrator disregarded the terms of the Retainer Agreement, alleging that the Respondents failed to fulfill their obligation to restore the underlying lawsuit to the trial calendar.

These arguments are without merit. The arbitrator did not exceed his authority in dismissing Appellants' claims against the Respondents in the AAA arbitration. By initiating arbitration under the auspices of the American Arbitration Association, Appellants agreed to be bound by its rules, including Rule 35, which grants the arbitrator broad discretion to

determine the admissibility, relevance, and materiality of evidence and to exclude evidence deemed cumulative or irrelevant. Am. Arb. Ass'n, Commercial Arbitration Rules and Mediation Procedures r. 35 (rev. 2022).

In accordance with these rules, the Respondents moved to dismiss the claims, asserting that their legal position was materially identical to that of the Halpern Defendants. Appellants, represented by counsel, were given a full opportunity to respond and to present any relevant arguments or evidence. The arbitrator considered all submissions and rendered a decision that was consistent with the procedural history and the findings of Judge Ostuni.

The underlying litigation had already been restored to the trial calendar. The only remaining claims against both the Halpern Defendants and the Respondents concerned attorneys' fees and costs related to the pursuit of unsupported malpractice allegations. The arbitrator's dismissal of these claims was grounded in the record, the applicable arbitration rules, and the parties' agreement. The arbitrator acted entirely within the scope of the authority conferred by the arbitration agreement and the AAA rules. His decision was based on the evidence presented and the procedural framework agreed upon by the parties. There is no indication that he exceeded his jurisdiction or decided issues beyond the scope of the arbitration. On the contrary, the arbitrator adhered strictly to the authority granted to him and resolved the matter in accordance with the governing legal standards.

Accordingly, the trial court correctly upheld the arbitrator's award. The arbitrator's actions were consistent with both the AAA rules and the New Jersey Arbitration Act, and there is no basis to disturb the award on the grounds of excess of authority. properly confirmed his award. Accordingly, the trial court's order must be affirmed.

POINT III

THE ARBITRATOR CONSIDERED ALL MATERIAL EVIDENCE AND PROVIDED A FAIR HEARING

Appellants had ample opportunity to fully present their case during the arbitration proceedings. Nevertheless, they now contend that the arbitrator refused to consider crucial evidence, including legal opinions from their expert, deposition transcripts, documentary exhibits, and various financial records. However, Appellants themselves acknowledged that they submitted this evidence for the arbitrator's review. Their claim that the arbitrator failed to consider it is entirely unsupported.

As previously noted, AAA Rule 35 grants the arbitrator the authority to determine the admissibility, relevance, and materiality of the evidence offered and to exclude evidence deemed cumulative or irrelevant. Am. Arb. Ass'n, Commercial Arbitration Rules and Mediation Procedures r. 35 (rev. 2022). Similarly, under the New Jersey Arbitration Act, N.J.S.A. 2A:23B-15(a), an arbitrator is empowered to conduct the arbitration in a manner the arbitrator considers appropriate for a fair and expeditious resolution. This includes the discretion to determine the admissibility, relevance, materiality, and weight of any evidence.

In this case, the arbitrator exercised that discretion appropriately. He considered all evidence he deemed relevant and admissible in deciding the Respondents' motion to dismiss. The arbitrator reviewed Judge Ostuni's ruling and evaluated the record before him. It was well within his authority to assess the relevance and weight of the evidence presented by both parties. Moreover, the underlying litigation had already been restored to the trial calendar. As a result, Appellants' claims against the Respondents—identical to those asserted against the Halpern Defendants—lacked any viable damage

component, since Appellants retained the opportunity to pursue any such damages in the underlying action.

There is therefore no basis to vacate the arbitrator's award or the trial Court's confirmation of that award. Consistent with his broad authority under the AAA rules and the NJAA, the arbitrator considered all evidence submitted by both parties and carefully analyzed the materials he found relevant. His award expressly referenced Judge Ostuni's ruling and reflected a thorough review of the record. The arbitrator permitted full submission of evidence, allowed for witness testimony, and provided both parties with ample opportunity to present their arguments.

Appellants' allegations of procedural unfairness amount to nothing more than disagreement with the arbitrator's rulings. Such disagreement does not constitute grounds for vacating an arbitration award. The arbitrator's evidentiary decisions were well within the scope of his authority and do not reflect any misconduct or bias. In sum, the record overwhelmingly supports the arbitrator's award and the trial court's confirmation of that award. Accordingly, the trial court's order must be affirmed.

POINT IV

THE ARBITRATION PROCESS WAS JUST AND NO MANIFEST DISREGARD OF THE LAW OR PROCEDURE OCCURRED.

