2016 IL App (1st) 150505-U

FOURTH DIVISION
June 30, 2016

No. 1-15-0505

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

DAVID CONNEY, M.D.,	)	Appeal from
	)	the Circuit Court
Petitioner-Appellee,	)	of Cook County
	)	
v.	)	13-CH-28184
	)	
QUARLES & BRADY, LLP,	)	Honorable
	)	Kathleen G. Kennedy,
Respondent-Appellee.	)	Judge Presiding

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Where attorney and client agreed to arbitrate their fee dispute and that client had unlimited right to chose arbitrator, including certain individuals, and client then chose one of those individuals, federal act allowing vacatur of arbitration award on grounds of arbitrator partiality was not grounds for overturning award, and where arbitrator considered facts of alleged attorney malpractice but did not decide pending legal malpractice claim, federal act regarding scope of arbitrator's powers was not implicated.

¶ 2 David Conney, a former client of the Milwaukee, Wisconsin law offices of Quarles & Brady, LLP (Quarles), brought this action to confirm an arbitrator's decision that it was unreasonable of the firm to charge $1.1 million for representation in a suit to recover Conney's investment losses from The Northern Trust Company of Chicago (Northern Trust). In the

confirmation action, Conney overcame the law firm's arguments that the award should be vacated pursuant to sections 10(a)(2) and 10(a)(4) of the Federal Arbitration Act because the arbitrator was partial to Conney and exceeded the scope of his powers. 9 USC § 10(a)(2), (a)(4) (2012) (FAA). The firm appeals.

¶ 3 In a motion ordered taken with the case, Conney contends a quote on page 6 of Quarles' reply brief should be stricken because it misstates the arbitrator's award. By contrasting Quarles' brief with the record of the award, Conney demonstrates that the six-word clause he finds objectionable was merely Quarles' summary of a very long and irrelevant portion of the arbitrator's decision. Furthermore, Quarles tells us that it made a typographical error in its placement of the concluding quotation mark, that the quotation mark belongs just before the clause, and that the firm's punctuation error does not affect its overall argument. We do not agree with Conney's contention that this is a "significant issue." Now that he has brought the error to our attention, we are capable of reading the reply brief as if it were correctly punctuated. We deny Conney's motion and proceed with the appeal.

¶ 4 Quarles represented Conney between 2003 and 2006 in two separate actions to terminate his trust relationship with Northern Trust and to recover $2.6 million in investment losses. The first action proceeded uneventfully and Conney made no issue of paying the firm's hourly fees totaling $87,622 for its prefiling assessment and for other work related to terminating the company's control over Conney's trust. However, as hourly fees added up during the second case, Conney questioned the adequacy of the law firm's pre-retention research and disclosures and its task management. For instance, in a letter written in July 2004 to Quarles attorney Michael H. Schaalman, Conney expressed displeasure with the lawyer's new estimate that instead of totaling $300,000 to $400,000 through trial, the firm's "legal fees could reach $1 million." Conney wrote

that if he had been given this higher figure when he was evaluating the possibility of suing Northern Trust, he would not have hired Quarles and obligated himself to spend so much money on a suit in which the best possible outcome, if he prevailed, was an award of only $1.5 million. Just a year after hiring Quarles, Conney said "I feel blindsided and [I] have serious reservations about continuing with you."

¶ 5 In September 2005, when Conney's fee payments to Quarles totaled $531,909, and expenses were $47,672, Conney wrote two letters to Schaalman complaining about the ever increasing litigation budget. In the first letter, Conney complained that when Schaalman revised the budget in July 2005, Schaalman said, "I expect to stay within that budget," but was now estimating that Conney would be charged an additional $300,000 through trial and $100,000 more if there was an appeal. Conney emphasized, "*From my perspective, this is an unsound business proposition*." In the second letter that September, Conney compared specific estimated figures with actual billed amounts and questioned whether Schaalman was placing any restraint on his associates' billing entries. For instance, the firm's estimate for one task had been $25,000, but the invoiced amount was $93,664, and one attorney alone, Paul D. Bauer, was responsible for $68,730 of that total. Conney also complained that he was being informed only after the work had been done that the fees exceeded the budget. Conney said that when the fees exceeded the budget, they also exceeded his estimated net recovery; that the suit was apparently "an unwise business proposition;" and that he "fe[lt] trapped." Conney proposed that the firm cap its fees with the receipt of his September 2005 payment, negotiate an additional payment contingent on any recovery, and finalize this arrangement "quite soon."

