IN THE SUPREME COURT OF THE STATE OF NEVADA

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IN THE MATTER OF THE PETITION OF CLA PROPERTIES LLC.	**Case No. 80427**
SHAWN BIDSAL, AN INDIVIDUAL, Appellant, vs. CLA PROPERTIES LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, Respondent.	
CLA PROPERTIES LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, Appellant, vs. SHAWN BIDSAL, AN INDIVIDUAL, Respondent.	**Case No. 80831**

APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, STATE OF NEVADA
HONORABLE JOANNA S. KISHNER

*****

APPELLANT'S REPLY BRIEF IN DOCKET NUMBER 80831

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Docket No. 80831 is CLA's appeal from the district court's order denying post-arbitration attorneys' fees. Although this court consolidated No. 80831 with Bidsal's appeal (No. 80427), the court subsequently noted that No. 80831 is not actually a cross-appeal. (E.g., Order of July 6, 2021, noting that "these consolidated appeals do not involve a cross-appeal"). CLA's prior brief (filed February 22, 2021) mistakenly included a cover and an argument heading referring to "Opening Brief on Cross-Appeal." For clarity, in the present brief CLA will refer to its opening brief in the attorneys' fee appeal, No. 80831, as CAOB (CLA Appellant's Opening Brief) and Bidsal's answering brief as BRAB (Bidsal's Respondent's Answering Brief).

ARGUMENT

I. Additional fees should have been awarded under the Agreement.

CLA's opening brief on the attorneys' fee appeal presented persuasive arguments and authorities establishing that the district court erred by denying CLA's motion for post-arbitration fees. Bidsal's arguments fail to provide valid reasons for rejecting CLA's arguments. Accordingly, this court should reverse the district court's ruling, and CLA should be allowed to recover its fees from Bidsal.

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A. There is no merit to Bidsal's argument regarding reformation.

The Agreement provides for a mandatory attorneys' fee award to the prevailing party at the arbitration; and CLA has noted the Agreement also provides that the arbitrator's award "shall be final" and is "not subject to judicial review." CAOB 71. To make sense of these provisions, CLA argued that the necessary implication is that the prevailing party in arbitration should also be entitled to an award of post-arbitration attorneys' fees if the losing party in the arbitration breaches the agreement and attempts to challenge the award by ignoring its finality and by seeking judicial review. CAOB 71-74. There is no doubt that Bidsal violated the prohibition against challenging the arbitration award in court.

Bidsal's attack on CLA's position commences by raising a strawman argument that "the crux of CLA's argument is that Section 14.1 should be reformed to authorize an award of post-arbitration fees." BRAB 42-43. Bidsal then offers more than six pages of legal authorities attempting to show that the remedy of reformation is not applicable. BRAB 43-49. The fallacy of Bidsal's argument is that CLA did not mention "reformation" or rely on that potential remedy as a basis for contending that the Agreement authorizes a post-arbitration fee award. Thus, Bidsal is attempting to rebut an argument that he created—an argument that CLA never made.

The gist of CLA's argument on this point is: "The provision requiring arbitration costs and fees to the prevailing party **should be harmonized and read together** with the subsequent provision in the same paragraph, which requires the parties to treat an arbitration award as final and not subject to judicial review." CAOB 72 (bold added). In other words, CLA is not asking for reformation of the Agreement. CLA is asking for interpretation of the agreement pursuant to long-standing rules of contract interpretation. *See WPH Architecture, Inc. v. Vegas VP, LP*, 131 Nev. 884, 888, 360 P.3d 1145, 1147 (2015) (courts should harmonize a contract's arbitration provisions, to give effect to all of its provisions, and to render them consistent with each other).

B. There is no merit to Bidsal's argument regarding finality of the arbitration award.

1. The no-challenge provision must be given meaning and effect.

After making his strawman argument about reformation, Bidsal then turns to the issue of whether the parties' agreement that the arbitration award would be final and not subject to review could ever be enforced. CLA had cited *Aerojet-General Corp. v. American Arbitration Ass'n*, 478 F.2d 248 (9th Cir. 1973) and other cases for the proposition that parties can contractually agree to eliminate all court review of an arbitration award. CAOB 20, 71. Bidsal's response is to challenge *Aerojet*'s

holding as mere unpersuasive dicta, and to rely instead on *In re Wal-Mart Wage & Hour Emp. Practices Litig*, 737 F.3d 1262 (9th Cir. 2013). BRAB 51-52.