Appellants further assert that the arbitration proceedings were fundamentally unfair, arguing that the arbitrator's reliance on Judge Ostuni's ruling in their separate case against the Halpern Defendants was legally improper. They contend that the claims against Respondents should have been evaluated independently from those asserted against the Halpern Defendants. Appellants also argue that the arbitrator's dismissal of

their claims without hearing critical evidence or allowing them to fully develop their case violated principles of fairness and due process. Additionally, they allege procedural errors, including the denial of adjournment requests needed to prepare evidence and the arbitrator's failure to conduct what they characterize as a "full appellate review." Ultimately, Appellants claim they suffered "manifest injustice and prejudice" as a result of the arbitrator's conduct.

However, as previously noted, the arbitrator acted well within the scope of his authority under the AAA rules. He carefully considered all relevant and material evidence and granted relief he deemed just and equitable. The New Jersey Arbitration Act (NJAA) broadly confers authority on arbitrators and "does not require any particular procedures, mandate discovery, compel the maintenance of a record, [or] command a statement by the arbitrator regarding his findings and conclusions, or an expression of the reasons why he reached the result that he did," unless expressly required by the parties' arbitration agreement. Johnson v. Johnson, 204 N.J. 529, 546 (2010) (citing N.J.S.A. 2A:23B-1 to -32).

Nonetheless, although not required under the NJAA, the arbitrator clearly articulated the legal basis for each of his determinations. Appellants, through counsel, were afforded a full and fair opportunity to submit all relevant evidence for consideration prior to the issuance of his decision. Mere dissatisfaction with the outcome does not provide a valid basis for judicial intervention. Where, as here, the arbitrator's decision reflects a reasoned and lawful application of the governing legal principles to the facts presented, confirmation of the award is both appropriate and warranted. The NJAA was

properly applied, and the resulting award was just and equitable. Accordingly, the trial court's order should be affirmed.

POINT V

**APPELLANTS FAIL TO DEMONSTRATE UNDUE
FINANCIAL HARM OR PROCEDURAL MISCONDUCT**

Appellant's assertion of financial harm as a basis to vacate the arbitration award is both legally insufficient and factually unpersuasive. The alleged financial hardship is not a consequence of any misconduct by the arbitrator or a flaw in the arbitration process, but rather the direct result of Appellants' continuous pursuit of their meritless claims against Respondents. Appellants' own moving brief in support of their underlying motion to vacate the arbitration award conceded that they successfully reached a settlement in the underlying litigation after the matter was restored. (See Da179). Despite having resolved the underlying dispute, Appellants nevertheless filed a meritless motion to vacate the arbitration award in an attempt to recover "substantial legal fees and costs" allegedly incurred while pursuing baseless claims against Respondents.

As Judge Ostuni correctly noted, Appellants could not have suffered any damages as a result of the arbitration proceedings, since the matter was reinstated and any claims for legal fees or consequential damages could have been pursued in the underlying action against IRS and Travelers/Fidelity. (See Da125). The arbitration fees and costs awarded were consistent with standard arbitration practice and were explicitly agreed to by Appellants in the arbitration agreement. These financial consequences are a direct result of Appellants' own contractual commitments—not arbitrator misconduct or procedural irregularities.

Here, Appellant voluntarily entered into the arbitration agreement, participated fully in the proceedings, and had ample opportunity to present evidence and arguments. The arbitrator's decision was based on a thorough evaluation of the facts and applicable law. That the outcome imposes financial consequences on Appellant does not render the award unjust or improper. To the contrary, allowing parties to undo arbitration awards simply because they are dissatisfied with the financial implications would undermine the finality and efficiency that arbitration is designed to provide. Appellants had every opportunity to assert claims for consequential damages or legal fees in the reinstated litigation. Instead, they chose to voluntarily settle that matter. Moreover, the arguments Appellants now raise were already fully briefed and considered by the trial court in their original motion to vacate. The trial court correctly found that the fees incurred by Appellants were the result of their own meritless pursuit of claims against Respondents. Such self-inflicted costs do not meet the high threshold required to vacate an arbitration award under applicable law.

Appellants' dissatisfaction with the financial outcome of their own litigation choices does not justify disturbing a valid and binding arbitration award. Accordingly, the trial court's order should be affirmed.

POINT VI

**THE TRIAL COURT PROPERLY CONFIRMED THE
ARBITRATION AWARD**

The trial Court properly applied the highly deferential standard required by New Jersey law when reviewing arbitration awards and its' decision properly affirmed the arbitrator's careful and well-supported determinations.