¶ 6 In December 2005, Conney sent a similar letter in which he complained that the firm had no apparent incentive to keep within its budget and his expected net recovery figure. He again

asked that the parties reach a fee cap and contingent fee agreement in order to "align [their] financial interests and strengthen [their] working relationship." Conney said that "if we continue on an hourly fee basis, I will likely recover little, or perhaps nothing, *even if I prevail at trial*" and that he was "[losing] enthusiasm for even going to trial." He proposed a contingent fee structure which capped his payments at $458,772 and expenses, and compensated the firm further only if it recovered more than $500,000 from Northern Trust. Conney proposed that Quarles receive an increasing contingent fee of at least 5% of any amount over $500,000, to as much as 20%, depending on the amount recovered. Conney also asked Schaalman to follow through on the attorney's assurance in September 2005 that "within days" Schaalman would finalize a written contingent fee proposal. Conney also said that he had retained a Wisconsin attorney to help resolve their fee problem and he asked Schaalman to communicate with that lawyer.

¶ 7 The parties negotiated for the next few months, during which Conney stopped making monthly payments and Quarles threatened to seek the court's leave to withdraw from the case. Conney responded that Quarles' withdrawal would prejudice him before Northern Trust and that bringing a new law firm "up to speed" on the case would only further increase his fees.

¶ 8 The negotiations led Schaalman to propose on March 21, 2006, that either (1) Conney agree to a $750,000 fee cap with a 25% contingency for the firm if a judgment against Northern Trust exceeded $750,000, or (2) that the parties "promptly proceed to binding arbitration to resolve this fee dispute." Schaalman also wrote, "We would be willing to give Dr. Conney the choice of an arbitrator including even the lawyers he has hired to assist us in prosecuting these claims, George Heisler, Michael Conway, and [Hanson] Reynolds, any one or them or all three. *** The decision of the arbitrator(s) would be final and non-appealable." Schaalman concluded,

"[t]hese are the only two proposals we will now consider in maintaining the engagement for Dr. Conney." Conney chose arbitration. After some minor revision negotiated by phone, Conney and Quarles entered into a contract on April 6, 2006, which stated:

> "Dr. David Conney and Quarles & Brady have agreed to binding arbitration with respect to any fee dispute arising out of Dr. Conney's lawsuit against The Northern Trust Company. That arbitration agreement is as follows: The parties agree to defer resolution of their fee dispute, if any, until after the Northern Trust litigation is settled or judgment is entered in the trial court. Dr. Conney has the right to choose the arbitrator(s), including without limitation, the lawyers who are fact or expert witnesses in the case, namely George Heisler, Michael Conway, and Hanson Reynolds, any one or combination of them. The decision of the arbitrator(s) is final and nonappealable.
>
> As consideration for this arbitration agreement and subject to his right to arbitrate all past, current, and future legal fees, Dr. Conney agrees to pay [within 10 days] all outstanding fees and disbursements and that the fee arrangement remains as an hourly retention on a going-forward basis."

¶ 9 Schaalman executed the contract on Quarles' behalf. After signing the contract, Conney paid the $184,000 fees that were outstanding.

¶ 10 Conney's suit against Northern Trust was ultimately a failure. All but one of his claims were dismissed or resolved through summary judgment, and the one claim that was tried, a misrepresentation claim, was rejected by a jury. With new counsel, Conney filed an appeal in 2008, but then reached a settlement with Northern Trust.

