2024 IL App (1st) 231057-U

No. 1-23-1057

Second Division
August 30, 2024

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

	)	Appeal from the
PAUL ABRAMSON,	)	Circuit Court of
	)	Cook County.
Petitioner-Appellant,	)	
	)	
v.	)	No. 22 CH 05933
	)	
ALEXANDER LOFTUS and STOLTMANN	)	
LAW OFFICES, P.C.,	)	Honorable
	)	Celia Gamrath
Respondents-Appellees.	)	Judge, Presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Howse and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the circuit court's order denying petitioner-appellant's petition to vacate an arbitration award where petitioner failed to show by clear and convincing evidence: (1) the arbitrator's partiality towards respondents-appellees during arbitration proceedings, and (2) that the award entered without an evidentiary hearing was a gross mistake of fact or law.

¶ 2 The matter before us concerns "a case within a case within a case." Petitioner-appellant, Paul Abramson, is a former client of respondents-appellees, Alexander Loftus, an Illinois-based

attorney, and the law firm with which Loftus was affiliated, Stoltmann Law Offices, P.C. (collectively respondents), at the time of petitioner's representation. Pursuant to their agreement for legal services, respondents represented petitioner in a legal malpractice action against petitioner's former attorney, Steven Marderosian. Marderosian had previously been retained to file claims against a law firm, Chuhak and Tecson (Chuhak), who had represented petitioner in an earlier probate matter. See *Abramson v. Chuhak & Tecson, P.C.*, No. 1-12-1842, 2013 IL App (1st) 121842-U (*Abramson I*) (unpublished order pursuant to Supreme Court Rule 23); *Abramson v. Marderosian*, 2018 IL App (1st) 180081 (*Abramson II*). After we affirmed dismissal of petitioner's complaint against Marderosian in *Abramson II*, petitioner filed a demand for arbitration against respondents for legal malpractice pursuant to the Illinois Uniform Arbitration Act (Act) (710 ILCS 5/1, 22) (West 2022).

¶ 3 Following limited discovery and resolution of respondents' two dispositive motions, the arbitrator ultimately denied petitioner's claim without an evidentiary hearing and entered a final arbitration award in favor of respondents. Petitioner subsequently filed a petition to vacate the award in the circuit court of Cook County based on allegations of the arbitrator's purported partiality and lack of due process. Following briefing and oral argument, the circuit court affirmed the award.

¶ 4 On appeal, petitioner argues that the circuit court erred in affirming the award for two main reasons: (1) he sufficiently alleged evidence of the arbitrator's partiality and or bias towards Loftus, and (2) he had been entitled to a hearing on the merits based on his proffered evidence. For the reasons that follow, we affirm the decision of the circuit court.

¶ 5 I. BACKGROUND

¶ 6 A. Past Litigation

¶ 7 This case has a complex procedural history that directly informs the arbitration proceedings at issue. As such, we begin with a summary of petitioner's prior actions as needed and cite those decisions and their records as appropriate in recounting the factual background of this case. See *In Re N.G.*, 2018 IL 121939, ¶ 32 (appellate court may take judicial notice of court records in related cases).

¶ 8 1. *Abramson I*

¶ 9 The genesis of this multi-layered legal malpractice action is petitioner's 2008 contest of his deceased mother's will. 2013 IL App (1st) 121842-U ¶¶ 3, 7. During that contest, petitioner was represented by Chuhak pursuant to a modified fee arrangement after petitioner refused to pay the firm's standard hourly fee. *Id.* ¶¶ 5, 7. Specifically, Chuhak agreed to represent petitioner pursuant to a contingency fee agreement, in which it would receive 50% of any proceeds recovered in the will contest but would not take any fee if the firm withdrew during representation. *Id.* ¶ 5. Additionally, if petitioner sought further services outside the scope of the agreement, a separate contract would be required. *Id.* ¶ 6.

