NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0078-11T1

ARUNA CHAKRALA and DR. ARUNA CHAKRALA, M.D., P.C.,

Plaintiffs-Respondents,

v.

SUDHA BANSAL,

Defendant-Appellant.

Argued January 24, 2013 - Decided September 24, 2013

Before Judges Nugent and Haas.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-1594-08.

Jae H. Cho argued the cause for appellant.

Richard F. Collier, Jr. argued the cause for respondents.

The opinion of the court was delivered by

NUGENT, J.A.D.

This appeal involves a dispute between doctors about their medical practice. The doctors arbitrated their dispute. Dissatisfied with the arbitration awards, defendant, Dr. Sudha Bansal, filed a Law Division action to confirm in part, modify in part, and vacate in part the arbitration awards issued by the

American Arbitration Association (AAA). The Law Division dismissed her action and she appealed. We affirm.

These are the facts. Plaintiff, Aruna Chakrala, M.D., and defendant Sudha Bansal, M.D., entered into a partnership agreement (the Agreement) dated May 1, 2006. According to the Agreement, Chakrala[1] was the sole shareholder of Dr. Aruna Chakrala, M.D. P.C., an incorporated medical practice (the Practice). Bansal, who was employed by Capital Health Systems, N.J., agreed to leave her position to accept a fifty percent interest in the Practice. Each party agreed to work "on a [three] months on and [three] months off rotation period, the first such period to commence as of 09.01.2006 or 10.15.2006 with Dr. Sudha Bansal . . . being ON for [three] months." Each party would be compensated by receiving the net profit, less twenty percent retained earnings, for the three months the party worked. When both parties worked during the same period, they would share equally the net profits generated during that time.

The Agreement states that Bansal has the right to require Chakrala to change the structure of the Practice from a corporation to a limited liability company after December 31, 2007. The Agreement also states that New Jersey law governs

[1] We refer to the parties by their last names to distinguish Dr. Chakrala from her incorporated practice, and for ease of reference. We mean no disrespect.

performance under the Agreement as well as any disputes under the Agreement, and the parties will arbitrate any disputes arising under the Agreement. The arbitration clause provides:

> Any disputes under this [A]greement or related to this [A]greement shall be decided outside the NJ court system and within the guidelines set forth for binding arbitration as is customary in the State of New Jersey.

In May 2008 the parties became embroiled in a dispute that irreparably damaged their working relationship. Bansal attempted to have Chakrala restructure the Practice as a limited liability company, as provided for in the Agreement. Chakrala responded by sending Bansal a letter dated May 7, 2008, purporting to terminate the Agreement, and alleging Bansal had breached the agreement and had "not significantly added to the growth" of the practice. Thereafter, the parties' accusations escalated and Chakrala filed a verified complaint and order to show cause, seeking to compel arbitration.

In paragraphs six, twenty-three, and twenty-four of her verified complaint, Chakrala alleged that the arbitration clause in the Agreement was governed by New Jersey's version of the Uniform Arbitration Act (NJUAA), N.J.S.A. 2A:23B-1 to -32, specifically N.J.S.A. 2A:23B-3(c); that the NJUAA authorized the court, upon application of a party, to appoint an arbitrator; and that the NJUAA authorized a party to commence a summary

action to have the court appoint an arbitrator. In response to each of those assertions in the complaint, Bansal responded: "Neither admitted nor denied and [Bansal] leaves [Chakrala and the Practice] to their strict proofs on this issue."

Bansal also filed a counterclaim alleging causes of action for shareholder oppression, breach of fiduciary duty, breach of contract, fraudulent inducement, and bad faith. In the complaint's second count, Bansal acknowledged the arbitration clause, but also cited the Agreement's remedy clause, which states:

> In the event of a breach or threatened breach by either party of any of the provisions of this Agreement, both Parties agree that each party is entitled to, in addition to and not in limitation of any other rights and remedies available to them at law or in equity, to [sic] a permanent injunction in order to prevent or restrain any such breach by either party by their Partners, agents, representatives, servants, employees and/or any and all persons directly or indirectly acting for or with the Party.

Bansal asserted that the "Remedies" clause conflicted with the arbitration clause, "with regard to remedies available to the parties in the event of a breach," and therefore she should not be required to arbitrate the dispute.