The scope of judicial review of an arbitration award is limited. Tretina Printing, Inc. v. Fitzpatrick & Assocs., 135 N.J. 349, 357, (1994). It also is well settled that "there is a strong preference for judicial confirmation of arbitration awards." Linden Bd. of Educ. v. Linden Educ. Ass'n, 202 N.J. 268, (2010). See also Martindale v. Sandvik, Inc., 172 N.J. 275 (2002). An arbitrator's decision is not to be cast aside lightly. Bd. of Educ. of the Alpha v. Alpha Educ. Ass'n, 190 N.J. 34, 42. Further, an arbitrator's decision is "entitled to a presumption of validity," Twp. of Wyckoff v. PBA Local 261, 409 N.J. Super. 344, 354 (App. Div. 2009). "From the judiciary's perspective, once parties contract for binding arbitration, all that remains is the possible need to: enforce orders . . . which have been ignored; confirm the arbitration award; correct or modify an award; and in very limited circumstances, vacate an award." Minkowitz v. Israeli, 433 N.J. Super. 111, 134 (App. Div. 2013) Otherwise, "the purpose of the arbitration contract . . . would be severely undermined." *Id.*

Appellants have failed to establish any of the statutory grounds for vacating an arbitration award under N.J.S.A. 2A:23B-23(a). Their dissatisfaction arises not from any procedural defect or arbitrator misconduct, but from the financial consequences of an award that was both foreseeable and contractually agreed upon when they elected to arbitrate under the AAA's rules. Moreover, these consequences stem from Appellants' continued pursuit of meritless claims against Respondents, claims that were fully addressed and resolved through the arbitration process.

In the case at bar, the arbitrator's award was properly upheld as there is no basis to vacate the award. The Respondents moved to dismiss Appellants' claims against them in the AAA arbitration, as they were in the same position as the Halpern Defendants.

Appellants , through counsel, responded to this motion. The arbitrator considered all relevant and material evidence within the scope of his powers under the AAA rules and granted the appropriate relief he deemed just and equitable. Appellants agreed to be governed by the rules that the arbitrator adhered to, and there has been no violation by the arbitrator of N.J.S.A. 2A:23B-23(a). See Minkowitz v. Israeli, 433 N.J. Super. 111 (App. Div. 2013). The arbitrator's award is entitled to a presumption of validity, and Appellants have failed to overcome this presumption. See Twp. of Wyckoff v. PBA Local 409 N.J. Super. 344, 354 (App. Div. 2009). The arbitrator's authority, the process followed, and the issuance of the award all complied with the AAA's standards and the parties' agreement. The trial court correctly recognized that the arbitration process was fair, the award was within the arbitrator's authority, and no statutory basis existed to disturb it. Accordingly, the trial court's order should be affirmed.

CONCLUSION

Based on the foregoing, Respondents respectfully request the Court affirm the trial court's ruling in all respects, and uphold the arbitration award, denying Appellants' appeal in its entirety.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH, LLP
Attorneys for Defendants

/s/ Meredith Kaplan Stoma

MEREDITH KAPLAN STOMA, ESQ.

Dated: July 22, 2025

IN THE SUPERIOR COURT OF NEW JERSEY - APPELLATE DIVISION
APPELLATE DIVISION DOCKET NUMBER: A-002768-24 TEAM 01

ALEJANDRO PEREZ AND CATHY PEREZ, husband and wife,

Plaintiffs / Appellants

vs

GABRIEL H. HALPERN, ESQ, an attorney at law of the State of New Jersey;
PILNLIS HALPERN, LLP, attorneys at law of the State of New Jersey;
DANIEL N. EPSTEIN, ESQ., an attorney at law of the State of New Jersey;
EPSTEIN OSTROFF, LLC, attorneys at law of the State of New Jersey; and
DOES 1 through 10.

Defendants / Respondents

REPLY BRIEF OF APPELLANTS

Appeal from the judgment of Hon. Kevin P. Kelley, J.S.C.,
Entered on the 25th day of April, 2025
In the Superior Court of Bergen County
At Case No. BER-L-6186-21

Alejandro Perez and Cathy Perez
236 Mable Ann Avenue
Franklin Lakes, New Jersey 07417
Tel: (201) 906 5167

Dated: August 19, 2025.

Email: federalstatecasesperez@gmail.com

RECEIVED
APPELLATE DIVISION
AUG 20 2025
SUPERIOR COURT
OF NEW JERSEY

TABLE OF CONTENTS

TABLE OF CONTENTS	i.
TABLE OF CITATIONS	iii.
TABLE OF APPENDIX A pages (1a. - 77a.)	iv.
LEGAL ARGUMENTS	
REPLY TO RESPONDENT’S PRELIMINARY STATEMENT	1.
REPLY TO COUNTERSTATEMENT OF FACTS AND PROCEDURAL HISTORY	3.
REPLY ARGUMENT	5.
REPLY ARGUMENTS POINT I LEGAL STANDARD	5.
Respondents recite general legal principles favoring arbitration but fail to meaningfully address the specific statutory grounds for vacatur that are directly implicated in this case	6.
A. Exceeding the Arbitrator’s Authority (Subsection a(4))	6.
B. Misconduct and Refusal to Hear Material Evidence (Subsection a(3)):	6.
C. Award Procured by Undue Means (Subsection a(1)):	6.
REPLY TO POINT II THE ARBITRATOR DID, IN FACT, EXCEED HIS AUTHORITY AND DISREGARDED THE ARBITRATION AGREEMENT	7.
REPLY TO POINT III THE ARBITRATOR FAILED TO CONSIDER MATERIAL EVIDENCE AND DEPRIVED APPELLANTS OF A FAIR HEARING	9.