¶ 11 In 2010 Conney filed suit against Quarles and attorneys Schaalman and Bauer in federal court in Milwaukee and then moved to stay the proceedings and compel arbitration. Conney

alleged in his federal action that Quarles committed "professional negligence" and charged excessive fees when it (a) failed to timely plead a negligence count, which was subject to a much longer statute of limitations than the intentional tort (breach of fiduciary duty) count that Quarles pled, (b) charged fees for defending the timeliness of the tort claim and for seeking leave to amend with a negligence claim, which was a request that was denied as untimely, and (c) recommending that Conney go to trial on the single claim that had survived motion practice. The federal district court judge issued an order staying the malpractice claim and compelling arbitration only on the claim that Quarles charged excessive fees. According to the judge, "Plaintiff's malpractice claim is that defendants' negligence caused him to lose his case. Such a claim is not a dispute about fees. *** Notwithstanding the presumption in favor of arbitration [as an alternative to litigation], the [parties'] agreement [to arbitrate] is not susceptible to an interpretation that covers malpractice." However, the judge stayed judicial resolution of the malpractice claim, "[b]ecause the fee claim and the malpractice claim are not entirely unrelated, it is possible that in the absence of a stay there could be inconsistent rulings."

¶ 12 During the arbitration, Quarles raised the arguments it now raises, including that the proceedings were expanding into the scope of the malpractice claim and that the chosen arbitrator, attorney Michael R. Conway, Jr., should recuse himself because he had been part of Conney's legal "team" during the Northern Trust litigation. When these arguments were rejected by arbitrator Conway, Quarles filed a motion in the federal district court to enforce the court's order compelling arbitration of the fee dispute but not the malpractice claim. In a written order, the district court judge stated that it was unclear what action Quarles wanted the judge to take, that there was no arbitration award for the judge to review and the judge could only reiterate his

order, in the hopes of clarifying matters; that "the malpractice claim is not arbitrable;" and that the judge need not address Quarles' alternative request to appoint a new (impartial) arbitrator.

¶ 13 During the two-day arbitration conducted on October 22 and 23, 2013, Quarles maintained a standing objection to the questioning and evidence presented in support of the fee dispute. Arbitrator Conway subsequently issued his award in Conney's favor on December 22, 2013. The arbitrator ruled that of the $783,025 which Conney paid to Quarles, $685,403 was unreasonable and must be immediately refunded. The arbitrator also ruled that the $326,101 in fees and costs that had been billed but not paid was also unreasonable.

¶ 14 In 2013, Conney petitioned the circuit court of Cook County to confirm the award. An action to confirm an arbitration award is a "straightfoward," summary proceeding in which no other claims may be adjudicated and which will give the arbitration award the force of a judgment of the court. *City of Chicago v. Chicago Loop Parking*, 2014 IL App (1st) 133020, ¶ 52, 23 N.E.3d 453 (an arbitration confirmation is a summary proceeding which turns an award into a judgment of the court); *Taylor v. Nelson*, 788 F.2d 220, 225 (4th Cir. 1986) (a confirmation proceeding under the FAA is intended to be summary).

¶ 15 It is undisputed that the parties' arbitration agreement is governed by the FAA because it is related to a transaction involving interstate commerce—Conney is a California resident who agreed to settle a fee dispute with a Wisconsin entity for legal services rendered in Wisconsin. See 9 U.S.C. § 2 (2012) ("an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract"). Conney's confirmation action was filed in Illinois because the two-day arbitration took place in Chicago. See 9 U.S.C. § 9 (2012) (if no court is named in the arbitration agreement,

the petition for confirmation may be filed in a court in the district where the arbitral award was made).

¶ 16 Section 9 of the FAA provides that an order confirming an arbitration award must be entered unless the award is "vacated, modified, or corrected as prescribed in sections 10 and 11 of [the FAA]." 9 U.S.C. § 9 (2012); *Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 578, 581 (2008) (the grounds enumerated in sections 10 and 11 of the FAA are the exclusive grounds for obtaining relief from an arbitration award). See *Amicizia Societa Navegazione v. Chilean Nitrate & Iodine Sales Corp.*, 274 F.2d 805, 808 (2d Cir. 1960) (the court's function in confirming or vacating an arbitration award is severely limited, otherwise, the ostensible purpose of arbitration, *i.e.*, avoiding litigation, would be frustrated). See also *Marion Manufacturing Co. v. Long*, 588 F.2d 538, 542 (6th Cir. 1978) ("a court's judgment confirming an arbitration award must reflect what would have happened had the parties immediately complied with the award instead of going to court").

¶ 17 Section 10(a) of the FAA provides few grounds for vacating an award but they are: (1) "corruption, fraud or undue means" in procuring the award; (2) "evident partiality or corruption in the arbitrators;" (3) misconduct which prejudices the rights of any party; or (4) "where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." 9 U.S.C. § 10(a) (2012).

