

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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4 WPH ARCHITECTURE, INC., A Nevada
5 Corporation,

6 Appellant,

7 vs.

8 VEGAS VP, LP, a Nevada Limited
9 Partnership,

9 Respondent.

Supreme Court No. 54389
District Court No. 587179 Dept. X

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14 **ANSWERING BRIEF OF**
15 **RESPONDENT VEGAS VP, LP**

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Respondent Vegas VP, LP respectfully submits its Answering Brief.¹

ISSUES PRESENTED

- I. **WHETHER THE DISTRICT COURT PROPERLY REFUSED TO VACATE THAT PORTION OF THE ARBITRATION AWARD THAT DENIED AN AWARD OF COSTS AND FEES.**
- II. **PUBLIC POLICY DOES NOT DEMAND THE IMPOSITION OF COURT PROCEDURAL RULES ON AN ARBITRAL FORUM, PARTICULARLY WHERE THE PARTIES.**

INTRODUCTION

Great progress was made when arbitration treaties were concluded in which the contracting powers pledge in advance to submit all conflicts to an arbitration court, treaties which not only specify the composition of the court, but also its procedure.

Ludwig Quidde, Nobel Peace Laureate

The parties here agreed to submit their conflicts to arbitration, and even agreed on the procedure to be followed in that arbitration. But Appellant WPH Architecture, Inc. (“WPH”) is unwilling to abide by that agreement. Despite its express agreement to the application of the rules of the American Arbitration Association, WPH insists that the procedures attending to litigation in the Nevada courts were required to be grafted onto the proceedings. Thus, not content with an arbitration ruling that failed to hold it liable for its many errors, WPH strives to cherry pick portions of the Arbitration Panel’s decision, vacating those it finds unfavorable.

¹ Appellant WPH Architecture captioned its Opening Brief as though they sought relief through a writ petition, with the District Court and District Judge listed as “respondents” and “Vegas VP, LP” styled as “real party in interest.” As this matter is before the Court on the direct appeal of the judgment issued by the District Court, Vegas VP fashioned the caption with Vegas VP, LP named the Respondent, and the District Court and District Judge unnamed as parties to the action.

1 Respondent Vegas VP, LP (“Vegas VP”) was far less happy with the
2 Panel’s decision than WPH could possibly have been, but despite its
3 disappointment in the outcome, Vegas VP asked the District Court to honor the
4 agreement between the parties, and allow the ruling to stand. WPH’s motion to
5 vacate ignored the agreement between the parties that the arbitration rules would
6 govern the arbitration. Further, it was based upon a misapplication of the standard
7 by which arbitration awards may be challenged. Finally, WPH sought to turn a
8 statute that merely grants certain authority to arbitrators into a mandate of conduct
9 by such arbitrators. As there was neither a statutory nor common law basis to
10 support WPH’s challenge to the Panel’s decision, the District Court properly
11 denied WPH’s motion to partially vacate the award.

12 STATEMENT OF THE FACTS

13 Vegas VP contracted with WPH to perform architectural services for a
14 condominium project known as Metropolis. **See Agreement, APP 1a:147.²**
15 Pursuant to that Agreement, disputes between the parties were to be resolved
16 through arbitration conducted according to the Construction Industry Arbitration
17 Rules of the American Arbitration Association (“AAA”). **Id., APP 1a:157, ¶**
18 **7.2.2.** The Agreement did not contain any provision entitling a party prevailing in
19 a dispute to fees or costs.

20 Following construction of the building, Vegas VP, believing that many of
21

22 ² For ease of reference, Vegas VP refers to documents contained in the Appendix by
23 Volume and page number, (i.e., “App 1a:147”), deleting the “WPH” and any unneeded
preceding zeros.