The two Ninth Circuit cases do seem to be at odds. But both are panel decisions, not en banc decisions. And Ninth Circuit panels have often charted different paths concerning resolution of legal issues. *See Palmer v. University Medical Group*, 994 F. Supp. 1221, 1232 (D. Oregon 1998) *disapproved on other grounds in Hensley v. Northwest Permanente P.C.*, 258 F.3d 986, 994 n. 5 (9th Cir. 2001).

In any event, the distinction between *Aerojet-General* and *Wal-Mart* misses the point in this appeal. Neither case suggests that contract provisions requiring finality or prohibiting judicial review of arbitration award should be given no impact whatsoever. Under Nevada contract law, every provision in a contract should be given some impact, if at all possible. *Bielar v. Washoe Health Sys., Inc.*, 129 Nev. 459, 465, 306 P.3d 360, 364 (2013) (holding that a court should not interpret a contract so as to make a provision meaningless, and every word must be given effect if at all possible).

Even if the *Wal-Mart* view is adopted—barring parties from eliminating all judicial review under Section 10 of the FAA—this does not mean that the parties' contract provision should be given no effect. In *Kim-C1, LLC v. Valent Biosciences Corp.*, 756 F. Supp.2d 1258 (E.D. Cal. 2010), a contract stated that the ruling of the

arbitrator would be "binding, non-reviewable, and non-appealable." The court recognized a split of authority on the extent to which such a provision would be enforceable. The court essentially adopted a compromise position that such a provision would be generally enforceable—to carry out the intent of the parties for a final and binding arbitration award—but courts could still play a very limited role by ensuring that an award is not a result of extreme behavior by the arbitrator, such as fraud, undue means, or misconduct. *Id.* at 1265-66.

Under the *Wal-Mart* view, a provision calling for finality and eliminating a judicial challenge does not waive the provisions of the FAA; but that certainly does not mean the provision is meaningless and should be ignored. And it does not mean the arbitration winner is without a remedy if the loser violates the no-challenge provision. The party who prevailed at the arbitration might not be able to obtain an injunction, dismissal, or other court order preventing the losing party from challenging the arbitration award under the FAA and thereby breaching the no-challenge provision. But if the challenge is unsuccessful, the party who prevailed (twice) should be reimbursed for the expenses incurred as a result of the losing party's breach of the no-challenge provision. Otherwise, the provision would be meaningless, it would have no effect, and it would provide no deterrent to challenges that are expressly prohibited by the parties' contract (i.e., challenges that the parties themselves wanted to prohibit when they drafted and entered into the contract).

The parties in this case agreed to an arbitration provision that contained two requirements (among others): (1) the party who prevailed at arbitration would be able to recover costs and attorneys' fees from the losing party; and (2) the arbitration award would be final and not subject to a judicial challenge, thereby completely precluding the possibility of further expenses and attorneys' fees for the parties after the arbitration award. To harmonize these provisions, and to provide a reasonable interpretation of the parties' agreement, CLA should be able to obtain compensation for the attorneys' fees it incurred in defending against Bidsal's prohibited judicial challenge. That is all CLA seeks here: satisfaction and compensation for Bidsal's violation of the provisions to which he agreed, making the award the end of the process (other than judgment by way of confirmation).

2. Bidsal's arguments ignore public policies of promoting arbitration and preserving the freedom of contract.

Bidsal's argument, if accepted by this court, would allow parties to enter into a contract that contains an arbitration provision, but the parties would be prohibited from agreeing that the arbitration award will be final, binding, and not subject to a challenge in court – even if that is exactly what the parties want.

This court recognizes Nevada's public policy strongly favoring arbitration where the parties have previously agreed to that method of dispute resolution. *See Clark County v. Blanchard Const. Co.*, 98 Nev. 488, 491, 653 P.2d 1217, 1219

(1982). There is "a strong public policy favoring arbitration for the purpose of avoiding the unnecessary expense and delay of litigation where parties have agreed to arbitrate." *Burch v. Dist. Ct.,* 118 Nev. 438, 442, 49 P.3d 647, 650 (2002) (discussing FAA). The basic purpose of arbitration is the speedy disposition of disputes "without the expense and delay of extended court proceedings." *Aerojet-General,* 478 F.2d at 251. Bidsal's position ignores this policy and deters arbitration, because the position prevents parties from eliminating an entire layer of expenses and attorneys' fees.

