FIRST DIVISION
January 20, 2015

No. 1-14-0819
2015 IL App (1st) 140819-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MITCHELL PRICE, M.D.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	
	)	
CHICAGOLAND UNIVERSITY PEDIATRIC	)	13 L 8687
SURGERY LLC, an Illinois limited liability	)	
company; ROBERT ARENSMAN, M.D., and	)	
THOMAS WEBER, M.D., individually,	)	
	)	Honorable Patrick J. Sherlock,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Arbitration award did not violate public policy; plaintiff also failed to show that award should be vacated due to fraud; affirmed.

¶ 2 Plaintiff Mitchell Price, M.D. (Dr. Price) appeals from an order of the circuit court that denied Dr. Price's motion to vacate an arbitration award and granted a request to confirm the award that was entered in favor of defendants, Chicagoland University Pediatric Surgery LLC (CUPS), and two CUPS partners, Robert Arensman, M.D. (Dr. Arensman), and Thomas Weber, M.D. (Dr. Weber). On appeal, Dr. Price contends the arbitration award should be vacated because it violates public policy and defendants procured the award through fraud. We affirm.

¶ 3 For a period of time between 2010 and 2012, Dr. Price was an employee of CUPS, a group of pediatric surgeons in the Chicago area. Part of the CUPS model was that while a surgeon would be on staff at select hospitals, all CUPS surgeons would share call coverage at the numerous hospitals where CUPS had contracts.

¶ 4 Dr. Price signed two different employment agreements during his time with CUPS. In the first, signed in March 2010, CUPS agreed to pay Dr. Price $500,000 a year, less the compensation he received from a contract with Stroger Cook County Hospital (Stroger), where Dr. Price received a salaried position. In November 2010, Price signed a second employment agreement that stated he would be paid $500,000 a year, less the compensation paid to him "by third parties." In March 2011, Dr. Price received a second salaried position at the University of Illinois-Chicago (UIC). Both agreements provided that CUPS had discretion to provide Dr. Price with incentive compensation along with his base pay. Ultimately, Dr. Price's employment with UIC ended in March 2012, and his employment with Stroger ended in May 2012.

¶ 5 Both agreements had an arbitration clause that stated:

> "Dispute Resolution. In the event of a dispute between the parties to this Agreement, thirty (30) days written notice of the dispute shall be given by one party to the other, and a good faith attempt to resolve the dispute shall be made by the parties. If such efforts do not resolve the dispute within thirty (30) days from the date notice of the dispute was given and if a party wishes to pursue the dispute, the party shall initiate binding arbitration pursuant to the Commercial Rules of the American Arbitration Association. The arbitrators shall have no

> power *** to ignore or vary the terms of this Agreement, and shall be bound to apply controlling law."

¶ 6 Around January 2012, Dr. Price notified CUPS that he would no longer provide call coverage unless CUPS compensated him. Part of the dispute concerned whether CUPS had to pay Dr. Price additional compensation for on-call time once he had received hospital salaries that totaled $500,000. Later in 2012, Dr. Price filed a complaint in the circuit court of Cook County against CUPS, Dr. Weber, and Dr. Arensman, alleging a number of claims. The following five of Dr. Price's claims were ordered to proceed to arbitration: (1) CUPS withheld Dr. Price's salary in violation of the Wage Payment and Collection Act (Wage Payment Act) (820 ILCS 115/1 *et seq.* (West 2012)); (2) Dr. Weber and Dr. Arensman withheld Dr. Price's salary in violation of the Wage Payment Act; (3) CUPS withheld Dr. Price's bonus in violation of the Wage Payment Act; (4) Dr. Weber and Dr. Arensman withheld Dr. Price's bonus in violation of the Wage Payment Act; and (5) CUPS intentionally breached Dr. Price's employment agreement.

¶ 7 The arbitration hearing took place over two days. In her opening statement, counsel for Dr. Price asserted that defendants wanted Dr. Price to work for CUPS without being paid by CUPS. Dr. Price's counsel stated that CUPS stopped paying Dr. Price after May 2011, and as a result, defendants owed Dr. Price money for the 12-month period that Dr. Price worked for Stroger, UIC, and CUPS, but received no pay from CUPS. Dr. Price's counsel further asserted that the Minimum Wage Law (820 ILCS 105/1 *et seq.* (West 2012)) and the Wage Payment Act "protect the public policy interests of every employee in Illinois to get paid for services that they provide," and accordingly, CUPS could not require Dr. Price to work for free because defendants decided "he got enough from other parties."

¶ 8 In his opening statement, defendants' counsel explained that CUPS's business model is for a surgeon's salary to be composed of salary lines from one or two hospitals, and for CUPS to supplement that salary when the combination of those salary lines does not reach the amount that was designated for the surgeon. Defendants' counsel further asserted that Dr. Price was aware that his compensation was $500,000 and that two hospitals would provide his salary.

¶ 9 Dr. Weber, a CUPS partner, testified that the purpose of CUPS was to have a group of pediatric surgeons who would cover each other at various institutions. Dr. Weber further stated that CUPS provided a forum for surgeons to discuss particularly difficult cases and that it was not unusual for two CUPS surgeons to perform a difficult operation together, even if one of the surgeons was not salaried at that particular hospital. Dr. Weber also explained that normally, if there were two salaried pediatric surgeons at a hospital, those two surgeons would have to split all of the call coverage for that hospital. However, with CUPS, more surgeons are available to share that coverage. As for financial background, Dr. Weber explained that CUPS generated revenue through contracts with hospitals to provide coverage, and estimated that each contract was worth approximately $200,000 a year.