REPLY TO POINT IV THE ARBITRATION PROCESS WAS UNFAIR AND THE ARBITRATOR MANIFESTLY DISREGARDED APPLICABLE LAW AND PROCEDURE	11.
REPLY TO POINT V APPELLANTS HAVE SUFFERED FINANCIAL HARM CAUSED BY RESPONDENTS' MISCONDUCT AND PROCEDURAL UNFAIRNESS	13.
REPLY TO POINT VI THE TRIAL COURT ERRED IN CONFIRMING THE ARBITRATION AWARD	14.
CONCLUSION	15.

TABLE OF CITATIONS

Cases	Pages
<i>AT&T Technologies, Inc. v. Communications Workers of America</i> , 475 U.S. 643, 651 (1986)	9, 14.
<i>Vitarroz Corp. v. G. Willi Food International Ltd.</i> , 637 F. Supp. 2d 238 (D.N.J. 2009)	9, 10, 11, and 12.
Constitutional Provisions / Statutes	
<i>N.J.S.A. 2A:23B-1 (a)</i>	6.
<i>N.J.S.A. 2A:23B-1 (a) (1)</i>	7.
<i>N.J.S.A. 2A:23B-15(a)</i>	9 and 10.
<i>N.J.S.A. 2A:23B-23(a)</i>	6.
<i>N.J.S.A. 2A:23B-23(a) (1)</i>	6.
<i>N.J.S.A. 2A:23B-23(a)(3)</i>	6.
<i>N.J.S.A. 2A:23B-23(a)(4)</i>	2 and 6.
<i>N.J.S.A. 2A:23B-1 et seq</i>	5 and 6.
9 U.S.C. § 10(a)(3)	5 and 6.
<i>Arbitration clause</i>	3.
<i>Arbitration Rules (AAA Rules)</i>	6, 7,8, and 9.
<i>Federal Arbitration Act (FAA)</i>	2,5, 7, 9, and 10.
<i>New Jersey's Arbitration Act</i>	7, 9, 10, 12, and 15.
<i>New Jersey's Revised Uniform Arbitration Act</i>	5.

TABLE OF CONTENT
APPENDIX A
(1a – 77a)

	pages
ORDER APRIL 25, 2025.	1a.
APPEAL NOTICE MAY 6, 2025.	3a.
INFORMATION STATEMENT MAY 6, 2025.	6a.
AMERICAN ARBITRATION AWARD JANUARY 28, 2025.	10a.
RETAINER EPSTEIN OSTROVE	11a.
LEGAL MALPRACTICE EXPERT REPORT	14a.
DAMAGES	27a.
DAMAGES RESTORING MATTER	33a.
AUGUST 3, 2017, CONSENT ORDER UNDERLYING MATTER	34a.
ORDER MEDIATION	36a.
ORDER DATED SEPTEMBER 2020 DENIED REINSTATEMENT	37a.
ORDER AND OPINION	38a.
DENIED EPSTEIN TO SEAL RECORD AND DENIED STAY	
ORDER DATED APRIL 3, 2025 , ORDER GRANTED PLAINTIFFS	47a.
MOTION RECONSIDERATION RESTORING MATTER BACK	
TO TRIAL LIST.	

REPLY TO RESPONDENT'S PRELIMINARY STATEMENT

Respondents' Preliminary Statement presents a misleading and overly simplified version of the procedural history and issues on appeal, omitting critical facts and mischaracterizing the bases for Appellants' challenge to the arbitration award and the trial court's order confirming it. **First and foremost**, this appeal is not merely a continuation of meritless claims, as respondents suggest, but rather a challenge to a fundamentally flawed arbitration process and an arbitrator's decision that exceeded his authority, manifestly disregarded controlling law, and failed to address core issues of legal malpractice. The arbitration proceedings were compromised by procedural irregularities, unsupported reliance on collateral court findings that were neither binding nor dispositive, and an erroneous legal standard applied by the arbitrator that deprived the Appellants of a fair adjudication of their claims. Appellants timely paid for costly arbitration application, in which claims were to be heard on the merits, no hearing whatsoever was provided. Contrary to respondents' assertion, January 28, 2025, arbitration award *See: (App. A, pg. 10a.)* did not involve any genuine evaluation of the merits of Appellants' legal malpractice claims. **Instead**, the arbitrator improperly treated Judge Ostuni's ruling in the underlying litigation as dispositive, despite the fact that (1) the Law Division expressly made no findings as to the conduct of Respondents, and (2) reinstatement of the underlying matter did not negate the years of delay, 'emotional distress', and 'significant legal