Parties are free to enter into contractual relations that mandate the resolution of disputes through alternative methods, including arbitration. *Conti v. Mayfield Village*, 2019 WL 4479919, at *2 (N.D. Ohio, Sept. 18, 2019). Ordinarily, just as two parties to a dispute can agree to settle it, thereby surrendering the procedural rights they would have had if they had litigated to judgment, they can agree to arbitration even if by agreeing they give up procedural rights they would otherwise enjoy. For that matter, they could agree to resolve their dispute by the flip of a coin or by using a Ouija board to obtain a paranormal resolution. *Roughneck Concrete Drilling & Sawing Co. v. Plumbers' Pension Fund,* 640 F.3d 761, 766 (7th Cir. 2011).

Parties to an arbitration contract can agree to eliminate all court review of the proceedings, if their intention to do so clearly appears. *Aerojet-General*, 478 F. 2d

at 251. An agreement to arbitrate and to be bound by the award means that the award is final and binding; courts are not authorized to retry the merits of the controversy; and the award can only be reviewed for due process and jurisdictional limitations. *See Jacksonville Roofing v. Local Union No. 435*, 156 So. 2d 416, 419 (Fla. App. 1963); *National Airlines, Inc. v. Metcalf*, 114 So. 2d 229, 232 (Fla. App. 1959).

The key question is whether the parties intended to eliminate all judicial review. *Swenson v. Bushman Inv. Properties, Ltd.*, 870 F. Supp. 2d. 1049, 1056 (D. Idaho 2012). In *Communications Consultant, Inc. v. Nextel Communications of Mid-Atlantic, Inc.*, 146 Fed. Appx. 550 (3rd Cir. 2005), a contract provided that there would be "binding arbitration," and that the decision would be "final and unreviewable for error of law or legal reasoning of any kind." *Id.* at 552. The court held that, in the presence of such contract language, the only permissible basis for a court challenge is if the challenger can show that the arbitration was influenced by corruption, fraud, or partiality, or that the arbitrator failed to provide a hearing to consider a party's position. *Id.* at 552-53. *See also Vento v. Crithfield*, 2015 WL 13632432, *6 (D. Virgin Islands, 2015) (following *Communications Consultant).*

In addition to the public policy favoring arbitration, Nevada public policy also highly values freedom of contract. *See City of N. Las Vegas v. Eighth Judicial Dist. Ct.*, 2017 WL 2210130 at *1 (Nev., May 17, 2017; No. 68263; unpublished disposition) (citing *Quality Health Care Mgmt., Inc. v. Kobakhidze*, 977 N.Y.S. 2d

568 (Sup. Ct. 2013). "Parties are free to contract, and the courts will enforce their contracts if they are not unconscionable, illegal, or in violation of public policy." *St. Mary v. Damon*, 129 Nev. 647, 658, 309 P.3d 1027, 1035 (2013); *Rivero v. Rivero,* 125 Nev. 410, 429, 216 P.3d 213, 226 (2009).

Here, the parties exercised their freedom of contract by expressly and specifically agreeing to an arbitration approach in which the prevailing party would recover costs and attorneys' fees; and upon entry of the arbitration award, the parties would live with the award and not challenge it—even if they disagreed with it. But now, Bidsal wants to erase the no-challenge provision from the contract, giving it no impact or effect. His contention should be rejected. The contract should be construed to allow an award of post-arbitration costs and fees, to deter Bidsal from violating the contract by challenging the arbitration award, and to compensate CLA for Bidsal's breach of the no-challenge provision.

II. An attorneys' fee award was available under NRS 38.243.

NRS 38.243 allows an award of post-arbitration attorneys' fees and expenses to the prevailing party after a post-arbitration challenge to the award. The district court ruled that this case is governed by the FAA, which does not allow post-arbitration fees, and that NRS 38.243, which does allow such an award, is not applicable. The district court's ruling was error, as demonstrated in CLA's brief at

CAOB 74-78. Bidsal's answering brief confuses the issue and offers no plausible basis for affirming the district court's decision. The decision should be reversed.