¶ 18 Similarly, section 11 of the FAA provides very limited grounds for modifying or correcting an award, including: an evident, material miscalculation or a mistaken description of a person, thing or property that is referred to in the award; an award on a matter not submitted for arbitration; or a defect in the form but not the merits of the award. 9 U.S.C. § 11 (2012). Only in these few instances, may a court "modify and correct the award, so as to effect the intent thereof

and promote justice between the parties." 9 U.S.C.A. § 11 (2012). Although Quarles is asking to vacate under section 10(a) rather than only modify or correct the award under section 11, we include this description of section 11 to help convey the minimal role courts have in arbitration proceedings. "Under the FAA, courts may vacate an arbitrator's decision 'only in very unusual circumstances.' " *Oxford Health Plans LLC v. Sutter*, 569 U.S. __, 133 S.Ct. 2064, 268 (2013) (quoting *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 942 (1995)); *Eljer Manufacturing, Inc. v. Kowin Development Corp.*, 14 F.3d 1250, 1253 (7th Cir. 1994) (describing the judicial review of arbitration awards as "grudgingly narrow"). Limited judicial review " 'maintain[s] arbitration's essential virtue of resolving disputes straightaway.' " *Oxford Health Plans*, 569 U.S. at __, 133 S.Ct. at 2068 (quoting *Hall Street Associates L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 588 (2008)). "If parties could take 'full-bore legal and evidentiary appeals,' arbitration would become 'merely a prelude to a more cumbersome and time-consuming judicial review process.' " *Oxford Health Plans*, 569 U.S. at __, 133 S.Ct. at 2068 (quoting *Hall Street Associates*, 552 U.S. at 588).

> "Arbitration does not provide a system of junior varsity trial courts offering the losing party complete and rigorous *de novo* review. It is a private system of justice offering benefits of reduced delay and expense. A restrictive standard of review is necessary to preserve these benefits and to prevent arbitration from becoming a preliminary step to judicial resolution. " (Citations and internal quotations omitted.) *Eljer Manufacturing*, 14 F.3d 1250 at 1254.

¶ 19 Here, the circuit court issued its decision on January 23, 2015, confirming the award. This appeal followed within 30 days and was stayed until 2016 at the parties' request while they

attempted to reach a settlement. The negotiations were unfruitful, briefs were written and filed, and we now consider the arguments for and against reversal of the confirmation.

¶ 20 Quarles contends that although it is difficult to overcome an arbitration award, this case presents circumstances so egregious that we will conclude the arbitrator was biased and partial to Conney and that the only way for Quarles to receive a fair and impartial arbitration is to vacate the award and order a new proceeding with a different arbitrator. Consistent with the principles and authority set out above, we review *de novo* the trial court's determination that Quarles failed to demonstrate it was entitled to vacate the award pursuant to § 10 of the FAA. *Webster v. A.T. Kearney, Inc*., 507 F.3d 568, 571 (7th Cir. 2007) (a district court's decision on a motion to vacate or confirm an arbitration award under the FAA is reviewed *de novo*).

¶ 21 Quarles' grounds for seeking Conway's recusal and arguing that the arbitration award is based on Conway's bias and partiality for Conney is that Conway "was intimately involved in numerous conference calls and was involved in almost every aspect of the [Northern Trust litigation]." Affidavits completed by Schaalman and Bauer explained that Conway was involved in Conney's Northern Trust problem "even before Quarles & Brady made an appearance" and remained "a very active member of the legal team" that represented Conney in the actual suits. Schaalman detailed that involvement:

> "3. From July, 2003 through the trial of this matter, Mr. Conway participated in telephonic conference calls with me and other members of the legal team which included my partner Paul Bauer and Hanson Reynolds along with [our client] Dr. Conney. These conference calls occurred several times a month and involved consultation about all aspects of the case, including the factual basis for legal claims asserted, the selection of experts, the analysis of [Northern Trust's] defenses, drafting of motions and supporting

briefs, trial strategies, and amendment of pleadings and settlement. Mr. Conway added specific value to the team because Dr. Conney insisted that it was critical to have a 'trusts and estates litigator' as part of his team.