fees' incurred due to Respondents' mishandling of the case *See: 2025 Order* ((April 3, 2025, Order Granted Plaintiffs Motion Reconsideration Restoring Matter Back To Trial List: *See: App. A, pg. 47a.*). The arbitrator's wholesale deference to that ruling, without any independent fact-finding, rendered the arbitration proceeding a rubber-stamp exercise rather than the meaningful hearing guaranteed by the parties' agreement and New Jersey law. *See: (Award App. A, pg. 10a.)*. **Furthermore**, the trial court's decision to confirm the arbitration award without holding a proper evidentiary hearing, and without addressing Appellants' well-supported claims under *N.J.S.A. 2A:23B-23(a)(4)* and the FAA, was legally erroneous. Appellants set forth multiple, independently sufficient grounds for vacatur—each of which the lower court failed to address with the rigor required under the statute and binding precedent. (App. A, pg. 1a. Order April 25, 2025). Respondents attempt to paint this appeal as a redundant challenge to prior rulings. **In reality**, it raises urgent and unresolved questions about the fairness and legality of the arbitration process and whether the arbitrator's dismissal was grounded in actual fact-finding or impermissible delegation to external, unrelated rulings. Appellants do not seek a second bite at the apple—they seek the first full and fair hearing of their malpractice claims, as guaranteed by law and the parties' agreement to arbitrate. **Accordingly**, this Court should reject Respondents' misleading narrative and proceed to review the arbitration award under the proper standard. The award should be vacated, and

the matter remanded for a fair and impartial arbitration hearing consistent with New Jersey's strong public policy requiring arbitration to be fundamentally fair and conducted within the bounds of the arbitrator's authority.

REPLY TO:

COUNTERSTATEMENT OF FACTS AND PROCEDURAL HISTORY

Respondents' Counterstatement of Facts and Procedural History presents a selective and self-serving narrative that omits material facts, misstates procedural developments, and ignores the central legal and factual bases for Appellants' claims and this appeal. **To begin**, Respondents gloss over their own role in allowing the underlying case to * languish for over two years, despite the clear opportunity and obligation to restore the matter to the active trial list. Contrary to their portrayal, Respondents' failure to act with diligence and competence during their representation of appellants between 2018 and 2020 was not merely a matter of "strategy," but constituted the core of the legal malpractice claims. The record is clear that Respondents **did not** file any motion to restore the case, **nor** did they adequately inform or advise Appellants of the consequences of inaction. This was not an issue of Appellants "disregarding legal advice," but rather one of being deprived of timely and informed counsel. Despite Respondent's failure and its **obligation** to restore the matter to the active trial list *See: (Respondent's Epstein Ostrove Retainer Agreement App. A, pg. 11a-.)* and its obligations, Respondent **did neither**. The arbitration clause cited by Respondents is not in dispute; however, what

is at issue is the fundamentally flawed manner in which the arbitration was conducted. Appellants' claims were dismissed not on their merits, but based solely on findings made by Judge Ostuni in a different case involving different parties—the Halpern Defendants—not Respondents. Judge Ostuni made no findings concerning Respondents' conduct, and he expressly stated that the reinstated underlying matter could allow Appellants to seek damages against the original defendants, not that no malpractice occurred during the years the matter sat dormant due to legal mismanagement. (emphasis). Respondents' recitation of the procedural steps—particularly the dismissal of the claims against the Halpern Defendants and the granting of their motion to lift the stay—does not negate the misconduct and mishandling that occurred during Respondents' representation. The fact that Appellants eventually succeeded in reinstating the underlying matter in 2025 does not cure the years of delay, loss of litigation leverage, additional-substantial legal fees, and emotional toll incurred as a direct consequence of Respondents' legal malpractice. *See:* (App. A, 47a.) and *See:* (Expert Report App. A. pgs. 14a-27a). **Further**, Respondents' repeated reliance on the arbitrator's decision as a final and just resolution ignores that the arbitrator refused to hear key evidence—including expert testimony, deposition transcripts, and relevant documents—and summarily dismissed the case based entirely on collateral findings unrelated to their conduct. This was not a discretionary evidentiary ruling, but a wholesale abdication of the

arbitrator’s duty to independently assess the claims before him. Respondents fail to address this central issue and instead lean on the presumption of arbitral finality, even when that finality was achieved through a manifest disregard of the law and due process. **Additionally**, The Respondents’ narrative that Appellants pursued “baseless” claims is both inappropriate and unfounded. The malpractice claims were supported by facts, expert testimony, and significant documentation. The trial court’s deference to an arbitrator who did not address these materials—or the legal standards applicable to malpractice—was not simply a matter of procedural correctness, but a ‘miscarriage of justice’. **Finally**, Respondents ignore multiple procedural irregularities throughout arbitration—including unexplained denial of adjournments, ambiguity in arbitrator selection, and truncated discovery—that cumulatively deprived Appellants of a fair hearing as guaranteed by both the Federal Arbitration Act and New Jersey’s Revised Uniform Arbitration Act (*N.J.S.A. 2A:23B-1 et seq.*). **In sum**, Respondents’ counterstatement attempts to reframe this appeal as a simple disagreement with unfavorable outcomes, rather than what it is: a challenge to a legally deficient and procedurally unfair arbitration award that failed to resolve the malpractice claims on-their actual merits. Appellants are not seeking a do-over—they are seeking the fair and independent arbitration to which they were contractually and legally entitled.