A. The Nevada choice of law provision governs this issue.

1. The Agreement recognizes three sources of applicable law and rules.

The Agreement contains three separate sources providing applicable laws and rules relating to arbitration. First, Article III, Section 14.1, is a lengthy paragraph that calls for the arbitration to be "administered by JAMS," using JAMS expedited rules. 1 App. 35-36. These JAMS rules would cover such procedural matters as selection of the JAMS arbitrator, scheduling, submission of papers, and the like.

Second, the same lengthy paragraph states that "the arbitration" will be governed by the United States Arbitration Act (i.e., the FAA). 1 App. 36. Although Section 14.1 provides for JAMS procedural rules, with the FAA governing the arbitration, the same section establishes rights and obligations that the parties decided would be unique to their agreement—and not covered by JAMS rules or the FAA—such as details relating to discovery and arbitration expenses evidence. 1 App. 35-36. Near the end of Section 14.1, the agreement contains the sentence discussed earlier in this brief: "The award rendered by the arbitrator shall be final and not subject to judicial review and judgment thereon may be entered in any court of competent jurisdiction." 1 App. 36.

Third, the agreement contains a Nevada choice of law provision, in all capital letters, as follows:

> **IN ALL RESPECTS** THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEVADA INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY, PERFORMANCE AND THE RIGHTS AND INTERESTS OF THE PARTIES UNDER THIS AGREEMENT WITHOUT REGARD TO THE PRINCIPLES GOVERNING CONFLICTS OF LAWS, UNLESS OTHERWISE PROVIDED BY WRITTEN AGREEMENT.

1 App. 44 (Article X ¶ d) (bold added; capitalization in original). As noted at CAOB 21, this paragraph is the only provision in the entire contract that is emphasized in all capital letters, thereby indicating special importance to the parties.

2. The Nevada choice of law provision must be given effect.

The district court ruled that the arbitration and all the post-arbitration issues, including the question of whether post-arbitration fees could be awarded, would be governed by JAMS rules and the FAA—leaving nothing to be governed by Nevada law. 12 App. 3053 (¶ 14) (finding that "the JAMS rules govern the procedural law and the United States Arbitration Act, 9 U.S.C. § 1, et seq. governs the substantive law"). The district court made this ruling despite the agreement's express provision that the agreement was to be governed "in all respects" by Nevada law. Further, the

district court failed to identify anything to which the Nevada choice of law provision, which is emphasized with all capital letters, would apply. 12 App. 3051-55.

Similar to the district court, Bidsal's brief fails to identify anything to which the emphasized Nevada choice of law provision would apply. His brief states that the provision would not apply to any arbitration-related matters, but that "the remainder of the Agreement is governed by Nevada law." BRAB 58. But he fails to identify any actual part of the Agreement or any dispute that would constitute "the remainder of the Agreement" to which the Nevada choice of law provision might possibly be applicable.

Bidsal's position, if accepted by this court, would mean that JAMS rules govern arbitration procedures, the FAA would govern all substantive matters relating to the arbitration (including post-arbitration proceedings), and there would be nothing left to be governed by the provision requiring application of Nevada law "in all respects." This is directly contrary to *WPH*, 131 Nev. at 888, 360 P.3d at 1147, which recognizes the "well-established tenet of contract interpretation" that requires all parts of an arbitration contract to be harmonized and given effect, so as not to render any terms meaningless—including provisions relating to sources of applicable law.[1]

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[1] Bidsal's own appellate brief recognizes that the Agreement in this case "should be read to give effect to all its provisions and to render them consistent with each other." BRAB 56, citing *WPH*.

3. All three sources of law can be harmonized and given effect.

As noted above, neither the district court nor Bidsal identified anything to which the Agreement's all-capitals Nevada choice of law provision would apply. In contrast, CLA's interpretation of the agreement provides effect and meaning for all of the three provisions that recite application of JAMS, FAA, and Nevada law.

> Under the Agreement, arbitration procedures are governed by JAMS rules; the arbitration itself, as well as any potential judicial challenge to the award, is governed by the FAA; and everything else [such as post-award attorneys' fees] is governed "in all respects" by Nevada law.

CAOB 75.

Under this interpretation of the Agreement—which is the only reasonable interpretation consistent with Nevada law regarding contract interpretation—the reach of the FAA would end upon confirmation of the award, and the Nevada choice of law provision would govern CLA's motion for an award of attorneys' fees incurred in defending against Bidsal's judicial challenge to the merits of the arbitration award. *See WPH*, 133 Nev. at 888-89, 360 P.3d at 1148 (holding that state laws regarding attorneys' fees are substantive, not procedural).