¶ 10 In August 2008, Chuhak filed a complaint in the circuit court of Cook County challenging petitioner's mother's will. *Id.* ¶ 7. After several months of written and oral discovery, Chuhak advised petitioner to participate in a pretrial mediation. *Id.* ¶¶ 7-8. In June 2009, during the two-day mediation, petitioner and his father engaged in lengthy conversation for the first time in years, and both agreed to sign a settlement agreement in an attempt to repair their relationship. *Id.* ¶ 9. However, petitioner apparently stated that he would not sign any agreement until Chuhak agreed to reduce its contingency fee. *Id.* ¶ 10. Chuhak responded that it would stop representing petitioner if he did not sign the settlement agreement. *Id.* Petitioner subsequently signed the agreement, which reflected a settlement in the amount of one million dollars to be split evenly between Chuhak

and petitioner. *Id.* ¶¶ 10-11. The settlement also contained a "no-contact provision," which prohibited petitioner from contacting his father. *Id.* ¶ 12. However, petitioner and his father continued to communicate until sometime in 2010. *Id.* Thereafter, petitioner received two cease and desist letters from his father. *Id.* ¶ 12. After forwarding the second one to petitioner, Chuhak informed him that it would no longer be representing him regarding any future dispute concerning the no-contact provision. *Id.*

¶ 11 Subsequently, in April 2011, petitioner retained Steven Marderosian as his attorney, and filed suit against Chuhak in the circuit court of Cook County. *Id.* ¶ 13; see also *Abramson II*, 2018 IL App (1st) 180081, ¶ 9.[1] Petitioner's initial action for declaratory judgment sought to recover his $500,000 legal fee paid to Chuhak following the firm's refusal to represent petitioner in further legal proceedings. *Abramson I*, 2013 IL App (1st) 121842-U, ¶ 13. The complaint was later amended to include causes of action for fraudulent inducement, rescission, breach of fiduciary duty, and alternatively, breach of contract. *Id.* ¶ 15. Chuhak filed and was granted a section 2-615 motion to dismiss (735 ILCS 5/2-615 (West 2010)). *Id.* ¶ 16. We affirmed dismissal of all counts on appeal. *Id.* ¶¶ 46-47.

¶ 12 2. *Abramson II*

¶ 13 In May 2014, petitioner sued Marderosian for legal malpractice in the circuit court of Cook County. *Abramson II*, 2018 IL App (1st) 180081, ¶ 14. He retained a different attorney, Margaret Lundahl, to file the initial complaint. Petitioner re-filed an amended complaint in February 2015,

[1]Marderosian also apparently represented petitioner in another matter pursuant to Case Number 2013-CH-17457 in the circuit court of Cook County, which purportedly involved a case brought by petitioner's father against him regarding breach of the settlement agreement. According to the record, on February 20, 2020, petitioner was ordered to pay $500,000 to his father for violating the no-contact provision of the settlement.

but moved and was granted leave to voluntarily dismiss the suit without prejudice in March 2016. *Id.*

¶ 14 On March 31, 2017, petitioner and respondents in the current case entered into an agreement for legal services. Pursuant to the agreement, an unsigned copy of which appears in the record, respondents had been retained to pursue a claim against Marderosian and his law firm and would refile the voluntarily dismissed case. The agreement also provided that any claims between the parties concerning legal malpractice would be resolved by binding arbitration pursuant to the Commercial Rules of Arbitration by the American Arbitration Association (AAA) in Chicago.

¶ 15 On April 3, 2017, respondents re-filed a verified complaint against Marderosian, which indicated that it was an "identical" refiling of the previously dismissed case. *Id.* ¶ 15. The complaint alleged a single claim for legal malpractice, which stated, *inter alia*, Marderosian had failed to allege or amend the complaint against Chuhak in *Abramson I* to include various claims for malpractice, including the failure to obtain the necessary witnesses for the will contest and discover the actual value of the estate before settlement. *Id.* Petitioner alleged that, but for these omissions, he would have prevailed against Chuhak and recovered damages in the amount he should have received in the underlying will contest, as well as the cost of prosecuting a "futile appeal" in *Abramson I* and defending the lawsuits brought by his father. *Id.* ¶¶ 16-17.