REPLY ARGUMENTS POINT I
LEGAL STANDARD

Respondents recite general legal principles favoring arbitration but fail to meaningfully address the specific statutory grounds for vacatur that are directly implicated in this case. Contrary to their claim that Appellants merely rehash previously rejected arguments, Appellants have clearly identified multiple independent and well-supported bases for vacating the arbitration award under N.J.S.A. 2A:23B-23(a)—specifically: **A. Exceeding the Arbitrator’s Authority (Subsection a(4))**: The arbitrator dismissed Appellants’ claims not based on the actual record or the merits of the case, but rather by importing the ruling and reasoning from a separate court decision involving entirely different parties (*Perez v. Halpern*). This ruling was not binding and had no legal or factual nexus to the arbitration against Epstein. By adopting Judge Ostuni’s reasoning wholesale, the arbitrator failed to adjudicate the specific controversy before him, thus exceeding the authority granted by the arbitration agreement and AAA rules. **B. Misconduct and Refusal to Hear Material Evidence (Subsection a(3))**: The arbitrator refused to hear key expert reports, deposition transcripts, and discovery responses that directly supported Appellants’ malpractice and damages claims. These materials were timely submitted and went to the heart of the dispute. The refusal to consider such evidence constitutes misconduct and a denial of a fair hearing under the statute. **C. Award Procured by Undue Means (Subsection a(1))**: While Respondents claim the arbitration followed proper process, the record reflects irregularities,

including denied adjournments, premature motion practice, and a failure to provide reasoned decision-making. The arbitrator rendered an outcome that lacked independent analysis and appeared designed to mirror a separate litigation result that did not bind this proceeding—effectively outsourcing his judgment. That is not the neutral, independent review the parties contracted for. Respondents cite cases emphasizing deference to arbitration decisions, but *judicial deference ends where statutory violations begin*. The New Jersey Arbitration Act and the FAA explicitly allow courts to vacate awards under the precise circumstances present here. The trial court failed to apply this legal standard correctly and gave undue weight to the outcome, not the process used to reach it. **Finally**, Appellants are not challenging arbitration in the abstract, nor are they seeking a “do-over.” They are demanding accountability where the process has broken down—where the arbitrator ignored evidence, relied on a separate and unrelated judicial opinion, and abandoned his duty to independently decide the issues actually presented. The Respondents’ effort to minimize or mischaracterize these issues as “unsubstantiated” or “previously rejected” does not negate the fact that the arbitrator failed to fulfill the basic requirements of neutrality, independent judgment, and fair hearing.

REPLY TO POINT II

**THE ARBITRATOR DID, IN FACT, EXCEED HIS AUTHORITY
AND DISREGARDED THE ARBITRATION AGREEMENT**

Respondents’ assertion that the arbitrator acted within his authority under AAA

Rule 35 is both misleading and legally incorrect. While AAA Rule 35 provides arbitrators with discretion to manage evidence, that discretion does not permit the arbitrator to substitute binding legal determinations from a wholly unrelated matter—involving different parties, different retainer agreements, and different legal theories—for a proper analysis of the merits of the claims at issue in this arbitration.

The arbitrator's decision was not grounded in the evidentiary record developed in this case, but rather improperly and almost entirely deferred to Judge Ostuni's rulings in the "Halpern matter". Yet, neither Epstein nor the Plaintiffs were parties to that case. The arbitrator did not make any independent findings regarding Mr. Epstein's conduct, nor did he evaluate the distinct obligations arising under *Epstein's own retainer agreement*. By wholly adopting the reasoning from a separate, third-party dispute, the arbitrator failed to discharge his duty to adjudicate the claims submitted to him under the governing arbitration agreement. **Moreover**, the *Retainer Agreement required* Mr. Epstein to take steps to restore the underlying matter to the trial calendar—a duty the arbitrator ignored, simply assuming that the matter had been restored and using that assumption to justify dismissal. Whether the underlying litigation was "restored" was a question of fact central to the malpractice claim. Instead of hearing evidence or making factual findings, the arbitrator dismissed the claims on procedural grounds borrowed from unrelated litigation. **Critically**, this delegation of adjudicative responsibility to a prior judge's ruling—outside the scope

of the arbitration—violated the parties’ agreed-upon framework and denied Plaintiffs a fair arbitration on the merits of their claims. Such conduct constitutes a manifest disregard for the law and exceeds the arbitrator’s authority, providing an established basis for vacatur under both the Federal Arbitration Act and the New Jersey Arbitration Act. *See: Vitarroz Corp. v. G. Willi Food International Ltd.*, 637 F. Supp. 2d 238 (D.N.J. 2009). **In sum**, the arbitrator did not “consider all submissions,” as Respondents claim. He summarily adopted a ruling from another case and ignored key evidence and contractual obligations unique to this arbitration. This is not a permissible exercise of arbitral discretion; it is an abdication of it. **Accordingly**, trial court erred in confirming the award. *See: AT&T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643, 651 (1986). **Therefore**, the order must be reversed.