WPH is crystal clear in its holding that statutes and rules governing awards of attorneys' fees are **substantive laws** that apply to arbitration proceedings. *WPH*, 133 Nev. at 889, 360 P.3d at 1148. Bidsal asserts, however, that "If JAMS rules

govern procedural questions, while Nevada law governs substantive questions, the FAA would have no application." BRAB 57. Bidsal's assertion is wrong. As CLA's opening brief explained, "the arbitration itself, as well as any potential judicial challenge to the award is governed by the FAA." CAOB 75. This is precisely what occurred here, with JAMS procedural rules governing arbitration procedures, and with the substance of the arbitration itself—as well as Bidsal's judicial challenge to the award—being governed by the FAA. Thus, there is no rational basis for Bidsal's complaint that "the FAA would have no application" under CLA's view of the Agreement.

The history of this case belies Bidsal's complaint that CLA's position would mean "the FAA would have no application." BRAB 57. The FAA has already had significant application in this case. Bidsal's arbitration briefs argued that Nevada substantive law should govern interpretation of the Agreement during the arbitration proceedings. *E.g.*, 6 App. 1499-1500; 8 App. 1819-20; 10 App. 2383-84. But when Bidsal filed his petition in the district court to vacate the arbitration award, he did so by invoking the FAA as the law governing judicial review and vacatur of arbitration awards. 1 App. 92:15 ("According to 9 U.S.C. § 10, arbitration awards may be vacated as follows: ..."); 1 App. 93 ("Under 9 U.S.C. § 10(a)(4), an arbitration award will be vacated if ..."). Similarly, his reply in support of his district court petition

asserted that the FAA is the applicable source of law for reviewing and vacating arbitration awards. 10 App. 2495-96.

CLA also took the position that the FAA would govern judicial confirming or vacating the award. 1 App. 3. And when the district court confirmed the award, the district court correctly found: "Moreover, the parties agreed the Court's decision to vacate the Award is properly governed by United States Arbitration Act, 9 U.S.C. § 9." 11 App. 2615:15-16. The district court confirmed the award "pursuant to the Operating Agreement, **9 U.S.C. § 9** and NRS 38.244(2)." 11 App. 2617:9-10 (bold added).

Bidsal got exactly what he wanted when he requested the district court to use the FAA as applicable law for his petition to vacate the award. Yet he now argues that "the FAA would have no application" under CLA's position in this appeal. The district court's confirmation order establishes the fallacy of Bidsal's argument.

Accordingly, JAMS rules governed procedural matters relating to the arbitration; the FAA governed the arbitration itself and the proceedings for judicial confirmation or vacatur of the award (supplemented by Nevada standards for judicial review of arbitration awards, as the parties both agreed); and Nevada substantive law otherwise governed the Agreement, including the post-arbitration (i.e., post-

confirmation) motion for attorneys' fees. All three sources of law should have been given effect, contrary to the district court's ruling.[2]

4. Bidsal's additional argument creates a nullity of the Nevada choice of law provision.

Bidsal's attorneys prepared the order denying CLA's motion for post-award fees and costs. 12 App. 3051. Trial courts have been criticized for their verbatim adoption of findings and conclusions prepared by prevailing parties, particularly when those findings are in the form of conclusory statements. *See United States v. El Paso Natural Gas Co.*, 376 U.S. 651, 656-57, 84 S.Ct. 1044, 1047-48 (1964).

Nowhere in the Order prepared by Bidsal did the district court even attempt to describe an allocation of law source determinations among JAMS, FAA **and Nevada law**; and likewise, nowhere in the BRAB does Bidsal attempt to provide such a description. Rather, the Order and Bidsal would make the Nevada choice of law provision a nullity, which is the exact result precluded by *WPH*.

Bidsal makes two self-contradictory assertions. First, he attempts to avoid the impact of *WPH*, claiming: "The Agreement provides for three sources of law (not

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[2] The district court's order denying CLA's motion for fees repeatedly mentioned that CLA had relied on the FAA in earlier court filings. 13 App. 3052-53. In fact, this seemed to be the district court's primary rationale for ruling that the FAA applied, rather than Nevada law. CLA's opening brief in this appeal explained why the district court's reliance was error. CAOB 77-78. Bidsal largely ignores the district court's rationale, other than a brief footnote that mentions the district court's order but does not analyze it. BRAB 57 n. 11.

just two, as in *WPH*)." BRAB 57. But the number of the various sources of law in a contract is irrelevant. **All** must be given effect. The Nevada choice of law provision in the Agreement in this case must be given effect, regardless of the number of other sources of law.