¶ 16 In June 2017, Marderosian filed an answer, asserting affirmative defenses, which included: (1) *res judicata* or collateral estoppel based on our holding in *Abramson I*; (2) the parties' agreement to a limited scope of representation, which excluded pursuit of a legal malpractice claim; and (3) contributory or comparative negligence, in that petitioner had purportedly told Marderosian that he did not want to file a malpractice claim against Chuhak. *Id. Id.* ¶ 18.

¶ 17 Petitioner unsuccessfully moved to strike Marderosian's affirmative defenses and subsequently sought leave to file an amended complaint. *Id.* ¶ 22. During the pendency of petitioner's motion to amend, Marderosian filed a motion for summary judgment. *Id.* ¶ 21. Among other things, Marderosian argued that in light of *Abramson I*, collateral estoppel barred petitioner from pleading that Marderosian could have filed a malpractice claim against Chuhak. *Id.*

¶ 18 On October 2, 2017, the court denied petitioner's motion to amend his complaint. Thereafter, on October 10, 2017, petitioner filed a "Motion to Stay Briefing on § 2-1005 Motion and for Discovery Pursuant to Illinois Supreme Court Rule 191." *Id*. In the motion, petitioner argued that a stay was necessary to permit limited discovery to respond to the summary judgment motion. *Id.* The motion attached Loftus' affidavit, which averred that he needed to depose Marderosian and his legal partner regarding the scope of Marderosian's representation. *Id.*

¶ 19 On October 23, 2017, the circuit court denied the Rule 191 motion, prompting petitioner's response to the motion for summary judgment. *Id.* ¶ 23. Following a December 19, 2017, hearing, the court granted the motion for summary judgment, finding that collateral estoppel precluded the malpractice claim, regardless of whether it had been pled. *Id.* ¶ 24. Although Loftus purportedly argued that the claims he sought to file went beyond malpractice, the court noted that such claims were "outside the allegation[s] of the [operative] complaint." *Id.* Loftus' subsequent oral request for leave to file an amended complaint was denied. *Id.* ¶ 25.

¶ 20 Petitioner subsequently appealed, asserting error in the trial court's (1) denial of his requests to amend the complaint, (2) denial of his Rule 191 motion, and (3) grant of the motion for summary judgment. Notably, the subject amended complaint was not included in the record on appeal. We affirmed the circuit court's decision on all grounds. *Abramson II*, 2018 IL App (1st) 180081, ¶¶ 31-32, 33-37, 42-50, 53-54.

¶ 21 3. Current Case – "*Abramson III*"

¶ 22 i. Arbitration Proceedings

¶ 23 On January 11, 2021, petitioner filed a demand[2] for arbitration with the AAA, alleging legal malpractice against Loftus for conduct concerning *Abramson II* and seeking damages in the amount of $3,125,000. He indicated that his preferred qualifications for an arbitrator would be one who had "expertise in legal and professional negligence claims as well as knowledge of legal ethics." He further selected the Commercial Rules of Arbitration to be utilized in ongoing proceedings.

¶ 24 ii. Arbitrator Selection

¶ 25 The parties were provided with 15 potential arbitrator candidates for selection. On December 4, 2020, petitioner submitted a ranked list of his preferred candidates. Notably, Carmen D. Caruso was ranked as "2" out of "6" chosen candidates.

¶ 26 On December 14, 2020, Caruso was appointed as arbitrator by the AAA. The parties were given a copy of Caruso's disclosures and indicated that any objections to his selection were to be made on or before December 18, 2020. Caruso's disclosures included, among others, that he or his law firm: did not represent any person in any proceeding involving either party; had not represented any person in the proceeding against any party to the arbitration; and did not have any professional or social relationship with counsel for any party to the proceeding with their respective firms. However, in response to the question as to whether Caruso had any professional or social relationships with any parties or witnesses to the arbitration, Caruso responded in the affirmative and offered the following comments:

[2]At various times during the arbitration proceedings, petitioner both appeared *pro se* and also by counsel. It is unclear as to what aspects of the proceedings he was represented.