REPLY TO POINT III

**THE ARBITRATOR FAILED TO CONSIDER MATERIAL EVIDENCE
AND DEPRIVED APPELLANTS OF A FAIR HEARING**

Respondents attempt to characterize the arbitration as fair and comprehensive, but the record shows otherwise. The issue is not whether evidence was submitted, but rather whether the arbitrator actually considered that evidence in rendering his award. Contrary to Respondents’ assertions, critical evidence—including Plaintiffs’ expert legal opinion, deposition transcripts of key parties, and financial documents supporting damages—was either outright ignored or never meaningfully addressed in the arbitrator’s written award. While Respondents cite AAA Rule 35 and N.J.S.A.

2A:23B-15(a) to justify the arbitrator's discretion, that discretion is not unlimited. The law is clear: an arbitrator's *discretion cannot extend to excluding material evidence necessary for a fair resolution*. Courts have repeatedly held that failure to consider relevant, non-cumulative, and timely-submitted evidence constitutes *misconduct warranting vacatur* under both the Federal Arbitration Act and the New Jersey Arbitration Act. See: *Vitarroz Corp. v. G. Willi Food International Ltd.*, 637 F. Supp. 2d 238 (D.N.J. 2009). **Here, Plaintiffs expert** opinion went to the heart of the legal malpractice claim. Yet the arbitrator dismissed the case *without addressing any of the experts' conclusions or analyzing the specific legal duties breached*. This omission alone undermines the integrity of the award. Additionally, financial records substantiating the magnitude of damages were excluded without explanation, and the arbitrator relied instead on the supposed availability of the underlying case—which is factually and procedurally distinguishable from the claims at issue in the arbitration. **Moreover**, the arbitrator's decision relied almost exclusively on Judge Ostuni's ruling in the "Halpern matter", involving **different attorneys and different alleged breaches**. The arbitrator never engaged with the unique allegations against Epstein or the distinct theory of damages in this matter. As such, *the arbitrator did not "carefully analyze the materials he found relevant"*—he simply substituted one judge's opinion from a different case and bypassed the required independent *analysis*. It is not enough that the arbitrator allowed submissions; he was *required*

to consider them. Due process in arbitration means more than a formal opportunity to submit documents—it demands meaningful consideration of the issues and evidence. Appellants were denied this, and therefore the proceedings were fundamentally unfair. Accordingly, Respondents’ attempt to frame Appellants’ objections as mere disagreement with discretionary rulings mischaracterizes the substance of this appeal. This is not about second-guessing factual findings—it is about the arbitrator’s refusal to engage with the record, failure to address critical evidence, reliance on an unrelated legal opinion in violation of the standards for fair arbitration. These are precisely the kinds of procedural defects that courts have found sufficient to warrant vacatur. *See: Vitarroz Corp. v. G. Willi Food International Ltd.*, 637 F. Supp. 2d 238 (D.N.J. 2009). Appellants respectfully request that the arbitration award be vacated, and the matter remanded for proper adjudication on the merits.

REPLY TO POINT IV

**THE ARBITRATION PROCESS WAS UNFAIR AND THE ARBITRATOR
MANIFESTLY DISREGARDED APPLICABLE LAW AND PROCEDURE**

Respondents claim the arbitration process was just and that the arbitrator acted within his authority, yet the record tells a different story. The arbitrator’s reliance on Judge Ostuni’s ruling—addressing a different case against separate defendants—to summarily dismiss Appellants’ distinct claims against Respondents was a manifest disregard of the law. Appellants’ claims against Respondents raise unique legal and factual issues that required independent evaluation, not wholesale adoption of