1 the change orders required during construction had been the result of WPH's
2 professional negligence, Vegas VP initiated an arbitration proceeding. See **Final**
3 **Decision, APP 1a:11.** WPH initially raised numerous counterclaims against
4 Vegas VP, but dismissed those counterclaims prior to the hearing. *Id.* After a two
5 week hearing of Vegas VP's claims, the Arbitration Panel ("Panel"), consisting of
6 Noel E. Manoukian, Chair; P. Craig Storti; and John T. Jozwick, found in favor of
7 WPH, and order that neither party would take anything. **Final Decision, APP**
8 **1a:11.**

9 In its decision ("Final Award"), the Panel ruled that each party would bear
10 its own fees and costs. *Id.*, **App 1a:21, lines 21-24.** WPH thereafter filed a Post
11 Award Motion seeking costs pursuant to "NRS 18.010, *et seq.*," and costs and fees
12 pursuant to the offer of judgment authority, NRS 17.115 and NRCP 68. **Affidavit**
13 **of Weil, App. 1a:3, ¶¶ 12-13; Motion for Costs, APP 1a:36.**

14 The Panel denied the motion, finding that WPH was not entitled to
15 recovery of fees or costs ("Fee Decision"). **Fee Decision, App. 1a:177-182.** In
16 the Fee Decision, the Panel stated that "the underlying papers and pleadings would
17 likely not entitle WPH, as the prevailing party, to its attorney's fees and costs,"
18 pursuant to NRS 18.010.³ *Id.* at 180. The Panel also determined that WPH's
19 claims had not been frivolous and groundless. *Id.* The Panel noted that while
20 Nevada had been determined to be the proper venue, there had never been a
21

22 ³ While the Panel did not reference NRS 18.020, NRS 18.010 and 18.020 use the same
23 phrase "prevailing party," without any indication that a different meaning would attach in
the two statutes. Here, WPH had not prevailed on its counterclaims.

determination that Nevada law would apply, except that the parties had agreed that Nevada's discovery rules would apply where the AAA rules did not resolve an issue. ***Id.* at 180-181.** However, the Panel nevertheless considered the application of Nevada law, and held that it was unclear whether Nevada law would allow an award of fees and costs in an arbitration arising from a rejected offer of judgment. ***Id.*** Finally, the Panel noted that ***contrary to the arbitration forum's rules***, WPH had not raised the issue of its entitlement to fees prior to issuance of the final award, precluding the Panel from awarding fees under the AAA rules. ***Id.***

Thereafter, WPH filed its motion with the District Court, requesting the Fee Decision be vacated, and that a judgment for fees and costs be entered. **Motion, APP 2:459.** WPH also requested that the portion of the Final Award that held in favor of WPH be confirmed. *Id.* The District Court denied the Motion for partial vacation of the ruling. **Order, App 2:502.** While the District Court had initially denied the whole of WPH's motion, the District Court later clarified its ruling, and confirmed the award, denying only the request for the partial vacation. **Order Granting Motion to Clarify, APP 2:511.**

On appeal, WPH contends that the District Court erred in denying the Motion to Vacate, asserting that the Panel was *obligated* to award fees pursuant to Nevada's rules regarding the rejection of offers of judgment.

ARGUMENT

WPH failed to present any grounds that would have supported the vacation of the Fee Decision. Its efforts to graft Nevada rules and statutes intending to encourage settlement before trials in the district courts to an arbitration proceeding

1 cannot justify the disregard of the Panel's well-articulated decision explaining the
2 numerous grounds for the denial of fees and costs to WPH. The parties had agreed
3 to the application of the AAA rules in the event of the dispute; such rules do not
4 provide for the "offer of judgment" process. Moreover, as there is no requirement
5 in Nevada that arbitrators award fees on the basis of rejection of an offer of
6 judgment, even if such rules could apply in that forum, a decision to decline to do
7 so is not a manifest disregard of the law. As WPH failed to show that grounds
8 existed to support the vacation of the Panel's decisions, the District Court's
9 judgment should be affirmed.