> "About 4 or 5 years ago, Mr. Loftus applied for a position with my law firm, and after interviewing him, while we believed he would be a competent attorney, we declined to make an offer. Whether he would have accepted would be a matter of speculation. We parted cordially. I believe we 'linked in' with each other in this process and consequently, I receive his professional announcements on Linkedin from time to time and would assume he received mine. And I believe he mentioned me, in a positive way, in a recent post in which he announced his acceptance into one of [the] lawyer-rating organizations (Top 100 High Stakes Lawyers) where he apparently saw I was already a member. I recall sending him a "thanks for the mention" note on the Linkedin platform.
>
> I have no financial relationship with Mr. Loftus and never had.
>
> I have never been in a case with him as a lawyer.
>
> I have no bias either 'for' or 'against' Mr. Loftus and believe I will be 100% impartial. As a precaution, I would 'un-link' from him on social media."

¶ 27 Caruso additionally commented that, "consistent with the applicable rules of the [AAA], the Code of Ethics for Arbitrators in Commercial Disputes, the parties' agreement, and applicable law," he would "maintain a professional demeanor and appearance of impartiality during all phases" of the case.

¶ 28 Following receipt of this disclosure, on December 18, 2020, petitioner filed a timely objection to Caruso's appointment. He noted that he "believe[d] cause exist[ed] whereby Mr[.] Caruso has previously formed an opinion as to Mr[.] Loftus before being appointed as arbitrator in this case."

¶ 29 On January 4, 2021, the AAA responded to petitioner's objection, noting that, "[a]fter careful consideration of the parties' contentions, the [AAA] has determined that Carmen D. Caruso will be reaffirmed as an arbitrator in the above matter."

¶ 30 On January 7, 2021, petitioner filed a request for reconsideration of Caruso's reappointment. He noted his continued objection to Caruso's selection, and further stated:

> "Mr. Caruso has stated in no uncertain terms that he found Mr[.] Loftus to be a 'competent attorney' which is in conflict with my AAA claim against Mr[.] Loftus, as the basis of my claim is that Mr. Loftus was incompetent in representing me in the underlying matter and committed legal malpractice. Therefore Mr. Caruso by his own admission made a prejudicial disclosure that he would be biased in the arbitration of my AAA claim."

¶ 31 No written response from the AAA to petitioners' reconsideration request appears in the record.

¶ 32 iii. Discovery

¶ 33 a. Boynton Report

¶ 34 Petitioner retained Julie Boynton as an expert witness. In a 39-page report, Boynton provided three major opinions as to petitioner's malpractice claim. First, regarding Chuhak, Boynton opined that Chuhak had been negligent when representing petitioner in the will contest. Specifically, Boynton referred to Chuhak's failure to, *inter alia*, investigate and engage in minimal discovery about the value of petitioner's mother's estate; properly document the terms and conditions of the settlement; review the agreement with petitioner prior to signing; and advise petitioner that continued contact with his father would violate the no-contact provision. Additionally, Boynton opined that Chuhak's contingency fee was excessive in light of the work performed. Boynton further asserted that Chuhak's conduct was the proximate cause of damages

to petitioner, which included settling his case for substantially less than the estimated value of the estate, collecting an unreasonable fee, and subjecting petitioner to a fine for violation of the no-contact provision.

¶ 35 Second, regarding Marderosian, Boynton opined that Marderosian was negligent for, *inter alia*, failing to decline representation based on his lack of experience in legal malpractice matters; bringing a fiduciary duty claim instead of malpractice and in turn waiving all other potential claims; filing a deficient complaint against Chuhak and failing to amend it; and failing to advise petitioner of his limited scope of representation. Boynton further opined that Marderosian's conduct resulted in damages, including: the loss of petitioner's malpractice claim against Chuhak; petitioner's payment to his father based on breach of the no-contact clause; excessive fee payments to Chuhak; inability to have contact with his family; and loss of his share to his mother's estate.