¶ 10 Dr. Weber further testified that no one in CUPS was compensated for providing call coverage for CUPS. Dr. Weber also explained that surgeon-employees may or may not be paid by CUPS, depending on how much salary they received from hospitals. Dr. Weber stated that a surgeon's total salary was composed of salary lines from hospitals, and if that fell short of the amount promised by CUPS, then CUPS would make up the difference. Ultimately, CUPS's goal was to make sure that CUPS employees did not receive any pay from CUPS and instead were paid by third parties.

¶ 11 In Dr. Price's case, CUPS supplemented his salary at various points. Dr. Weber stated that he had expected that Dr. Price would begin working with CUPS in April 2010, but Dr. Price arrived in March 2010, before any hospital salaries had been secured for him. Nonetheless, CUPS paid him. CUPS also supplemented Dr. Price's salary in 2010 when he was only working for Stroger and for a period in 2011 before Dr. Price began to be paid by UIC. Specifically, Dr. Price received $20,000 a month from CUPS for the first four months of 2011.

¶ 12 Dr. Weber also testified about the circumstances surrounding the November 2010 employment agreement, which Dr. Price asserted was invalid. According to Dr. Weber, the November 2010 agreement came about because it became obvious, not just for Dr. Price, but for everyone in CUPS, that CUPS's sources of revenue and salary were likely to change frequently, and so CUPS needed a document with more flexibility. According to Noemi Rodgers, practice manager for CUPS, the November 2010 agreement was provided to Dr. Price before November 2010.

¶ 13 As to when Dr. Price was terminated, Dr. Weber stated that Dr. Price was notified in December 2011, and a notice of termination that was sent on April 23, 2012, was the final letter in a series that warned him that "it was coming up."

¶ 14 Dr. Arensman, a founder of CUPS, testified that the goals and benefits of CUPS were to bring pediatric surgeons together to "assure quality pediatric surgery care to underprivileged children" and "assure a reasonable lifestyle for the pediatric surgeons that do it." Dr. Arensman stated that regardless of whether CUPS paid a certain dollar amount at a given time, it assured surgeons' lifestyles, such as by taking care of a surgeon's work while he is on vacation. As an additional benefit, CUPS compensated surgeons for a hospital's furlough days that otherwise would have gone unpaid.

¶ 15 Dr. Arensman also testified that Dr. Price arrived before any hospital salary lines were in place. To ensure that Dr. Price had money "for home and hearth," Dr. Arensman took out a loan to pay Dr. Price until he could get on the Stroger payroll. As for bonuses, Dr. Arensman stated that in 2010, no one received one due to various expenses that CUPS had incurred. In 2011, Dr. Price did not receive a bonus due to performance issues.

¶ 16 Dr. Arensman further testified about the circumstances towards the end of Dr. Price's time at CUPS. According to Dr. Arensman, Dr. Price notified CUPS around January 2012 that he would no longer provide call coverage unless CUPS compensated him. Dr. Arensman stated that he did not terminate Dr. Price's contract at that point because "[w]e're just not that kind of people." Instead, CUPS "simply excused him from call and shouldered [*sic*] on." Asked when Dr. Price's contract with CUPS was terminated, Dr. Arensman stated that the contract was definitely terminated when Dr. Price lost his academic appointment at UIC because that resulted in the loss of required medical malpractice insurance. Dr. Arensman added that Dr. Price's contract was probably breached in January 2012, but the group was "sufficiently kind and sufficiently large that we just shouldered [*sic*] on and omitted him from call most of the time." However, Dr. Price continued to take call at Stroger, where he worked until the end of May 2012.

¶ 17 Dr. Arensman also discussed why Dr. Price appeared on certain 2012 CUPS call schedules. Dr. Arensman stated that potential reasons for Dr. Price being on the February 2012 call schedule were that he was still covering call at Stroger, or that the call schedule had already been made when Dr. Price announced that he would no longer cover call without compensation. Dr. Arensman acknowledged that Dr. Price was also listed on the March 2012 call schedule, but

Dr. Arensman did not know whether Dr. Price was providing coverage at hospitals other than Stroger at that point.

¶ 18 Dr. Mark Holterman, another founder of CUPS, testified that CUPS was formed to provide better care, prevent burnout, and give surgeons more leverage to make more money for their skills. Dr. Holterman explained that once Dr. Price had full-time duties at two hospitals, he was not paid additional money for CUPS's call because "it's all part of the arrangement, which was I take call for your place, you take call for my place, and we all benefit from not being on call all the time." Without this arrangement, Dr. Price would have been on-call at Stroger every other night, instead of every fourth or fifth night. Dr. Holterman further testified that Dr. Price had difficulties adjusting to the practice.

¶ 19 Dr. Price testified that he understood CUPS to be a consortium where each surgeon not only covered his own hospitals, but also provided cross-coverage for other CUPS surgeons. According to Dr. Price, CUPS was "a group call coverage system and that's all it was meant to be." Dr. Price also stated that CUPS received funds from various hospitals for call coverage, and whatever was left after paying for administrative functions and promised salaries was divided equally as bonus money. Dr. Price further stated that he "had to get paid for my call" and "the call bonus was the guarantee that I was told." Dr. Price viewed his $500,000 salary as a minimum he could make because on top of that sum would be his call schedule money, which was considered a bonus. Dr. Price's annual salary from Stroger was approximately $266,488 and his UIC salary, which started in 2011, was approximately $233,600.