10 **I. THE TRIAL COURT PROPERLY DENIED THE MOTION**
11 **TO VACATE THE ARBITRATION AWARD.**

12 The District Court properly refused to vacate the Fee Decision. No grounds
13 that would support vacation of an arbitration ruling under Nevada law were
14 presented by WPH. In reviewing WPH's motion, the District Court was bound by
15 a fairly stringent standard of review. An arbitration award may be vacated only
16 for statutory grounds under NRS 38. 241, inapplicable here, or for common law
17 grounds. *Bohlman v. Printz*, 120 Nev. 543, 546, 96 P.3d 1155, 1157 (2004) . The
18 two common law grounds under which a court may review private binding
19 arbitration awards are (1) whether the award is arbitrary, capricious, or
20 unsupported by the agreement; and (2) whether the arbitrator manifestly
21 disregarded the law. *Wichinsky v. Mosa*, 109 Nev. 84, 89-90, 847 P.2d 727, 731
22 (1993). Neither of these grounds were present here. As there were no appropriate
23 grounds to overturn the arbitration Panel's decision, the District Court properly

1 denied the motion.

2 **A. The Award did not Reflect a Manifest Disregard for the**
3 **Law.**

4 “Manifest disregard of the law” means something more than just an error in
5 the law or a failure on the part of the arbitrators to understand or apply the law.”

6 *Lagstein v. Lloyd's of London*, __ F.3d __, 2010 WL2303317, *4 (June 10,
7 2010), quoting *Mich. Mut. Ins. Co. v. Unigard Sec. Ins. Co.*, 44 F.3d 826, 832 (9th
8 Cir. 1995). A manifest disregard of the law is shown where the arbitrator,
9 knowing the law and recognizing that the law required a particular result, simply
10 disregarded the law. *Clark County Educ. Ass'n v. Clark County School Dist*, 131
11 P.3d 5, 8 (Nev. 2006). Mere claims that Here, the Panel did not “know” or
12 “recognize” that the law required an award of fees and then disregard such a
13 requirement. To the contrary, the Panel first determined that whether Nevada law
14 even applied to the arbitration had never been decided or agreed by the parties.
15 Moreover, the Panel determined that, even assuming Nevada law applied, whether
16 it was entitled to award fees on the requested basis had never been determined
17 under Nevada law. The Panel further determined that absent an express
18 authorization, it was not inclined to award fees. Finally, the Panel noted that it had
19 not been asked to consider the issue of a fee award until after it had issued its final
20 award, and that such a modification did not fit within the scope of modifications
21 permitted under the AAA rules.

22 None of these multiple grounds for denial of a fee award could fall within
23 the scope of a manifest disregard of any legal mandates. To the contrary, they

1 reflect a careful consideration of what the law *authorized*, and a determination
2 that the Panel’s authority to award fees under the requested grounds was, at best,
3 questionable. WPH’s attempt to twist the rules governing arbitration to create a
4 mandate where none exists properly failed. The Fee Decision contains a well-
5 reasoned explanation for its outcome, which decision shows thoughtful analysis of
6 applicable arbitration rules, consideration of Nevada law, and the appropriate
7 application of each. WPH failed to demonstrate to the District Court any basis
8 upon which the decision might be vacated. Accordingly, the District Court
9 properly denied the request for partial vacation of the award.

10 ***1. Nevada law does not impose an obligation upon***
11 ***arbitrators to award fees and costs.***

12 At the heart of WPH’s motion to vacate lay a fundamental
13 misunderstanding of the effect of NRS 38.238. This statute provides:

14 Any arbitrator *may* award reasonable attorney’s fees and other
15 reasonable expenses of arbitration if such an award is authorized by
16 law in a civil action involving the same claim or by the agreement of
17 the parties to the arbitration proceeding.

18 NRS 38.238(1) (emphasis added). WPH relies upon this statute to insist that “the
19 Panel should have awarded WPH [its] costs, attorneys’ fees, and interest.”