4. I know from statements made by Dr. Conney that he consulted Mr. Conway on a weekly basis outside of the team conference calls about this litigation and these consultations occurred through the duration of the case.

5. Mr. Conway also met privately with both of Dr. Conney's experts, Hanson Reynolds and William Wilkie, and Mr. Conway's evaluation of these experts was crucial to their selection by Dr. Conney.

6. At Dr. Conney's instruction, Mr. Conway received every draft pleading and his input was required before it was filed.

7. Mr. Conway's active participation in the representation of Dr. Conney actually increased once he resigned from his law firm, McDermott, Will.

8. In keeping with his active participation in the representation of Dr. Conney, Mr. Conway reviewed and edited the briefs in support of the motion for summary judgment, and specifically consulted with Dr. Conney and the other members of the legal team about the statute of limitations defenses raised by Northern Trust in its motion for summary judgment."

¶ 22 Brady's sworn statement corroborated Schaalman's sworn statement, and added:

4. *** Mr. Conway was involved with Quarles & Brady in early efforts to get the Conney trust terminated and, when litigation began in earnest, he was involved throughout the litigation in strategy sessions and was frequently sent drafts of briefs for his comments and revisions.

5. Mr. Conway was specifically involved in editing and commenting upon the drafts of Quarles & Brady responses to Northern Trust's motion to dismiss and Conney's cross-motion for summary judgment.

6. In addition, Dr. Conney would occasionally forward Mr. Conway's notes to Quarles & Brady for our consideration and review.

7. Thereafter, in the summer of 2006, Mr. Conway was heavily involved in Quarles & Brady's discussions regarding the meaning of and ramifications of [new precedent], including the decision to seek leave to file an amended complaint and an interlocutory appeal.

8. He was also intimately involved in the strategizing up through trial, including participation in regular weekly meetings with what Dr. Conney considered his legal 'team,' which included not only Mr. Conway but many other attorneys[.]

9. Mr. Conway was not only deposed during the underlying matter as a fact witness but was named as and provided testimony as an expert witness at the trial of the Northern Trust matter.

10. My personal review of billing records produced by Quarles & Brady demonstrate substantive contact with Mr. Conway regarding strategy and legal arguments 24 times in 2003; 10 times in 2004; 3 times in 2005; and 16 times in 2006. Additional contacts with Mr. Conway likely occurred but were not recorded."

¶ 23 Quarles contends, "it was impossible to know at the time the [arbitration agreement] was entered into what disputes might ultimately exist between the parties that would be the subject of arbitration and therefore impossible to anticipate the extent to which any specific individual would be a necessary witness at trial."

¶ 24 The above facts and concerns that Quarles now emphasizes are ones that Quarles knew of in 2006 when it proposed to use arbitration to resolve its fee dispute with Conney, and when it not only agreed to let Conney choose the arbitrator, but specifically suggested and agreed that Conney could select Conway as an arbitrator. Schaalman proposed, "We would be willing to give Dr. Conney the choice of an arbitrator including even the lawyers he has hired to assist us in prosecuting these claims, George Heisler, Michael Conway, and [Hanson] Reynolds, any one of them or all three. *** The decision of the arbitrator(s) would be final and non-appealable." Schaalman executed the contract which states, "The parties agree to defer resolution of their dispute, if any, until after the Northern Trust litigation is settled or judgment is entered in the trial court. Dr. Conney has the right to choose the arbitrator(s), including without limitation, the lawyers who are fact and expert witnesses in the case, namely [Heisler, Conway, and Reynolds], any one or combination of them. The decision of the arbitrator(s) is final and nonappealable. "

¶ 25 Thus, Quarles expressly agreed that Conney could choose attorney Conway as arbitrator even though Quarles knew at the time that there was an extensive attorney-client relationship between them and that Conway was one of "the lawyers who are fact or expert witnesses in the [Northern Trust] case." Quarles is responsible for inserting the contract terms it now considers problematic. Quarles could have insisted upon restrictions or exceptions. Instead, Quarles agreed "Dr. Conney has the right to choose the arbitrator(s), including without limitation, *** Michael Conway." Quarles relies on the "evident partiality" language in § 10(a)(2) of the FAA as grounds for vacating the award, however, the Seventh Circuit held in *Sphere Drake Insurance* that "parties are entitled to waive the protection of § 10(a)(2)." 9 U.S.C. § 10 (2012)); *Sphere Drake Insurance Ltd. v. All American Life Insurance Co.*, 307 F.3d 617, 620 (7th Cir. 2002). "The Federal Arbitration Act makes arbitration agreements enforceable to the same extent as other