¶ 20 Dr. Price also testified about his two employment agreements and asserted that the November 2010 agreement was invalid. Dr. Price stated that in November 2010, he and another surgeon were given an employment agreement, told that there was no agreement on file, and that they would have to sign the new agreement to receive their bonus money. Dr. Price was told there was no difference between the agreement he signed in March 2010 and the new one. However, the November 2010 agreement provided that Dr. Price's salary would be $500,000 minus compensation from "third parties," instead of the March 2010 agreement's statement that his salary would be $500,000 minus compensation from Stroger. This change did not register with Dr. Price, as he "went over [the agreement] very quickly because there was a time constraint."

¶ 21 Dr. Price stated that CUPS stopped paying him in May 2011, but that nothing had changed, including his call schedule. Dr. Price stated that after he complained, Dr. Arensman tried to pressure UIC and Stroger to end Dr. Price's employment. Ultimately, Dr. Price's contract with UIC was not renewed and ended on March 20, 2012, which in turn ended Dr. Price's malpractice coverage at some of CUPS's other hospitals. Dr. Price acknowledged that in or around January 2012, he informed CUPS that he would no longer provide call coverage unless CUPS compensated him, but maintained that was not a breach of his agreement. Dr. Price asserted that the breach of his agreement was CUPS not paying him for his call coverage.

¶ 22 In closing, Dr. Price's counsel contended in part that Dr. Price spent 11 months working for CUPS for free and the Minimum Wage Law was clear that CUPS could not contract around Price's wages. According to Dr. Price's counsel, it was "fundamental in Illinois and in the United States that CUPS can't have an employee work for free." Dr. Price's counsel also stated that the November 2010 agreement violated public policy because it allowed him to work without compensation.

¶ 23 In his closing, defendants' counsel asserted in part that CUPS met its commitments to Dr. Price under the written agreements and according to Dr. Price's understanding. Defendants' counsel contended that Dr. Price understood the CUPS business model and that call coverage was a part of a surgeon's duties to CUPS. Defendants' counsel also stated that Dr. Price and other surgeons received benefits for being part of CUPS, such as a reduced call schedule and supplemental pay in the event that salary lines did not meet the promised minimum. Defendants' counsel further asserted that the bonus was purely discretionary among CUPS partners.

¶ 24 Following closing arguments, the arbitrator offered her preliminary impressions to the parties. To defendants, the arbitrator stated:

> "The problem that I see on your side of it is that under the wage laws he has to be paid a salary or some compensation from his employer. I understand that you had an agreement that said to the extent you are paid by others, we will make you whole, but once that threshold was met, *** what happens then? He is continuing to render services that benefit CUPS, but there is no additional compensation forthcoming from CUPS.
>
> I suppose to the extent that there was an understanding that there would be an annual compensation basis, one could argue you paid him upfront. *** Maybe that works. Maybe it doesn't.
>
> * * *
>
> [Y]ou still have to pay for services rendered. I mean you still—how much you have to pay may be in dispute but under—even minimum wage, but you can't have him continue to render services without some—or you tell me if you think there is authority out there that says you can."

¶ 25 The parties agreed to submit post-hearing briefs, although Dr. Price's post-hearing brief is not in the record. In their post-hearing brief, defendants contended that Dr. Price was not covered by the Minimum Wage Law because CUPS had fewer than four employees at all relevant times. In support of this assertion, defendants referenced testimony from Dr. Weber during the arbitration hearing in which he stated that when the November 2010 employment agreement was signed, Dr. Price and another surgeon were the only employee-surgeons within CUPS. Additionally, in an affidavit attached to the post-hearing brief, Dr. Arensman averred that "[a]t no time has CUPS had more than three employees concurrently." Defendants also asserted a second reason why the Minimum Wage Law did not apply here—the time for which Dr. Price sought to be paid, his on-call time, was spent predominantly for his own benefit. Dr. Arensman's attached affidavit stated that during on-call periods on evenings and weekends for CUPS, Dr. Price was able to engage in personal activities away from the hospital, unless and until he was called in for a consultation or operation. Arensman added that most on-call evenings, Dr. Price did not get called to the hospital.

¶ 26 Additionally, defendants contended that Dr. Price's employment agreement terminated on March 20, 2012, when he lost his malpractice insurance at the end of his appointment at UIC. Defendants further asserted that even if the agreement was not immediately terminated at that point, CUPS had previously provided Dr. Price with a series of four termination letters that dated back to December 2011. Defendants also stated that Dr. Price breached the agreement in January 2012 by refusing to take hospital call.

¶ 27 In her award, the arbitrator stated that Dr. Price had asserted claims for breach of contract and violation of the Wage Payment Act, along with an indirect claim under the Minimum Wage Law. As an initial matter, the arbitrator found that the November 2010 employment agreement was binding and enforceable. The arbitrator stated that as a well-educated person and party to prior agreements, Dr. Price understood and could have fulfilled his obligation to read and understand a legal document before signing it. The arbitrator was not convinced by Dr. Price's claim that he signed the November 2010 agreement under duress because CUPS threatened to withhold his bonus payment, which in any event was discretionary. The arbitrator also stated that the November 2010 agreement reflected the parties' shared understanding at the start of their relationship, wherein CUPS would "guarantee [Dr. Price] an annual income of $500,000 to be comprised of those salary lines he obtained from the hospitals, with any shortfall made up directly by CUPS."