On August 26, 2008, the Law Division entered judgment on Chakrala's verified complaint, appointed the AAA as the

arbitrator "for all disputes subject to the arbitration clause of the [Agreement]," denied Bansal's request for injunctive relief, and otherwise stayed Bansal's counterclaim "pending resolution of the arbitration of the disputes subject to the [Agreement]." In rendering its decision, the court determined that the NJUAA, specifically N.J.S.A. 2A:23B-5(a), authorized an application for judicial relief to compel arbitration. Based on the language of that statute, the court concluded that it was authorized to decide the matter in a summary proceeding. Exercising its statutory authority pursuant to N.J.S.A. 2A:23B-11, the court ordered the parties to arbitrate their dispute under the rules and administrative supervision of the AAA. Bansal did not appeal from the confirming order.

Following six non-consecutive days of arbitration hearings, the AAA arbitrator issued a partial final award. Finding Bansal "generally to be credible," and Chakrala "generally not to be credible," the arbitrator concluded that Chakrala had breached the Agreement "and injured [Bansal] in numerous ways." The arbitrator further determined that Bansal's "principal injury [was] the frustration of [her] expectation under the [A]greement to be treated fairly and in good faith, and to be confirmed as an owner of a new LLC to be formed for the practice." The arbitrator also found that, when the parties' relationship

ended, Bansal was entitled to "form a new independent office and continue to serve some portion of the patient base [the parties] had developed together[.]"

The arbitrator awarded Bansal $12,297 as damages on a claim related to Medicare payments, $100 nominal damages for other breaches of the Agreement by defendant, and counsel fees and costs. The arbitrator denied Bansal's request for injunctive relief, namely, that she be "put back into" the Practice so that patients could become reacquainted with her, and that both parties be required to relocate outside of the municipality where the Practice was currently located.

Two months after rendering the partial final award, the arbitrator rendered a final award, which required Chakrala to pay Bansal $45,000 in attorney's fees. The final award also required Chakrala to pay the arbitrator's fees and costs. The portion of the arbitrator's fees and costs previously paid by Bansal were to be reimbursed to her.

The partial final award is dated September 22, 2010, and the final award is dated December 8, 2010. On March 3, 2011, Bansal moved to Pennsylvania. On March 7, 2011, Bansal commenced an action under the Federal Arbitration Act (FAA), 9 U.S.C.A. §§ 1-16, in the United States District Court, District of New Jersey, and filed a motion to confirm in part, modify in

part, and vacate in part the arbitration award. On May 31, 2011, the court granted Chakrala's cross-motion to dismiss plaintiff's complaint for lack of subject matter jurisdiction. The court denied as moot Bansal's motion to modify the arbitration award.

Five days before the United States District Court dismissed Bansal's action, Bansal filed an action in the Law Division to confirm in part, modify in part, and vacate in part the arbitration award. Bansal sought to confirm the arbitration award insofar as it awarded her fees and costs; modify the award both by requiring Chakrala to issue Bansal stock representing fifty percent ownership of the successor company to the Practice and ordering Chakrala to pay additional damages; and vacate those provisions of the award that required Chakrala to pay $100 in nominal damages and denied the injunctive relief that Bansal had requested.

Bansal filed her Law Division motion under the FAA. She argued that the FAA applied because the Practice involved out-of-state patients and companies, including New York residents, the Practice's medical malpractice insurance carrier, the Practice's billing company, and companies that drew and analyzed blood from patients.

Chakrala moved to dismiss plaintiff's action. She argued that the Agreement did not involve interstate commerce; the terms of the Agreement required the court to apply New Jersey law; and Bansal had not timely invoked the FAA.

The Law Division denied Bansal's motion and dismissed her action. Acknowledging that the parties' medical practice "did actively participate in interstate commerce," the court noted the FAA requires "that the arbitration clause of the underlying agreement . . . appear in a contract evidencing a transaction involving commerce." The court found that the Agreement "was not a contract evidencing a transaction involving commerce. Instead, it was a contract[] evidenc[ing] a partnership [that had been] . . . negotiated and signed [by] two parties, physicians, entirely located within the State of New Jersey." The court also noted that the Agreement required the application of New Jersey law. Lastly, the court concluded Bansal was precluded from invoking the FAA for two reasons: the Agreement "provide[d] for the applicability of state arbitration law [and Bansal] . . . failed to object to the applicability of the [NJUAA] prior to now." The court entered an order dismissing Bansal's action and Bansal filed this appeal.