findings from unrelated litigation. The arbitrator's refusal to allow adjournments to prepare crucial evidence, limitation on witness testimony, and failure to conduct any meaningful review of Appellants' submissions denied them a fair opportunity to develop their case. Such procedural shortcuts violate fundamental due process rights guaranteed even in arbitration under New Jersey law. The arbitrator's abbreviated "review" effectively functioned as a dismissal without a hearing, undermining the integrity of the process. While the NJAA affords arbitrators broad discretion, it does not—and cannot—permit awards procured by manifest disregard of law or procedural unfairness. The absence of a detailed record or reasoned explanation for rejecting Appellants' evidence and arguments compounds this error and justifies vacatur. *See: Vitarroz Corp. v. G. Willi Food International Ltd.*, 637 F. Supp. 2d 238 (D.N.J. 2009). The arbitrator's cursory reliance on a separate court ruling without applying the correct legal standards or fully considering the arbitration submissions constitutes an abuse of discretion. Judicial review may be limited, but it must ensure that arbitration remains a fair and equitable alternative to litigation. **Here**, the arbitrator's conduct resulted in manifest injustice and prejudice to Appellants, warranting reversal. Mere dissatisfaction with an outcome is not at issue—rather, this appeal challenges the fundamental fairness and legality of the arbitration process itself. For these reasons, the arbitration award should be vacated, and the matter remanded for a new hearing before an impartial arbitrator who will conduct a full

and fair adjudication consistent with governing law.

REPLY TO POINT V

**APPELLANTS HAVE SUFFERED FINANCIAL HARM CAUSED BY
RESPONDENTS' MISCONDUCT AND PROCEDURAL UNFAIRNESS**

Respondents' attempt to dismiss Appellants' financial harm as "self-inflicted" and legally insufficient ignores the core issues underlying this dispute. The financial damages Appellants seek to recover arise directly from Respondents alleged legal malpractice and breaches of their duties during representation—not merely from Appellants' strategic litigation choices or settlement decisions. Contrary to Respondents' suggestion, Appellants did not voluntarily incur these costs without cause. Rather, the arbitration process was tainted by the arbitrator's manifest disregard of law and procedure, including dismissal of meritorious claims based on unrelated rulings, denial of necessary discovery and hearings, and procedural shortcuts that denied Appellants a fair opportunity to prove their damages. *See:* (App. A. legal malpractice report and damages 14a, damages 27a. damages 33a. + costs + years later restoring matter back to trial list 2025 App A. 47a.) **Appellants' successful reinstatement and settlement in the underlying litigation do not negate their right to pursue compensation for fees and costs improperly caused by Respondents' malpractice.** The reinstatement simply restored Appellants' underlying claims against the original defendants; it does not erase the financial harm Appellants endured due to Respondents' wrongful

conduct and the flawed arbitration process. **Further**, the arbitration agreement's fee provisions do not immunize Respondents or the arbitrator from accountability where the process is fundamentally unfair or legally defective. Judicial review must ensure arbitration remains a just forum, not a means for parties to escape responsibility by hiding behind procedural formalities. Appellants respectfully submit that the trial court erred in finding that financial harm was merely the product of meritless litigation choices. The record demonstrates that the costs were directly attributable to Respondents' conduct and the arbitrator's improper rulings: *AT&T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643, 651 (1986). For these reasons, the arbitration award should be vacated, and the trial court's order reversed.

REPLY TO POINT VI

TRIAL COURT ERRED IN CONFIRMING THE ARBITRATION AWARD

While Appellants acknowledge the limited scope of judicial review in arbitration matters, this deference cannot be absolute where the arbitrator's conduct and rulings demonstrate manifest disregard of the law and procedural fairness. The cases cited by Respondents emphasize the importance of finality but also recognize that arbitration awards must not be immune to correction when statutory grounds for vacatur exist. *Contrary* to the *Respondents'* assertion, the arbitrator exceeded his authority by improperly relying on unrelated rulings, denying Appellants a meaningful opportunity to fully present material evidence, and dismissing claims critical to Appellants' pursuit of redress for legal malpractice.

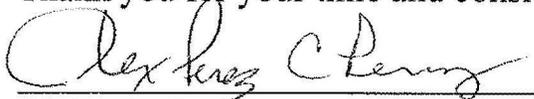
These errors compromised the fairness and integrity of the arbitration process, which the trial court failed to adequately address. Appellants' dissatisfaction is not mere displeasure with the outcome but a justified challenge to the flawed arbitration procedure and decision, which deprived them of their contractual and statutory rights. The presumption of validity does not apply when an award is tainted by procedural irregularities or when the arbitrator exceeds the powers granted under the arbitration agreement and the New Jersey Arbitration Act. *The trial court* overlooked these fundamental defects and wrongly confirmed an award that should have been vacated to preserve Appellants' right to a fair adjudication. Arbitration must serve justice, not become a shield for erroneous and unjust rulings. **Accordingly**, the trial court's order confirming the arbitration award should be reversed, and the arbitration award vacated.

CONCLUSION

WHEREFORE, Appellants respectfully request that this Court:

- Reverse the trial court's order confirming the arbitration award;
- Vacate the arbitration award entered on January 28, 2025.
- Remand the matter for further proceedings consistent with the Court's ruling;
- and - Grant such other and further relief as the Court deems just and proper.

Thank you for your time and consideration.



Alejandro Perez, and Cathy Perez (Plaintiff Appellants). Dated: August 19, 2025.