¶ 28 The arbitrator then discussed whether Dr. Price was entitled to additional compensation under his contract or an applicable statute. The arbitrator noted that Dr. Price contended that the Minimum Wage Law and Wage Payment Act expressed a public policy that required payment for services rendered by employees. The arbitrator also recalled that Dr. Price asserted that the statutes, or at least the Minimum Wage Law, provided an independent guarantee of income for his on-call time. In response to Dr. Price's contentions, the arbitrator found that the Wage Payment Act did not apply because it only spoke to the manner of delivering payments that are otherwise owed pursuant to a contract, and there was no showing that CUPS owed Dr. Price some amount under the November 2010 agreement. The arbitrator also found that the Minimum Wage Law did not apply because CUPS employed fewer than the four employees required to confer coverage. The arbitrator stated that although her analysis resulted in the "unusual finding that [Dr. Price] effectively rendered services to CUPS for no additional compensation during the relevant time frame," this outcome was legal and appropriate under the circumstances. The arbitrator noted that between January and May 2011, CUPS paid Dr. Price $20,000 a month, which were front-loaded payments that represented some compensation from CUPS to Dr. Price for services rendered as part of the whole package. Further, the arbitrator stated that Dr. Price understood and "effectively acquiesced" to the CUPS arrangement, knew the terms of the deal, benefitted from the arrangement through a reduced call schedule, and consented to the arrangement by continuing to provide on-call services even when he knew that CUPS would not provide him with a separate paycheck. The arbitrator was convinced that the parties "had a meeting of the minds that CUPS would guarantee [Dr. Price] minimum compensation of $500,000/year[,] but would not pay him for on-call time if his salary lines reached that guaranteed floor."

¶ 29 Additionally, the arbitrator stated that even if Dr. Price could claim coverage under the Minimum Wage Law, his on-call time was not compensable because he could use that time predominantly for his own benefit, rather than that of CUPS. In support of this conclusion, the arbitrator cited *Bernardi v. Village of North Pekin*, 135 Ill. App. 3d 589 (1985) and section 210.110 of the Illinois Administrative Code (56 Ill. Adm. Code 210.110 (2012)). Overall, the arbitrator found that enforcing the terms of the November 2010 agreement "does not offend any notions of fairness."

¶ 30 Further, in the context of addressing a claim related to whether Dr. Price was entitled to a salary for a certain period because CUPS allegedly did not provide the proper 90-day notice of termination, the arbitrator recalled Dr. Price's acknowledgement that he refused to provide services to hospitals other than Stroger and UIC as of January 2011.[1] The arbitrator noted that the employment agreement stated that CUPS's obligation to pay Dr. Price was " '[i]n consideration of Physician providing the duties described herein,' " and as a result, once Dr. Price refused to provide such services, CUPS's "obligation to pay him fell away." Having rejected Dr. Price's claims, the arbitrator stated that the award was "in full settlement of all claims submitted to this Arbitration."

[1] Based on the record, it is likely the arbitrator meant January 2012.

¶ 31 Subsequently, Dr. Price filed a motion to vacate the award pursuant to sections 8(c)(iii) and 12(a)(1) of the Illinois Uniform Arbitration Act (Arbitration Act) (710 ILCS 5/8(c)(iii), 12-(a)(1) (West 2012)). Dr. Price asserted that the court should vacate the award because defendants induced the award by fraud. Dr. Price pointed to three issues of fact and law that defendants allegedly intentionally misrepresented at the hearing and in their post-hearing brief: (1) that CUPS never employed more than three employees; (2) the legal standard for on-call employees; and (3) when CUPS provided notice of termination to Dr. Price.

¶ 32 As to the claim that CUPS misrepresented its number of employees, Dr. Price referred to several documents to assert that CUPS had more than three employees. Dr. Price attached to his motion to vacate his own affidavit, in which he averred that CUPS employed three surgeons and the practice manager beginning in at least January 2012. Dr. Price also referred to CUPS call schedules from January 2012 to March 2012 in which Dr. Arensman, Dr. Weber, Dr. Price, and two other surgeons were listed. Dr. Price further noted Dr. Weber's deposition that was taken before the arbitration hearing, in which Dr. Weber stated that a surgeon named Dr. Patel had been a partner for several months, but had worked for CUPS for one or two years before he was promoted. Based on these pieces of evidence, Price asserted that CUPS was subject to the Minimum Wage Law at least through the second quarter of 2012.

¶ 33 Dr. Price also recalled that at the hearing, he had argued that the state's "well[-]established public policy required employers to pay employees. Price stated that defendants had contended that they were not subject to this public policy based on their false representation that CUPS did not have more than three employees concurrently, and so the Minimum Wage Law did not apply. Now, in his motion to vacate, Dr. Price contended that the public policy mandating that employers pay their employees was independent of the Minimum

Wage Law. Dr. Price further asserted that the arbitrator's remarks at the end of the hearing suggested that she had initially agreed that public policy favored paying employees for their work, but defendants' intentional misrepresentation ultimately swayed her otherwise.