Being unable to describe an allocation of sources of law that gives meaning and effect to the all-capitals Nevada choice of law provision in Article X ¶ d of the Agreement, Bidsal offers an explanation that expressly makes the provision a nullity. He argues that the Article X ¶ d provision contains the phrase "unless otherwise provided by written agreement," and he argues that another part of the same Agreement in which those words appear is such a "written agreement." BRAB 58 (referring to Section 14.1 of the Agreement). As such, Bidsal argues that the Nevada choice of law provision in the agreement is negated and nullified by another provision in the same Agreement.

Under Bidsal's circular reasoning, one of two things must be true: either (1) the entirety of Article X ¶ d is made a nullity (which, as noted above, is contrary to the law), or (2) that paragraph is restricted by the delegation to JAMS and FAA in Section 14.1. But as to the latter, CLA has never contended that JAMS and the FAA have no application. And Bidsal has still not identified any area to which Nevada law would apply, as contrasted with JAMS rules or the FAA.

5. Nevada substantive law applies to the post-award request for attorneys' fees.

Bidsal argues that NRS 38.243 does not authorize an award of post-arbitration attorneys' fees in this case, because Nevada law cannot apply to the issue of attorneys' fees. BRAB 54-55. He ignores the Nevada choice of law provision and his own arguments below in the arbitration proceedings and in the district court.

In an objection to CLA's request for fees and costs during arbitration proceedings (5 App. 1108), Bidsal expressly relied on the Nevada choice of law provision. He argued:

> Article X, Section d. of the Operating Agreement provided that "IN ALL RESPECTS THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEVADA . . ." [citation to exhibit] **This section governs and applies to all provisions set forth in the Operating Agreement**, including Section 14.1 of Article III (cited by CLA) which provides a basis for the recovery of attorneys' fees and costs by a prevailing party in a dispute concerning the terms of the Operating Agreement.

5 App. 1113:14-20 (capitalization in original; bold added).

He immediately followed this argument during the arbitration proceedings with: "**In the State of Nevada, all applications for awards of attorneys' fees and costs are governed by Brunzell v. Golden Gate National Bank**, 85 Nev. 345, 455

P.2d 31 (1969)." 5 App. 1113:22-23 (bold added). Bidsal cited additional Nevada law regarding attorneys' fees and costs at 5 App. 1118, 1119, and 1120.

Bidsal's reliance on Nevada law continued when the case reached the district court. For example, in his first substantive filing in that court, Bidsal provided at least eleven citations to Nevada law, including Nevada citations that dealt with attorneys' fee awards.[3] 1 App. 93-94, 100-102, 104, 111-12 (attorneys' fees).

Bidsal cannot have it both ways. He should not be allowed to argue repeatedly to the arbitrator and to the district court that Nevada law should apply to attorneys' fee issues, but then argue to this court that Nevada law is inapplicable and irrelevant.

CONCLUSION

For the reasons in the CAOB and in this reply brief, this court should reverse the district court's order denying post-arbitration fees and costs, and the case should be remanded for further proceedings on CLA's motion.

Dated: Sept. 3, 2021

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[3] Although Bidsal now contends that the FAA alone must govern the issue of attorneys' fees, in the district court he provided at least seven citations to California cases dealing with California law on this topic. 1 App. 111-12.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in Times New Roman in 14 point font size.

I further certify that this brief complies with the type-volume limitations of NRAP 28.1(e) because it contains 4,465 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to page and volume numbers, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 3d day of September, 2021.

Robert L. Eisenberg

ROBERT L. EISENBERG

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of LEMONS, GRUNDY & EISENBERG, and on this date the foregoing ***Appellant's Reply Brief in Docket Number 80831*** was electronically filed with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

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Levine & Garfinkel
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I further certify that on this date I served a copy of the foregoing by depositing a true and correct copy, postage prepaid, via U.S. mail to:

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DATED: Sept. 3, 2021

Maggie Nevin
Employee of Lemons, Grundy & Eisenberg