20 However, this statute mandates nothing. Instead, by stating that an
21 arbitrator “may award fees,” the statute merely grants *permission* to arbitrators
22 to award fees under certain circumstances. See NRS 0.025 (explaining when used
23 in the NRS, “may” usually refers to a “right, privilege or power”). In contrast, no
language in the statute could be read to require any such award. Indeed, the use of
the term “may,” as opposed to “shall,” clearly indicates that the statute merely

1 confers, as a privilege, the ability to issue an award of fees and costs. *Tarango v.*
2 *SIIS*, 117 Nev. 444, 451 n. 20, 25 P.3d 175, 180 n. 20 (2001) (“ ‘[I]n statutes,
3 “may” is permissive and “shall” is mandatory unless the statute demands a
4 different construction to carry out the clear intent of the legislature.’ ” (quoting
5 *S.N.E.A. v. Daines*, 108 Nev. 15, 19, 824 P.2d 276, 278 (1992))).

6 Nothing in NRS 38.238 requires an arbitrator to impose fees or costs.
7 Accordingly, WPH’s assertion that the Panel “manifestly disregarded the law” by
8 failing to award fees is unsupported by Nevada law.

9 2. *The determination of an award of attorneys fees as*
10 *requested here was a matter of procedural, not substantive*
11 *law.*

12 Following the issuance of the Final Award, WPH proceeded with “post
13 trial” motions for fees and costs as though it had been engaged in a court
14 proceeding, rather than an arbitration proceeding. It sought costs as the
15 “prevailing party” with a vague reference “NRS 18.010 *et seq.*,” and costs and
16 fees pursuant to rejected offers of judgment. Such a course of conduct might have
17 been perfectly proper had the parties actually engaged in a *trial*, where the Court
18 retains jurisdiction after judgment for purposes of the award of fees and costs and
19 similar matters. However, as the Panel’s Fee Decision makes quite clear, an
20 AAA Arbitration Panel does not retain jurisdiction over a dispute for such
21 purposes.

22 Significantly, the parties agreed that the American Arbitration
23 Association’s Construction Industry Rules” (“AAA Rules”) would govern any
arbitration proceedings. **APP 1a:157, ¶ 7.2.2.** For this reason, WPH’s insistence

1 regarding Nevada law governing the contract is nothing more than a red herring.
2 Under Nevada law, the AAA Rules must be applied to determine the issue. This is
3 because in Nevada, a choice of law provision in an agreement applies “to the
4 substantive issues in the case,” while the forum’s rules governs procedural issues.
5 *Tipton v. Heeren*, 109 Nev. 920, 859 P.2d 465, 466 n. 3 (1993).

6 Even more significantly, this Court expressly ruled in *Tipton* that whether
7 attorneys fees should be granted due to the rejection of an offer of judgment is a
8 procedural determination. *Id.* In *Tipton*, this Court expressly determined that
9 Nevada law applied to the *procedural* issue of the propriety of awarding fees
10 where a more favorable offer of judgment had been rejected. Indeed, this Court
11 expressly determined that NRCP 68 and NRS 78.115 – the very statutes WPH
12 claims create substantive rights, were procedural. Despite having devoted nearly
13 two pages of its Opening Brief to this issue, with extensive citation to out of state
14 authority, WPH failed to acknowledge this Court’s decision in *Tipton*.

15 **3. *WPH’s attempt to graft Nevada procedural rules on to***
16 ***arbitration proceedings is not supported by the applicable***
arbitration rules.

17 Having agreed to the application of the AAA Rules, WPH was bound by
18 them. Pursuant to the AAA Rules, while the parties may agree to a modification
19 of such rules, such agreement must be in writing; additionally, if an agreement is
20 made after the appointment of the arbitrator, the arbitrator must consent to the
21 modification. **AAA Rules, R-1, APP 2:491.**⁴ There is no evidence of such a
22

23 ⁴ The AAA Rules were amended effective October 1, 2009. The current (2009) AAA
Rules are available online at <http://www.adr.org/sp.asp?id=22004>, with an explanation of

1 modification in this matter.