¶ 34 In response to Dr. Price's motion to vacate, defendants requested that the court confirm the award. As to Dr. Price's argument about the number of CUPS employees, defendants asserted that the arbitrator found that Dr. Price repudiated his contract as of January 2012, and so without Dr. Price, CUPS had at most three employees as of January 2012. Defendants additionally stated that in the award, the arbitrator did not mention Dr. Arensman's affidavit when concluding that CUPS never employed more than three employees concurrently. Defendants also contended that Dr. Price should have presented all of his evidence about the number of employees to the arbitrator.

¶ 35 In addition to their response to Dr. Price's motion to vacate, defendants also filed a motion to strike Dr. Price's motion to vacate. Defendants contended that the arbitrator's award contradicted Dr. Price's arguments and that Dr. Price had attempted to improperly reopen the proofs by including certain documents that were never presented to the arbitrator.

¶ 36 In his response to CUPS's motion to strike, Dr. Price asserted that confirming the award would affirm defendants' perjury. Additionally, Dr. Price contended that the award violated Illinois's long-standing public policy that employers must pay employees. Dr. Price further stated that defendants' motion to strike was a procedural anomaly.

¶ 37 Dr. Price also submitted a reply in support of his motion to vacate. In addition to contending that defendants submitted fraudulent testimony, Dr. Price asserted that the arbitration award violated Illinois's public policy because it allowed an employer to avoid paying someone for services rendered. Dr. Price contended that, based on legal precedent, Illinois had a clearly mandated public policy independent of statutes that an employer must pay wages to someone who provides services, especially when the employer benefits from the labor.

¶ 38 At a subsequent hearing, Dr. Price asserted that he sought to vacate the award based on fraud and public policy. As to his public policy argument, Dr. Price stated that it was "just deeply rooted. You can't say because you are paid by other employers, we don't have to pay you[,] which is essentially what [defendants'] argument is."

¶ 39 In its order denying Dr. Price's motion to vacate and confirming the award, the court stated that to vacate an award based on fraud, the complaining party must show that the arbitrator, rather than one of the parties, committed fraud or wrongdoing. The court further stated that the proper place for Dr. Price to challenge misrepresentations was before the arbitrator. Additionally, the court found that the arbitrator did not solely rely on defendants' representation that CUPS never had more than three employees, as the arbitrator also concluded that Dr. Price's on-call time was not compensable anyway. Overall, the court found no errors apparent on the face of the award and therefore no basis to vacate it. The court also struck defendants' motion to strike because it was procedurally improper and rendered moot by the denial of Dr. Price's motion to vacate.

¶ 40 Subsequently, Dr. Price filed a motion to reconsider, stating that the court had not addressed his public policy argument. Dr. Price asserted that the public policy at issue was that regardless of how many employees an employer may have, the employer must pay an employee for the work he does. Dr. Price contended that if this public policy were not enforced, employers with less than four employees would have no legal obligation to pay their employees for their work.

¶ 41 In their response, defendants contended that Dr. Price's motion to vacate only addressed fraud and that Dr. Price improperly raised a public policy argument for the first time in his reply brief supporting his motion to vacate. Defendants also contended that Dr. Price failed to cite any case law for his argument that the award was repugnant to public policy absent a statutory violation or breach of contract.

¶ 42 The court ultimately denied Dr. Price's motion to reconsider, finding that Dr. Price waived his public policy argument by raising it for the first time in his reply supporting his motion to vacate and again in his motion to reconsider. Nonetheless, the court found that the public policy argument was meritless. The court stated that Dr. Price presented the same argument to the arbitrator, who found that because the Minimum Wage Law did not apply, the November 2010 agreement was not void as against public policy.

¶ 43 On March 19, 2014, the court entered an order stating that pursuant to Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010), there was no just reason for delaying either the enforcement or appeal or both of the court's order denying Dr. Price's motion to vacate and granting defendants' petition to confirm the award, as well as the order denying Dr. Price's motion to consider.

¶ 44 On appeal, Dr. Price first contends that the arbitration award violates Illinois public policy by allowing an employer to avoid paying an employee any wages. Dr. Price asserts that the state has a well-defined public policy that an employer must pay some wages to an employee, especially when the employer benefits from the labor. Dr. Price argues that this public policy is a separate concern from violating the Minimum Wage Law and applies regardless of the number of employees CUPS alleges it had or if Dr. Price was on-call. According to Dr. Price, based on the testimony at the arbitration hearing, CUPS received in excess of $1 million in revenue related to Dr. Price's unpaid services, and it would be indefensible to allow an employer in this circumstance to avoid paying any compensation as long as it employs less than four people.

¶ 45 At the outset, we note that judicial review of an arbitration award is extremely limited, (*American Federation of State, County & Municipal Employees v. Department of Central Management Services*, 173 Ill. 2d 299, 304 (1996) (*AFSCME II*)), and the scope of review of an arbitration award is nothing like the scope of an appellate court's review of a trial court's decision (*National Wrecking Co. v. Sarang Corp.*, 366 Ill. App. 3d 610, 618 (2006)). If possible, a court must construe an award to uphold its validity. *Heatherly v. Rodman & Renshaw, Inc.*, 287 Ill. App. 3d 372, 374 (1997). Further, we presume that an arbitrator did not exceed her authority, and if the arbitrator acted in good faith, the award is conclusive on the parties. *National Wrecking Co. v. Sarang Corp.*, 366 Ill. App. 3d 610, 618 (2006). Such deference is accorded because the parties chose in their contract how their dispute is to be decided, and judicial modification of an arbitrator's decision deprives the parties of that choice. *Id*.