contracts, so courts must 'enforce privately negotiated agreements to arbitrate, like other contracts, in accordance with their terms.' " *Sphere Drake Insurance*, 307 F.3d at 620 (quoting *Volt Information Services, Inc. v. Stanford University*, 489 U.S. 468, 478 (1989). "Parties are free to choose for themselves to what lengths they will go in quest for impartiality." *Sphere Drake Insurance*, 307 F.3d at 620. "[P]arties can stipulate to whatever procedures they want to govern the arbitration of their disputes; [in fact,] parties are as free to specify idiosyncratic terms of arbitration as they are to specify any other terms in their contract." *Baravati v. Josephthal, Lyon & Ross, Inc.*, 28 F.3d 704, 709 (7th Cir. 1994).

¶ 26 In addition to these federal principles, Illinois state courts, as a matter of public policy, favor agreements to resolve disputes through arbitration. *City of Chicago*, 2014 IL App (1st) 133020, ¶ 41, 23 N.E.3d 453. Illinois courts give deference to arbitration awards "because the parties have chosen in their contract how their dispute is to be decided, and judicial modification of an arbitrator's decision deprives the parties of that choice." *City of Chicago*, 2014 IL App (1st) 133020, ¶ 41, 23 N.E.3d 453. Accordingly, arbitration awards will be construed, wherever possible, so as to uphold their validity and give effect to the parties' intention that they would arbitrate rather than litigate a resolution to their dispute. *City of Chicago*, 2014 IL App (1st) 133020, ¶ 42, 23 N.E.3d 453.

¶ 27 Allowing Quarles to invalidate the arbitration agreement is unwarranted and would be unfair. Quarles proposed the arbitration procedure and gave Conney the unlimited right to select their arbitrator(s) in order to short circuit Conney's criticism of the firm's work on the Northern Trust suit, to collect the fees the firm had billed Conney up to that point, and to retain Conney as a client through the subsequent trial and possibly an appeal. Quarles made the proposal and entered into the agreement at a time when it was fully aware of Conway's "active participation in

the representation of Dr. Conney," including Conway's frequent participation in strategy sessions and influence over the choice of legal arguments. Quarles cannot use the facts it was aware of and the very terms it suggested in 2006 as an escape hatch from the arbitration award it helped bring about. Given the record and the law, we find that Quarles waived its partiality challenge under § 10(a)(2). 9 U.S.C. § 10(a)(2) (2012).

¶ 28 In an attempt to overcome its waiver of § 10(a)(2), Quarles argues that it had no objection to Conway serving as arbitrator of the reasonableness of Quarles' attorney fees, but that it never agreed Conway could arbitrate a malpractice claim, which is the dispute that Conney purportedly presented in the arbitration. 9 U.S.C. § 10(a)(2) (2012). This is a variation of Quarles' second argument on appeal, which is that Conney exceeded his powers in violation of § 10(a)(4) of the FAA, which is an argument addressed below. 9 U.S.C. § 10(a)(4) (2012).

¶ 29 The three cases Quarles relies on to support its partiality argument, *Borst*, *Morelite*, and *Toyota of Berkeley*, are not on point because they do not involve a tailored contract such as this one that expressly approved of a particular arbitrator. *Borst v. Allstate*, 291 Wis. 2d 70, 717 N.W.2d 42 (2006) (boilerplate arbitration clause in insurance contract); *Morelite Construction Corp. v. New York City District Council Carpenters Benefit Funds*, 748 F.2d 79, 84 (2nd Cir. 1984) (construction contract which incorporated that industry's model language regarding arbitration of disputes); *Toyota of Berkeley v. Auto Salesman's Union, Local 1095, United Food & Commercial Workers Union*, 834 F.2d 751, 756 (9th Cir. 1987) (collective bargaining agreement providing for cooperation in choosing arbitrator). These cases are not grounds for disturbing the parties' apparent intention to opt out of the judicial system and arbitrate their fee dispute with the assistance of attorney Conway as their arbitrator. *City of Chicago*, 2014 IL App

(1st) 133020, ¶ 42, 23 N.E.3d 453 (arbitration awards should be construed, whenever possible to uphold their validity).