2 Further, the Panel had the express authority to determine its own
3 jurisdiction and to interpret the AAA rules. **See *Id.*, R-8, R-54.** The AAA Rules
4 further provide that an arbitrator *may* grant any relief within the scope of the
5 agreement, and *shall* apportion fees, costs, and the arbitrator's own compensation
6 in the final award. ***Id.*, R-44(c).** However, the Panel's jurisdiction after the
7 issuance of an award is limited to correction of "any clerical, typographical,
8 technical or computational errors." **AAA Rules, R-47, APP 2:491.**
9 Furthermore, the AAA Rules *require* the parties to share expenses equally, unless
10 an award of costs is contained *in the award itself*. ***Id.*, R -44(c), R- 51.**

11 WPH's attempt to modify the final award by adding awards for fees and
12 costs, whether as prevailing party or arising from rejected offers of judgment, was
13 simply not permissible by the procedural rules of the agreed forum – as the Panel
14 found. Such a determination was within the properly within the Panel's authority
15 to determine. *See Lagstein v. Lloyd's of London*, __ F.3d __, 2010 WL2303317,
16 *6 (June 10, 2010) (arbitrators had authority to determine their own ability to
17 award punitive damages following initial decision). Moreover, disagreement with
18 the determination does not warrant court interference. *Id.*

19 Here, the AAA Rules assumes that requests for fees will be made as part of
20 the case-in-chief, allowing a panel to include such issues in the final award. Here,
21 however, as the Panel pointed out, WPH made no mention of fees until after the

22 the amendments available at <http://www.adr.org/sp.asp?id=36626>. The record reflects
23 the rules in effect at the time of the arbitration.

1 final award had been issued.

2 Accordingly, the parties are bound to the Panel's decision. The Panel
3 determined that an award of fees was not warranted on several grounds. In
4 addition to questioning its ability to award fees pursuant to an offer of judgment,
5 the Panel determined that the AAA rules did not allow such a modification of the
6 Final Award. There is no basis to assert that this ruling was a manifest disregard
7 of the law. Accordingly, the Panel's decision should be confirmed in whole.

8 **4. *The grant of permission to award fees refers to substantive,***
9 ***rather than procedural authority.***

10 Even if NRS 38.238 could be considered to *require* imposition of an award
11 of fees where fees are available for the type of civil action pursued in the
12 arbitration, an award of fees would not be appropriate here. Aside from agreement
13 of the parties, the statute requires that fees be an entitlement based on the
14 *substantive nature* of the claim. See NRS 38.238, "An arbitrator may award
15 attorneys fees . . . if such an award is authorized by law in a civil action *involving*
16 *the same claim*" (emphasis added).

17 The official comments to Uniform Arbitration Act, § 21, on which NRS
18 38.238 was based, supports this conclusion. See ULA Arb, § 21, Comment 2
19 ("[S]tatutes such as those involving civil rights, employment discrimination,
20 antitrust, and others, specifically allow courts to order attorney's fees in
21 appropriate cases."). Reference to areas of law where statutes often require an
22 award of attorneys fees for successful claimants indicates that NRS 38.238 refers
23 to such

1 In contrast, the statutes and rules cited by WPH are procedural, rather than
2 substantive rules. *See e.g. Tipton v. Heeren*, 109 Nev. 920, 859 P.2d 465, 466 n. 3
3 (1993) (treating these statutes as requiring a procedural inquiry); *MRO*
4 *Communications, Inc. v. American Tel. & Tel. Co.* 197 F.3d 1276, 1282 (9th Cir.
5 1999) (whether a rejected offer of judgment entitles the offeror to recover
6 attorneys' fees . . . is a “procedural query”). The rules of the forum apply to
7 procedural matters. *Id.* Accordingly, even if Nevada were the proper choice of
8 law for the substantive issues raised in the dispute between VEGAS VP and WPH,
9 the Panel properly applied the AAA rules to determine that fees and costs were
10 appropriately shared between the parties. As the Panel’s decision was proper, so to
11 was that of the District court.

12 5. ***The Panel determined that WPH was not a prevailing party,***
13 ***and therefore, no award of fees would be appropriate under***
NRS 18.020.