¶ 46 Section 12 of the Arbitration Act (710 ILCS 5/12 (West 2012)) lists the grounds for a court to vacate an arbitration award. Among these grounds are that the award was procured by corruption, fraud, or other undue means, there was evident partiality or corruption by an arbitrator or misconduct that prejudiced the rights of a party, or the arbitrator exceeded her powers. 710 ILCS 5/12(a)(1), (2), (3) (West 2012).

¶ 47 In addition to these statutory bases, an award may be vacated if it contravenes paramount considerations of public policy. *Heatherly*, 287 Ill. App. 3d at 375. The public policy exception is narrow and is invoked only when a contravention of public policy is clearly shown. *AFSCME II*, 173 Ill. 2d 299, 307 (1996). While there is no precise definition of public policy, it is to be found in the Constitution, in statutes, and when these are silent, in judicial decisions. *American*

Federation of State, County, and Municipal Employees v. State, 124 Ill. 2d 246, 260 (1988) (*AFSCME I*). A two-part analysis applies to the public policy exception: (1) whether a well-defined and dominant public policy can be identified and (2) if so, whether the arbitrator's award violates that public policy. *AFSCME II*, 173 Ill. 2d at 307-08. Of note, the public policy must be ascertainable by reference to laws and legal precedents and not from generalized considerations of supposed public interests. (Internal quotation marks omitted.) *City of Highland Park v. Teamster Local Union No. 714*, 357 Ill. App. 3d 453, 460 (2005).

¶ 48 As a preliminary matter, defendants maintain that Dr. Price improperly raised his public policy argument for the first time in his reply brief supporting his motion to vacate. For his part, Dr. Price contends that he did not forfeit his public policy argument because raising an issue in a response preserves the issue for appeal, and moreover, he raised the argument in his motion to vacate.

¶ 49 Generally, failure to raise an issue in the trial court results in forfeiture of that issue on appeal. *Huang v. Brenson*, 2014 IL App (1st) 123231, ¶ 22. Here, we find that Dr. Price sufficiently raised the public policy argument to preserve it for appeal. Although his motion to vacate was largely premised on defendants' alleged fraud, Dr. Price indirectly raised a public policy argument, referring to a public policy independent of the Minimum Wage Law that requires employers to pay employees, and asserting that the alleged fraud induced the arbitrator to find that this public policy did not apply. Dr. Price explicitly raised a public policy argument in his response to defendants' motion to strike, though the motion to strike was ultimately stricken by the court. Additionally, Dr. Price directly raised a public policy argument in his reply brief supporting his motion to vacate. Raising an issue in a responsive briefing or pleading has been found sufficient to preserve the issue for appellate review. See *Huang*, 2014 IL App

(1st) 123231, ¶ 22; *Williamson v. Asher*, 2013 IL App (1st) 122038, ¶ 23. Further, we note that we may overlook general forfeiture principles and consider an issue not raised below if the issue is one of law, is fully briefed and argued by the parties, and the public interest favors considering the issue now. *Forest Preserve District of Du Page County v. First National Bank of Franklin Park*, 2011 IL 110759, ¶ 28.

¶ 50 Turning to the merits, we nonetheless find that the public policy exception does not apply here. We first consider whether Dr. Price's stated public policy—an employer must pay some wages to an employee—is "well-defined and dominant." See *AFSCME II*, 173 Ill. 2d at 307. To be sure, Dr. Price's stated public policy is found in the Minimum Wage Law. Section 2 of the Minimum Wage Law (820 ILCS 105/2 (West 2012)) states that "it is the policy of this Act to establish a minimum wage standard for workers at a level consistent with their health, efficiency[,] and general well-being ***." Section 2 also states that "[i]t is against public policy for an employer to pay his employees an amount less than that fixed by this Act." *Id.*

¶ 51 The problem, however, is that Dr. Price asserts that his stated public policy also exists separately from the Minimum Wage Law. Perhaps he took this position because the arbitrator found that CUPS had fewer than four employees and was therefore not covered by the Minimum Wage Law (See 820 ILCS 105/3(d) (West 2012); 56 Ill. Adm. Code 210.130 (2012))—a matter we address separately below. Dr. Price relies on language from four cases for support. In *O'Brien v. Enotech Construction Services, Inc.*, 183 F. Supp. 2d 1047, 1049-50 (N.D. Ill. 2002), the court stated that Illinois's minimum wage and wage payment laws had a "manifest public policy to limit freedom of contract with respect to the payment of wages in order to serve more important public purposes." Further, "the larger public purposes served by such wage laws trump individual contract rights." *O'Brien*, 183 F. Supp. 2d at 1050. In *Lewis v. Giordano's*