¶ 36 Third, with regard to Loftus, Boynton opined that Loftus had negligently represented petitioner by, *inter alia*, failing to research and properly respond to the collateral estoppel issue raised in Marderosian's motion for summary judgment in *Abramson II*; failing to properly plead damages in the operative complaint; filing a deficient Rule 191 affidavit; and failing to include the proposed amended complaint in the appellate record. Boynton further opined that Loftus' conduct was the proximate cause of petitioner's damages, where petitioner had been unable to recover any damages against Marderosian.

¶ 37 b. Oral Discovery

¶ 38 During limited discovery, Loftus and Boynton were both deposed. Loftus' deposition is not included in the record. Relevant here, Boynton testified that she could not express any opinion regarding Marderosian's negligence outside the opinions in her report. This included the claim as to whether Marderosian had properly advised petitioner to continue communications with his

father, as she was unaware of what Marderosian had specifically told petitioner in that regard. However, she considered the claim to be "ancillary" to the opinions expressed in her report. Boynton further testified that it would have been "inappropriate" and negligent for Marderosian to advise petitioner to continue communicating with his father given the terms of the settlement agreement. However, Boynton also admitted that petitioner likely became aware of the no-contact provision "at some point" when he received a cease and desist letter from his father in November 2010, which was prior to retaining Marderosian as counsel. Boynton also could not express an opinion as to whether Marderosian had been negligent in advising petitioner to attempt to vacate the settlement agreement, but reiterated that these claims were "ancillary" to the ones discussed in her report.

¶ 39 Boynton also testified as to Loftus' conduct in prosecuting the claim against Marderosian. She opined that, had the proposed amended complaint in *Abramson II* been filed earlier, there was a "fair argument" that the circuit court would have allowed for the complaint to be amended, or that the appellate court would have "come to a different conclusion" regarding whether the circuit court had abused its discretion in denying the motion to amend. She was unaware of any other claims that could have been filed in the amended complaint.

¶ 40 c. Dispositive Motions and Hearings

¶ 41 i. First dispositive motion and order

¶ 42 Respondents filed a Rule 33 dispositive motion.[3] Although a copy of the motion does not appear in the record, we glean from petitioner's response and the arbitrator's ruling, both of which

[3]Although the parties agreed to arbitrate under the Commercial Rules of the American Arbitration Association, they appear to have actually arbitrated under the *Consumer Rules*, based upon their reference to those rules' exact language throughout their briefs. As such, we cite the Consumer Rules as the governing provisions, but also cite to the similar Commercial Rules where applicable for the sake of completeness.

are included in the record, that respondents argued that claim preclusion under *Abramson I and II* barred petitioner's malpractice claim.

¶ 43 In response to the motion, petitioner argued that there were still triable issues of credibility and fact as to whether "Loftus filed a case critical pleading or not in the lower court and included it or not in the record on appeal" and that Loftus "had lied all along" regarding the filing of the proposed amended complaint and the case's progress while on appeal. Substantively, petitioner contended that he did not have to prove his damages caused by Loftus with "certainty," but maintained that he was able to do so stemming from Chuhak's conduct during his mediation with his father. In support, petitioner attached various affidavits, all of which related to Chuhak's handling of petitioner's will contest. Petitioner further argued that *Abramson I* and *II* did not preclude his claim because Marderosian had never pled a count for legal malpractice against Chuhak, and thus there had never been a formal adjudication on the merits as to that theory of recovery. Finally, petitioner argued that Loftus had breached his fiduciary duty, and attached the Boynton report in support.