14 WPH contends that it should have been awarded fees under NRS 18.020,
15 which allows fees to the prevailing party in an action where the plaintiff sought to
16 recover more than \$2500. However, even assuming this statute applied to this
17 arbitration proceeding, where both parties prevail in competing breach of contract
18 claims, it is within the discretion of the decision maker to determine that neither
19 party was the prevailing party. *Robertson's Marine, Inc. v. I4 Solutions, Inc.*, 223
20 P.3d 1141 (Utah App. 2010); *Gen. Cable Corp. v. Citizens Utilities Co.*, 27
21 Ariz.App. 381, 385, 555 P.2d 350, 354 (1976) (“Under the facts of this case,
22 where a complaint seeks greater damages than the counterclaim and the trial court
23 has denied relief to both parties, we find that neither party is the ‘successful party’

1 under the provisions of § 12-341.”); *see also Coldwell Banker Commercial Group,*
2 *Inc. v. Camelback Office Park*, 156 Ariz. 214, 223-24, 751 P.2d 530, 539-40
3 (App.1987) (finding it possible to have no successful party when one party
4 prevails on complaint and other party prevails on counterclaim), *vacated in part*
5 *on other grounds*, 156 Ariz. 226, 751 P.2d 542 (1988).

6 WPH brought, but did not prevail on, several counterclaims. **Final**
7 **Decision, APP 1a:11.** Indeed, those counterclaims were dismissed prior to the
8 hearing. *Id.* Accordingly, it was within the scope of the Panel’s authority to
9 determine, as it apparently did, that WPH would not be considered the prevailing
10 party in the case. **Fee Decision, App. 1a:177-182.**⁵ Accordingly, even if the
11 parties’ express agreement to apply the AAA Rules to the proceeding could
12 somehow be overridden by NRS 18.020, WPH still had no entitlement under the
13 statute.

14 **B. The Award was not Arbitrary, Capricious, or**
15 **Unsupported by the Agreement.**

16 An award is arbitrary, capricious, or unsupported by the agreement only
17 when it disregards facts relating to the dispute, or the terms of the agreement.
18 *Clark County Educ. Ass’n v. Clark County School Dist.* 131 P.3d 5, 8 (Nev. 2006).
19 WPH argues that the Panel’s purported failure to apply Nevada law to this issue
20 was arbitrary and capricious, as the Agreement required the law of the state where
21 WPH had its principal place of business. *Opening Brief*, p. 23. The Agreement

22 ⁵ While the Panel’s decision that referred to NRS 18.010’s reference to a “prevailing
23 party,” the same determination would apply to NRS 18.020. Moreover, the Panel ordered
that any issue raised but not addressed was expressly denied. **See Fee Decision, App.**
1a:182.

1 specifically provided that the AAA Rules would govern the arbitration
2 proceedings. **Agreement, APP 1a:203, ¶ 9.1.** Even under Nevada law, specific
3 provisions takes precedence over a general provision. *Dept. of Motor Vehicles v.*
4 *Bremer*, 113 Nev. 805, 942 P.2d 145 (1997) (applying rule to statutory
5 construction.

6 Moreover, as shown above, even assuming that WPH's principal place of
7 business had not been disputed, despite WPH's offices in both Nevada and
8 Oregon, **see Opposition, APP 1a:98, lines 21-26,** a choice of law provision
9 applies only to substantive law, not to procedural issues. *Tipton v. Heeren*, 859
10 P.2d at 466 n. 3. Accordingly, the Panel's discussion of the fact that no
11 determination that Nevada law would apply to procedural issues regarding the
12 award of fees and costs was entirely appropriate. Additionally, as shown above,
13 Nevada law does not mandate an award of fees in this situation. Therefore, there
14 is no basis for vacation of the Fee Decision on this ground.

15 **II. PUBLIC POLICY DOES NOT DEMAND THE IMPOSITION OF** 16 **COURT PROCEDURAL RULES ON AN ARBITRAL FORUM.**

17 WPH grossly distorts the concept of public policy favoring arbitration when
18 it urges this Court to apply such a policy to override the express agreement
19 between the parties, and impose procedural provisions on the arbitration forum to
20 which the parties never agreed. Ironically, WPH quoted *Mitsubishi Motors Co. v.*
21 *Soler Chrysler-Plymouth* as follows:

22 By agreeing to arbitrate a statutory claim, a party does not forgo the
23 substantive rights afforded by the statute; it only submits to their
resolution in an arbitral, rather than judicial forum. It trades the

1 procedures and opportunity for review of the courtroom for the
2 simplicity, informality, and expedition of arbitration.