Enterprises, Inc., 397 Ill. App. 3d 581, 597 (2009), the court stated that although the state has a strong principle of freedom to contract, that freedom "is not unlimited and *** contracts that are contrary to public policy will not be enforced." The court further explained that the purpose of the Minimum Wage Law was to ensure that an employee receives at least a minimum wage and the Wage Payment Act " 'assist[s] employees in seeking redress for an employer's wrongful withholding of employee benefits.' " *Lewis*, 397 Ill. App. 3d at 597. The court also stated that a finding that employees can waive their rights under those statutes by signing a release "would be contrary to public policy." *Id.* In *People ex rel. Martin v. Lipkowitz*, 225 Ill. App. 3d 980, 985 (1992), the court stated that the public policy underlying the Wage Payment Act and Minimum Wage Law benefits Illinois workers and taxpayers in the same way: "[a]n employer's denial of benefits earned by its employees burdens the State financially and socially, such as by decreasing the tax base and potentially depleting State assistance funds." Lastly, Dr. Price relies on *Golden Bear Family Restaurants, Inc. v. Murray*, 144 Ill. App. 3d 616, 627 (1986), in which the court stated that when an employee provides services to an employer, "her right to receive the compensation that the employer promised vests as much as her right to receive wages or any other form of compensation." The court went on to state that "[t]he lack of a promise to vest does not revoke the employer's obligation to pay" and the employer "must return those benefits that he derives from the continued labor of the employee." *Golden Bear Family Restaurants, Inc.*, 144 Ill. App. 3d at 627.

¶ 52 Dr. Price has failed to establish a well-defined and dominant public policy separate from the Minimum Wage Law, or Wage Payment Act for that matter, which applies to the facts of this case. In all four of the cases that Dr. Price relies on, the claims fell under a statute, and as a result, none of the cases ever had to consider whether the policy at issue also existed independently of the statute. See *O'Brien*, 183 F. Supp. 2d at 1049 (court considered validity of employees' releases of claims arising under Fair Labor Standards Act, Minimum Wage Law, and Wage Payment Act); *Lewis*, 397 Ill. App. 3d at 587 (pursuant to Minimum Wage Law, agreement by employee to accept less than minimum wage is void as matter of law); *Lipkowitz*, 225 Ill. App. 3d at 981, 985 (court allowed suit to proceed to enforce Wage Payment Act to recover unpaid vacation leave and statutory penalties); *Golden Bear Family Restaurants, Inc.*, 144 Ill. App. 3d at 627 (employers' vacation plans violated the Wage Payment Act).

¶ 53 Further, the specific circumstances here suggest that Dr. Price both consented and benefitted from the CUPS arrangement. Dr. Price was a highly-paid pediatric surgeon who, as the arbitrator found, understood how the CUPS arrangement worked. See *Herricane Graphics, Inc. v. Blinderman Construction Co., Inc.*, 354 Ill. App. 3d 151, 155 (2004) (because parties agreed to have their dispute settled by arbitrator, it is the arbitrator's view that the parties have agreed to accept). Moreover, Dr. Price received multiple benefits from the CUPS system, such as a reduced call schedule, a collaborative work environment, a guaranteed minimum salary, and opportunities to earn a bonus. Given Dr. Price's sophisticated position, understanding of how CUPS worked, and the benefits he received, the award here does not implicate Dr. Price's seeming concern that an employee worked for nothing while his employer reaped the rewards.

¶ 54 Additionally, to the extent that Dr. Price contends that his on-call status should not excuse CUPS from paying him, we disagree. The arbitrator found the opposite, and we see no basis for disturbing this conclusion. The arbitrator found that even if the Minimum Wage Law otherwise applied, Dr. Price's on-call time was not compensable because he could use that time predominantly for his own benefit. In support of this finding, the arbitrator cited to *Bernardi*, 135 Ill. App. 3d at 592 (dispatchers who worked at their homes were not entitled to the minimum wage because they had a high degree of freedom to engage in personal activities during periods of idleness), and section 210.110 of the Illinois Administrative Code (56 Ill. Adm. Code 210.110 (2012) (an employee's time spent on-call away from his employer's premise are compensable hours when such time is spent predominantly for the benefit of the employer, rather than the employee)). Dr. Price's mere disagreement about the arbitrator's interpretation of a statute does not fall within the limited circumstances under which we are allowed to review an arbitrator's award. See *International Ass'n of Firefighters, Local No. 37 v. City of Springfield*, 378 Ill. App. 3d 1078, 1082 (2008). Further, even gross errors of judgment in law or a gross mistake of fact—which we do not suggest occurred here—will not vitiate an award unless these mistakes are apparent on the face of the award. *Garver v. Ferguson*, 76 Ill. 2d 1, 10-11 (1979). We see no error on the face of the award regarding Dr. Price's on-call status that would justify vacating the award.

¶ 55 Next, Dr. Price contends that the award should be vacated because defendants procured the award through fraud. Dr. Price argues that Illinois and federal law provide that a party's fraud can be a basis for vacating an award. Dr. Price further asserts that through Dr. Arensman's affidavit attached to its post-hearing brief, CUPS fraudulently claimed that it did not employ four employees concurrently. According to Dr. Price, other pieces of evidence show that CUPS did have at least four employees. Dr. Price also maintains that CUPS misrepresented his termination date in its post-hearing brief. Dr. Price additionally argues that he could not have discovered defendants' false testimony during the arbitration because it was in a post-hearing brief to which the arbitrator did not allow a response.