Bansal first challenges the court's decision that the NJUAA, not the FAA, applies to the arbitration award. She

acknowledges that the court's 2008 order compelling arbitration as authorized by the NJUAA was final, but insists her 2011 complaint concerning the AAA award is a separate and unrelated action.[2] From the proposition that the 2008 and 2011 actions are separate and unrelated, Bansal reasons that the court's 2008 decision involving the NJUAA has no bearing on the 2011 action on the AAA award, and the trial court erred by ruling to the contrary. Bansal also contends the court's determination that the FAA did not apply to the AAA award violated the Supremacy Clause, because the FAA preempts state statutes that invalidate arbitration agreements.

Chakrala responds that the FAA does not apply to the arbitration award because the Agreement is not "a contract evidencing a transaction involving commerce," as required by 9 U.S.C.A. § 2. Chakrala also asserts that Bansal expressly agreed to arbitrate any disputes with Chakrala under New Jersey law. Lastly, Chakrala argues that Bansal is bound by the trial court's 2008 decision applying the NJUAA to the parties' dispute.

The trial court determined as a matter of law that the NJUAA applied to the AAA award. Our review of a trial court's

[2] Over Bansal's objection, the court clerk filed Bansal's 2011 application concerning the arbitration award under the docket number that had been assigned to the 2008 action.

conclusions of law is de novo. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995); 30 River Court E. Urban Renewal Co. v. Capograsso, 383 N.J. Super. 470, 476 (App. Div. 2006). Applying that standard, we conclude, as did the trial court, that Bansal was required to seek a modification of the AAA award under the NJUAA, not the FAA.

We begin by recognizing that arbitration is, fundamentally, a matter of contract. NAACP of Camden Cnty. East v. Foulke Management Corp., 421 N.J. Super. 404, 424 (App. Div.) certif. granted, 209 N.J. 96 (2011), appeal dismissed, 213 N.J. 47 (2013). For that reason, "the scope of the arbitration, no less than the duty to arbitrate, is governed by the agreement of the parties." Young v. Prudential Ins. Co. of Am., Inc., 297 N.J. Super. 605, 617 (App. Div.), certif. denied, 149 N.J. 408 (1997). Here, as the trial court correctly found, the parties agreed to arbitrate under the provisions of the NJUAA.

Chakrala and Bansal agreed to arbitrate disputes related to the Agreement "within the guidelines set forth for binding arbitration as is customary in the State of New Jersey." The guidelines for arbitration in New Jersey are not only customary, they are mandated by statute. The NJUAA expressly states that "[on] or after January 1, 2005, this act governs an agreement to arbitrate whenever made with the exception of an arbitration

between an employer and a duly elected representative of employees under a collective bargaining agreement or collectively negotiated agreement." N.J.S.A. 2A:23B-3(c). The NJUAA's provisions include procedures and criteria for confirming, modifying, and vacating arbitration awards. N.J.S.A. 2A:23B-22 to -24.

Not only did Bansal assent in the Agreement to arbitrate disputes under the NJUAA, she failed to contest the NJUAA's applicability when the issue was squarely framed by Chakrala's 2008 complaint to compel arbitration.[3] More significantly, Bansal did not appeal from the court's order compelling arbitration pursuant to the NJUAA. The court's order was "final" for purposes of appeal. Wein v. Morris, 194 N.J. 364, 380 (2008) (holding that orders compelling arbitration are deemed final judgments for purposes of appeal).

[3] In response to the three paragraphs in Chakrala's complaint alleging that the NJUAA applied, Bansal responded: "Neither admitted nor denied and [Bansal] leaves [Chakrala and the Practice] to their strictest proofs." We do not consider that response, which is not permitted by court rules, to be a denial. See R. 4:5-3 (stating that if a pleader genuinely "is without knowledge or information sufficient to form a belief as to the truth of an allegation [the pleader] shall so state and . . . this shall have the effect of a denial"). There is a difference between a pleader lacking the knowledge necessary to form a belief as to the truth of an allegation, and a pleader declining to admit a truthful allegation. In any event, Bansal did not argue that the FAA, rather than the NJUAA, applied to the Agreement.