¶ 30 For these reasons, we reject Quarles' first argument and proceed to its second argument for vacating the arbitration award.

¶ 31 Quarles contends that Conway exceeded the scope of the arbitration agreement, and, thus exceeded his powers, which are reasons under § 10(a)(4) for vacating the award. 9 U.S.C. § 10(a)(4) (2012). Quarles acknowledges that arbitrators are given wide latitude in conducting arbitration proceedings, but contends this tempered by the principle that the scope of arbitration is to be determined by the arbitration contract and the specifc issues submitted by the parties. *AT&T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643, 648-49 (1986) (arbitration is pursuant to contract and a party cannot be required to arbitrate a dispute which he did not agree to arbitrate); *Gateway Coal Co. v. Mine Workers*, 414 U.S. 368, 374 (1974) (arbitrators derive their authority to resolve disputes only because the parties have agreed in advance to submit such grievances to arbitration). Quarles contends that it entered into an "extremely limited" arbitration agreement with Conney regarding fees, but Conney unilaterally and improperly expanded the scope of the agreement to encompass Quarles' alleged professional negligence, which was a claim that was reserved for adjudication by the federal district court.

¶ 32 Quarles supports this argument by quoting the "extremely narrow" contract language in which the parties "agreed to binding arbitration with respect to any fee dispute arising out of Dr. Conney's lawsuit against The Northern Trust Company." Quarles contends that when it negotiated and signed this contract in 2006, Quarles "could never have expected that issues unrelated to the fee dispute, including acts or omission allegedly constituting negligence or

malpractice which could impact the reasonableness of the fees charged, would be considered during any arbitration under that agreement."

¶ 33 Quarles also looks to the orders of the federal district court, the first order being in response to Conney's motion to stay his federal suit and compel arbitration, and the second order being in response to Quarles' motion to enforce the first order. Quarles does not quote to any particular language, but we point out that the first order indicates litigation of the malpractice claim would have to be stayed while the fee claim was being arbitrated due to the fact that the two claims "are not entirely unrelated, [and] it is possible that in the absence of a stay there could be inconsistent rulings." In the second order, the court specified "the malpractice claim is not arbitrable" and was not about fees, but about whether Quarles' negligence caused it to lose the case.

¶ 34 Quarles also summarizes some of the questions the firm objected to during the arbitration, such as whether Schalmaan performed certain research before giving Conney an estimate of the litigation costs and likelihood of success, whether Quarles had researched the statute of limitations issue, and when had Quarles first retained an expert to evaluate Northern Trust's actions. Quarles contends that the firm's purported failure to consider issues is a negligence issue, not a fee dispute. Quarles also cites the testimony of Conney's expert, John Cabaniss, who gave his opinion that the fee agreement and initial billings were acceptable, however, Quarles "had not reasonably gathered the facts that were necessary" to predict a 65% likelihood of winning the case and that it was "a very, very tough case that is very unlikely to be won that does not justify spending hundreds of thousands of dollars, let alone $750,000, prosecuting based on an [insufficient] analysis [of the facts]."

¶ 35 A party seeking relief under § 10(a)(4) has a difficult task in overcoming the validity of the award. We must presume that arbitrator Conway did not exceed his authority. *First Health Group Corp. v. Ruddick*, 393 Ill. App. 3d 40, 47, 911 N.E.2d 1201, 1209 (2009). Our review of the award must be "extremely limited, more limited than appellate review of a trial" and we are to vacate the award only in " 'extraordinary circumstances.' " *First Health Group*, 393 Ill. App. 3d at 47-48, 911 N.E.2d at 1209 (quoting *Yorulmazoglu v. Lake Forest Hospital*, 359 Ill. App. 3d 554, 564, 834 N.E.2d 468, 476 (2005)). This limited judicial review is consistent with the policies outlined earlier in this order, such as that "an arbitration award should be the end, not the beginning of litigation" and that "[w]hen parties agree to submit a dispute to arbitration for a binding and nonappealable decision, they bargain for finality." *First Health Group*, 393 Ill. App. 3d at 48, 911 N.E.2d at 1209. Arbitration is intended to be a "quick and economical alternative to litigation, not to add yet another round before entering the district and appellate courts." *First Health Group*, 393 Ill. App. 3d at 48, 911 N.E.2d at 1209.