¶ 44 On October 7, 2021, following oral argument on the motion, the arbitrator issued a ruling. The arbitrator first noted that, in commercial arbitration, "dispositive motions in arbitration [were] intended to be the exception, not the norm[.]" Next, the arbitrator observed that, in bringing a legal malpractice action, petitioner had to prove "a case within a case," meaning that he had to prove that all three parties—Chuhak, Marderosian, and Loftus—had breached one or more legal duties

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The Commercial Rules are available at https://www.adr.org/sites/default/files/Commercial-Rules_Web.pdf (Last accessed June 7, 2024 at 3:57 p.m.). The Consumer Rules may also be found here: https://adr.org/sites/default/files/Consumer%20Rules.pdf (Last accessed June 9, 2024, at 2:33 p.m.). We take judicial notice of both. See *People v. Davis*, 180 Ill. App. 3d 749, 753 (1989) (a court may take judicial notice of administrative rules and regulations, or facts which are capable of immediate and accurate demonstration by resort to easily accessible sources of indisputable authority). In either set of rules, a dispositive motion is one intended to "dispose of or narrow the issues in the case."

that in turn caused proximate injury. The arbitrator expressly identified *Abramson II* as "established facts," in which the malpractice claim filed by Marderosian against Chuhak had been found to be barred by collateral estoppel. In turn, the arbitrator reasoned that the effect of *Abramson II* also provided Loftus with a "complete defense" as to whether he had been negligent in pursuing the same claims. As such, the arbitrator determined that "all or substantial parts of the lawsuit that Loftus asserted against Marderosian" were not actionable in the arbitration proceedings.

¶ 45 However, the arbitrator continued, *Abramson II* also contained discussion about Loftus' failure to file an amended complaint which would have apparently alleged separate claims against Marderosian. The arbitrator determined that he could not decide whether the filing of the amended complaint would have changed the outcome of *Abramson II* on a dispositive motion, as this issue raised "questions of fact not suitable for summary judgment." As such, the arbitrator denied the motion on that basis, and subsequently narrowed the scope of petitioner's claims in the upcoming proceedings to the following:

> "i. That as the first 'case within the case', Chuhak and Tecson did 'significant negligent work for [petitioner] outside the alleged scope of its engagement' giving rise to an actionable claim for damages (separate and apart from the damage claim that is barred by collateral estoppel);
>
> ii. That as the second 'case within a case', that Marderosian breached one or more legal duties to the [petitioner] with respect to the surviving claim as stated in subparagraph (i), that proximately caused damage to the [petitioner], separate and apart from the damage claim that is barred by collateral estoppel; and

iii. that Loftus breached one or more legal duties to the [petitioner] proximately causing damage to the [petitioner] with respect to the surviving claim as stated in subparagraph (i), that proximately caused damage to the [petitioner], separate and apart from the damage claim that is barred by collateral estoppel."

¶ 46 ii. Second dispositive motion

¶ 47 On March 14, 2022, respondents filed a second Rule 33 motion.[4] According to respondents, the gravamen of petitioner's remaining claims was that respondents had allegedly failed to file a more detailed complaint in *Abramson II* and had failed to include the proposed amended complaint in the appellate record. However, respondents argued, because this was a "case within a case," petitioner needed to first plead or prove Marderosian's negligence outside of the claims already barred by collateral estoppel, which petitioner could not do on the current state of the record. Respondents noted that the only evidence offered in support of these claims was the Boynton report and her subsequent deposition, but neither established proof that Marderosian had been negligent in not vacating the settlement between petitioner and his father, advising petitioner of the no-contact provision, or recommending that petitioner stop contacting his father. Further, respondents observed, it had been Boynton's testimony that petitioner had already been in violation of the no-contact provision before he retained Marderosian. Respondents concluded that Boynton could not testify with any certainty that, had the proposed amended complaint been filed, petitioner would have won his case against Marderosian in *Abramson II*.