Bansal had a full and fair opportunity in 2008 to contest and litigate the applicability of the NJUAA to her dispute with Chakrala. Consequently, if the 2008 action to compel arbitration and the 2011 action to enforce the award are separate and distinct actions, as Bansal claims, she is precluded from re-litigating the issue in the 2011 action. See Bondi v. Citigroup, Inc., 423 N.J. Super. 377, 422-23 (App. Div. 2011) (explaining elements of res judicata and collateral estoppel), certif. denied, 210 N.J. 478 (2012); see also Wm. Blanchard Co. v. Beach Concrete Co., 150 N.J. Super. 277, 292-93 (App. Div.) (explaining that "the application of the [entire controversy doctrine] requires that a party who has elected to hold back from the first proceeding a related component of the controversy be barred from thereafter raising it in a subsequent proceeding"), certif. denied, 75 N.J. 528 (1977).

Bansal also contends the trial court's decision violates the Supremacy Clause because the FAA preempts state law. We disagree, even assuming, as Bansal asserts, that the arbitration clause in the parties' Agreement appeared in a contract evidencing a transaction involving commerce.

"Congress enacted the FAA to replace judicial indisposition to arbitration with a 'national policy favoring [it] and plac[ing] arbitration agreements on equal footing with all other

contracts.'" Hall St. Assocs., L.L.C. v. Mattel, Inc., 552 U.S. 576, 581, 128 S. Ct. 1396, 1402, 170 L. Ed. 2d 254, 261 (2008) (alteration in original) (quoting Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 443, 126 S. Ct. 1204, 1207, 163 L. Ed. 2d 1038, 1042 (2006)). The FAA thus "preempt[s] any state statute that disfavor[s] arbitration agreements." Del Piano v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 372 N.J. Super. 503, 508 (App. Div. 2004), certif. granted, 183 N.J. 218, appeal dismissed, 195 N.J. 512 (2005). But "while possessing some preemptive force, [the FAA] does not entirely displace state arbitration law." Id. at 508-09 (citing Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Jr. Univ., 489 U.S. 468, 477, 109 S.Ct. 1248, 1255, 103 L. Ed. 2d 488, 499 (1989)); see also Ario v. Underwriting Members of Syndicate 53 at Lloyds, 618 F.3d 277, 288 (3d Cir. 2010) ("We have interpreted the FAA and Volt to mean that 'parties [may] contract to arbitrate pursuant to arbitration rules or procedures borrowed from state law, [and] the federal policy is satisfied so long as their agreement is enforced.'") (alternation in original) (quoting Roadway Package Sys., Inc. V. Kayser, 257 F.3d 287, 292 (3d Cir., certif. denied, 534 U.S. 1020, 122 S. Ct. 545, 141 L. Ed. 2d 423 (2001)). "[I]n general, the FAA will be found to be preemptive

only when state law prevents parties from fully arbitrating their disputes." Del Piano, supra, 372 N.J. Super. at 509.

Here, the parties contracted to arbitrate under the NJUAA. The NJUAA did not prevent the parties from arbitrating their dispute. To the contrary, when Bansal attempted in 2008 to avoid her contractual obligation to arbitrate, the court applied the NJUAA to enforce the arbitration clause in the parties' Agreement. In doing so, the court implicitly fostered the federal policy favoring arbitration. As we have previously observed, "New Jersey law does not limit that right [to arbitrate], and thus is congruent with federal law in this regard." Id. at 508.

The NJUAA does not disfavor arbitration; rather, it provides for the enforcement of arbitration agreements. The statute is congruent with, not antithetical to, the FAA. For those reasons, the NJUAA is not preempted by the FAA. We reject Bansal's argument to the contrary.

In view of our conclusion that the trial court properly determined the NJUAA, not the FAA, controlled the parties' dispute about the arbitration award, there is no need to address the parties' remaining arguments.

Affirmed.