¶ 36 Furthermore, any doubts about the scope of arbitrability "must be addressed with a healthy regard" for the policies favoring arbitration and should be resolved in favor of arbitration. *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 24-25 (1983). In a judicial review:

> "It is not enough to show that the arbitrator committed an error—or even a serious error. Because the parties bargained for the arbitrator's construction of their agreement, an arbitral decision even arguably construing or applying the contract must stand, regardless of a court's view of its (de)merits. Only if the arbitrator acts outside the scope of his contractually delegated authority—issuing an award that simply reflects his own notions of economic justice rather than drawing its essence from the contract—may a

> court overturn his determination. So the sole question for us is whether the arbitrator (even arguably) interpreted the parties' contract, not whether he got its meaning right or wrong. (Citations and internal quotations omitted.) *Oxford Health Plans*, 569 U.S. at __, 133 S.Ct. at 2068.

¶ 37 We also note that the arbitration system is considered "an inferior system of justice, structured without due process, rules of evidence, accountability of judgment and rules of law." *Moseley, Hallgarten, Estabrook & Weeden, Inc. v. Ellis*, 849 F.2d 264, 268 (7th Cir. 1988) (quoting *Stroh Container Co. v. Delphi Industries, Inc.*, 783 F.2d 743, 751 n. 12 (8th Cir. 1986). "Parties should be aware that they get what they bargain for and that arbitration is far different from adjudication." *Moseley*, 849 F.2d at 268 (quoting *Stroh Container Co.*, 783 F.2d at 751 n. 12).

¶ 38 These principles and the facts that culminated in the federal suit and subsequent arbitration lead us to conclude that arbitrator Conway did not exceed the scope of the parties' agreement to arbitrate their fee dispute. Wisconsin Supreme Court Rule 20:1.5(a) obligated Quarles to charge a reasonable fee and Conney elicited facts and opinion testimony indicating that Quarles had failed to meet this duty when it did not properly assess and disclose the costs and risks of ligation *before* getting Conney to accept an hourly fee arrangement. WI SCR 20:1.5 ("A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.") The arbitration agreement was a culmination of Conney's many letters and phone calls over the years complaining that the firm had little apparent regard for its own pre-engagement estimates and that its unrestrained and escalating fees and revisions to the budget meant that the suit became "an unwise business proposition" for Conney.

¶ 39 Quarles faults the evidence Conney presented and contends it did not address the elements relevant under the Wisconsin rule regarding an evaluation of the reasonableness of attorney fees. Conney's fee claim is analogous to the one presented in *Maynard Steel Casting*, in which the court considered the circumstances of the case in order to determine whether the total fee amount was just and reasonable. *Maynard Steel Casting Co. v. Sheedy*, 307 Wis. 2d 653, 663-64, 746 N.W.2d 816, 821 (2008). The court indicated that the Wisconsin rule regarding the reasonableness of attorney fees sets out eight factors which may be considered in a fee analysis, but it is not necessary for each and every factor to be considered, and additional facts may be pertinent. *Maynard Steel Casting Co.*, 307 Wis. 2d at 664-65, 746 N.W.2d at 821.

¶ 40 Moreover, the evidence that was presented was pertinent to this fee dispute. The fact that there could be some overlap between the evidence relevant to the fee dispute and the evidence relevant to the malpractice claim was acknowledged by the district court when it stayed the malpractice claim in order to avoid rendering a judgment that was inconsistent with the arbitration award. Arbitrator Conway was able to consider that evidence without deciding the merits of the actual malpractice claim. The arbitration award was consistent with both the parties' agreement to arbitrate and the district court orders compelling arbitration of the fee dispute but holding back the malpractice claim because it was not arbitrable. The issue presented and resolved in the arbitration was within the scope of the parties' agreement to arbitrate their fee dispute. Accordingly, we find no error in the arbitration award.

¶ 41 For these reasons, we affirm the trial court's order in Conney's favor.

¶ 42 Affirmed; appellee's motion taken with case denied.