¶ 56 The weight of Illinois authority indicates that only fraud on the part of the arbitrator can serve to vacate an award. As authority for the proposition that a party's fraud can serve as a basis to vacate an award, Dr. Price relies on the Third District case *Plainfield Community Consolidated School District No. 202 v. Lindblad Construction Co.*, 174 Ill. App. 3d 149 (1988). There, the parties agreed that one of the parties gave false testimony at the arbitration hearing. *Plainfield*, 174 Ill. App. 3d at 153. The court found that a portion of the award was procured by fraud and stated that "the statute clearly permits the court to vacate an award under the circumstances of this case and does not require that the error be apparent on the face of the award." *Id*. While *Plainfield* appears to initially support Dr. Price's contention, ultimately that case stands alone in contrast to other authority that provides that the arbitrator must be the source of the fraud. In *Hough v. Osswald*, 198 Ill. App. 3d 1056, 1057-59 (1990), a First District case, the court rejected the plaintiff's claim that a party's fraud could be grounds for vacating an award. The court stated that without any allegations of fraud or wrongdoing on the part of the arbitrator and in light of the plaintiff's admission that the arbitrator had not committed any wrongdoing, and because no error, fraud, or mistake appeared on the face of the award, the award would stand. *Hough*, 198 Ill. App. 3d at 1059. Further, in response to the plaintiff's urging to follow New Jersey law, which apparently provided that a party's actions could serve as a basis to vacate an award, the court stated it "must follow settled Illinois law until it has been changed" by the supreme court or the legislature. *Id*. The Fourth and Fifth Districts have also stated that only an arbitrator's fraud can serve as a basis to vacate an award. See *International Ass'n of Firefighters, Local No. 37*, 378 Ill. App. 3d at 1082 ("[a]bsent any evidence that (1) the arbitrator's award was made in bad faith, (2) the arbitrator was guilty of fraud or corruption, (3) the arbitrator exceeded his power, or (4) the arbitrator deliberately chose not to follow the law," the award should stand); *Hawrelak v. Marine Bank, Springfield*, 316 Ill. App. 3d 175, 181 (2000) (noting that without evidence the award was made in bad faith, "that any of the arbitrators were guilty of fraud or corruption, or that the arbitrators deliberately chose not to follow the law," the award should stand); *Tim Huey Corp. v. Global Boiler & Mechanical, Inc.*, 272 Ill. App. 3d 100, 109 (1995) ("[w]e cannot say that this award was made in bad faith, that the arbitrators were guilty of fraud, or that the arbitrators clearly chose not to follow the law"); *Fredman Brothers Furniture Co., Inc. v. Retail Store Employees Union, Local 575*, 70 Ill. App. 3d 518, 521 (1979) ("[t]he decision of an arbitrator *** is final, and not reviewable by any court, unless the party attacking the decision can demonstrate fraud, partiality, or misconduct on the part of the arbitrator"). Because Dr. Price has not alleged fraud on the part of the arbitrator, he has not stated a proper reason for vacating the award.

¶ 57 We also note that we are not persuaded by Dr. Price's reliance on federal and New Mexico authority to contend that a party's perjury is a form of fraud that can serve to vacate an arbitration award. Although we can look to federal decisions for guidance, we are not bound to follow them because Illinois has a different arbitration act. *AFSCME I*, 124 Ill. 2d at 261. Until the supreme court or legislature provides otherwise, we will follow the weight of Illinois precedent. See *Hough*, 198 Ill. App. 3d at 1059.

¶ 58 Moreover, we hesitate to even characterize as fraud the issue of the number of CUPS employees. Rather, Dr. Price's actual problem seems to be that he simply failed to fully support a claim under the Minimum Wage Law. The record does not contain either party's pre-hearing brief or Dr. Price's post-hearing brief. The appellant has the burden to provide a sufficient record to support a claim of error, and any doubts which arise from the incompleteness of the record will be resolved against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Dr. Price did not raise a claim under the Minimum Wage Law in the counts of his complaint that proceeded to arbitration, though he did mention the Minimum Wage Law in his opening statement at the arbitration hearing. In her award, the arbitrator stated that Dr. Price had raised an indirect claim under the Minimum Wage Law. Ultimately, it was Dr. Price's responsibility to put forth the necessary evidence at the arbitration hearing to support a claim under the Minimum Wage Law, including the number of CUPS employees. Based on the record before us, Dr. Price instead waited until after the hearing to complete his claim under the Minimum Wage Law. Our supreme court has recognized the overriding interest in finality that inheres in the submission of disputes to arbitration. *Board of Trustees of Community College District No. 508 v. Cook County College Teachers Union, Local 1600*, 74 Ill. 2d 412, 418 (1979). Moreover, the parties' employment agreement stated that in the event of a dispute, the resulting arbitration would be binding. Dr. Price was aware of the binding nature of the arbitration proceeding, and should have put forth all of the necessary evidence to support all of his claims.

¶ 59 Lastly, as to Dr. Price's assertion that CUPS misrepresented his termination date, we find that this was a matter left to the arbitrator. Based on the evidence presented, the arbitrator concluded that Dr. Price repudiated his contract in January 2012. We reiterate that because the parties agreed to have their dispute settled by an arbitrator, it is the arbitrator's view that the parties agreed to accept, and we could not overrule the award even if our interpretation differed from that of the arbitrator. See *Herricane Graphics, Inc.*, 354 Ill. App. 3d at 155.

¶ 60 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 61 Affirmed.