3 *Mitsubishi Motors Co. v. Soler Chrysler-Plymouth*, 473 U.S. 614, 628 (1985). Se
4 Opening brief, pp. 24-25. Despite reliance on this quotation, WPH is oblivious to
5 its own rejection of these words. Of course, the parties here did not agree to
6 arbitrate a statutory claim; they agreed to arbitrate contract claims. But neither
7 gave up any substantive contract right by agreeing to arbitrate. Instead, they
8 agreed that, rather than the “procedures and opportunity for review” that a trial in
9 a court would allow—including procedures relating to fees and costs—they would
10 rely on the relative informality provided by the AAA Rules.

11 But WPH proved unwilling to honor that Agreement. Having obtained the
12 expediency of an arbitral forum, they now insist they are entitled to both the
13 procedure and court review (although, of course, not a review of the *substantive*
14 decision) of the court system they had expressly given up. This demand turns the
15 public policy favoring arbitration agreements on its head. WPH wants to rewrite
16 the contract, to require an arbitration forum to follow procedural rules relating to
17 settlement strategy, even though Nevada itself calls such rules “procedural” – ***and***
18 ***had done so long before this contract was adopted.*** See *Tipton, supra*.

19 This Court has said it will not:

20 rewrite contract provisions that are otherwise unambiguous. Nor will
21 [this Court] attempt to increase the legal obligations of the parties
22 where the parties intentionally limited such obligations.

23 *Griffin v. Old Republic Ins. Co.* 122 Nev. 479, 483, 133 P.3d 251, 254 (2006).

Here, the parties intentionally limited their obligations regarding disputes to those

1 follow the procedures provided in the AAA Rules. Those rules do not incorporate
2 the offer of judgment process.

3 Parties to an agreement are capable of including a provision that would
4 award attorneys fees to a prevailing party. These parties did not make such an
5 agreement, so even had either party prevailed, no award would be appropriate.
6 Similarly, parties to an agreement could include in an arbitration clause an
7 agreement to the application of state “offer of judgment rules.” These parties did
8 not make such an agreement. Instead, the parties expressly, and unambiguously
9 agreed that AAA Rules would apply. The Panel determined how such the AAA
10 Rules applied in this case, a matter within their discretion pursuant to the parties’
11 Agreement. Vacating this award would not support the public policy of allowing
12 the parties to determine how their disputes should be resolved. To the contrary, it
13 would violate it.

1 **CONCLUSION**

2 WPH presented no grounds sufficient to vacate an arbitration award, as
3 there are no statutory or common law grounds on which to challenge the Panel's
4 denial of fees. Accordingly, the District Court properly denied that portion of
5 WPH's motion that requested vacation of the Fee Decision.

6 DATED this 11th day of June, 2010.

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1 **CERTIFICATE OF COMPLIANCE**

2 I hereby certify that I have read this appellate brief, and to the best of my
3 knowledge, information, and belief, it is not frivolous or interposed for any
4 improper purpose. I further certify that this brief complies with all applicable
5 Nevada Rules of Appellate Procedure, in particular N.R.C.A.P. 28(e), which
6 requires every assertion in the brief regarding matters in the record to be supported
7 by a reference to the page of the transcript or appendix where the matter relied on
8 is to be found. I understand that I may be subject to sanctions in the event that the
9 accompanying brief is not in conformity with the requirements of the Nevada
10 Rules of Appellate Procedure.

11 DATED this 11th day of June, 2010.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(b), I hereby certify that service of the foregoing
RESPONDENT Vegas VP, LP's ANSWERING BRIEF was made this date by
electronic filing via the Court's E-Flex system, which will automatically send a
notice of such filing to the attorneys of record in this case:

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DATED: June 11, 2010



An Employee of Greenberg Traurig