[4]The motion, dated March 14, 2022, oscillates between referencing Rule 33 of the Consumer Rules and Rule 34 of the Commercial Rules, and was sent via email on March 15, 2022, to the arbitrator. We refer to it as a Rule 33 Motion.

¶ 48 Petitioner responded that the two remaining claims—Marderosian's advice concerning the no-contact provision and Chuhak's unreasonable attorney fee—would have been viable if respondents had filed the amended complaint. Petitioner further maintained that Boynton had directly addressed the issues of negligence and damages by opining that the malpractice claim against Marderosian would have been successful if included in a new complaint, and that he would have been able to recover his settlement fee from Chuhak.

¶ 49 On March 31, 2022, at 10:13 a.m., the arbitrator issued a ruling denying respondents' second Rule 33 motion. The order stated as follows:

> "The Arbitrator has reviewed the [petitioner's] opposition to the [second Rule 33] motion addressing claims not barred by collateral estoppel. The dispositive motion is denied on the issues of whether [petitioner] can state a plausible claim for legal malpractice for alleged failure to timely present claims not barred by collateral estoppel in the underlying case. There is no other ruling on other issues, such as whether [petitioner] can present sufficient evidence on the merits of the 'case(s) within the case', proximate causation, and injury."

¶ 50 A few minutes later that same day, at 10:24 a.m., respondents sent an email to the arbitrator and parties, which included an attached reply brief to the motion.[5] The email stated:

> "Arbitrator Caruso,
>
> Very respectfully, I did not receive the [petitioner's] response until this morning until I requested it from [your administrative assistant] (I was not served). I prepared a brief [r]eply this morning.

[5]The March 14, 2022, date on the reply brief is apparently incorrect.

> The prime concern besides obviously wanting to dispose of this without hearing, is that the issues [as] raised in the [petitioner's] response *** are precluded by collateral estoppel[,] and we would all benefit from a ruling on that. Again, this case comes to hearing without a statement of claim so it's challenging to prepare when it's unclear, to the [petitioner] at least, what issues will be presented at hearing.
>
> The case within the case issues are what requires the real labor to prepare for hearing and there is no factual issue raised on those issues at this time. Were the case within the case issues [to] include the fees charged by Chuhak Tecson[,] that would exponentially increase the preparation necessary considering they were previously disposed of with the last motion."

¶ 51 In their reply brief, respondents observed that, although petitioner had "pivot[ed] in his response" and now focused on the alleged failure to file an amended complaint, petitioner still continued to discuss claims already barred by the last order. Respondents maintained that there was a lack of evidence to support the remaining claims, and that petitioner had failed to submit an affidavit which created any question of fact as to the advice he allegedly received from Marderosian.

¶ 52 That same day, at 12:37 p.m., the arbitrator issued a second order:

> "Order (the Second Order in this case on March 31, 2022):
>
> The Arbitrator has reviewed the Loftus Reply in support of [the second Rule 33] motion, which came to the Arbitrator after the Arbitrator issued an order denying the dispositive motion on the limited issue of whether [petitioner] states a plausible claim for alleged failure to timely allege claims not barred by collateral estoppel, but expressly leaving open other issues that Loftus emphasizes in his Reply.

> The Arbitrator agrees that [petitioner]'s opposition to the [second Rule 33] motion did not address Loftus' argument that, in substance, the proposed amendment of his complaint would have been futile. The Arbitrator will give the [petitioner] an opportunity to address these arguments, which amount to a contention by Loftus that [petitioner] lacks sufficient evidence to create genuine issues of fact on the merits of the claims that [petitioner] contends Loftus should have timely asserted (the 'case(s) within the case'), the alleged injury to [petitioner], and proximate causation.
>
> [Petitioner] should have until April 8, 2022, to file a supplement opposition to these aspects of the dispositive motion."

¶ 53 Petitioner filed a "reply to respondents' reply" and reiterated that his claims against Marderosian should have been filed in an amended complaint. Petitioner attached his own affidavit, which averred that Loftus had told him that he "had to refile the case with the original [c]omplaint" in order to file an amended one, and that the amended complaint had been included in the record on appeal.

¶ 54 On April 8, 2022, the arbitrator issued an order setting oral argument on the second Rule 33 motion for April 12, 2022. On April 20, 2022, the arbitrator issued an order granting the motion. Therein, the arbitrator indicated that he had reviewed the second motion in accordance with all submitted materials, that oral argument on the motion had been held on April 12[6], and that he was incorporating his previous ruling issued on March 31, 2022. The arbitrator acknowledged that he had previously denied the motion, but after continued review, ultimately concluded that petitioner's claims failed as a matter of law. In doing so, and as reiterated in his order on the first

[6]No record of the April 12 oral argument appears in the record. The record does, however, reflect that the evidentiary hearing was to be held on April 19.

Rule 33 motion, the arbitrator noted that "dispositive motions in arbitration are intended to be the exception, not the norm, in commercial arbitration."

¶ 55 The arbitrator observed that petitioner had attempted to characterize the allegations he would have pursued against Marderosian in *Abramson II* as "established facts." However, the arbitrator reasoned, the allegations did not demonstrate anything beyond respondents' representations that they had "a good faith basis" in bringing the claims. Further, noted the arbitrator, petitioner had failed to present any affidavits or testimonial evidence from any fact witness that demonstrated that such allegations were true. Indeed, the arbitrator observed, the only relevant submission was the Boynton report, which assumed those facts but were not otherwise supported. As such, the arbitrator concluded, because petitioner had not "presented evidence to prove any aspect of any case within the case, there was [no] reason to hold a hearing to determine credibility and otherwise allow [him] to weigh the evidence." Accordingly, the arbitrator struck the pending hearing date.

¶ 56 d. Final Arbitration Award

¶ 57 A final arbitration award was issued in favor of respondents on April 25, 2022, which incorporated the arbitrator's previous rulings. Petitioner was awarded $0 with no accompanying attorney fees, with the arbitrator's compensation and expenses to be "borne as incurred."

¶ 58 B. Circuit Court Proceedings

¶ 59 On June 17, 2022, petitioner, represented by counsel, filed a petition to vacate the final arbitration award. Therein, petitioner alleged that the award should be vacated for two main reasons: (a) evidence of the arbitrator's partiality; and (b) lack of due process based on the arbitrator's decision to cancel the hearing after granting respondents' dispositive motions. The petition attached various exhibits, including: a copy of the subject complaint in *Abramson II*, a

copy of the proposed first amended verified complaint,[7] the Boynton report, and petitioner's affidavit.

¶ 60 On October 11, 2022, respondents filed a response, which attached the Boynton report and her deposition transcript. The filing asserted that the award was legally correct, and that petitioner's claim of bias was meritless.

¶ 61 On December 27, 2022, petitioner filed a reply and a "supplemental response" in which he reiterated many of the allegations contained within the petition. Petitioner also attached an exhibit that reflected his ranked list of arbitrators and identified Caruso as his second choice.

¶ 62 On April 26, 2023, the circuit court issued a written ruling denying the petition. Petitioner timely filed a *pro se* motion to reconsider, which the court also denied. On June 9, 2023, petitioner timely filed a notice of appeal.

¶ 63 On July 18, 2023, petitioner filed a motion to certify a bystander's report of the oral argument held before the circuit court on April 11, 2023. On August 1, 2023, the court entered an order denying the motion as untimely filed pursuant to Supreme Court Rule 323(c), and for failing to provide "an accurate or objective rendition" of the April 11 oral argument. Petitioner's August 2, 2023, motion for reconsideration of the court's denial of certification was also denied.

¶ 64 II. ANALYSIS

¶ 65 A. Vacating an Award Under the Illinois Uniform Arbitration Act

[7]Unlike in *Abramson II*, the proposed amended complaint is included in record on this appeal. It alleged a single count for legal malpractice against Marderosian. Relevant here, the complaint alleges that petitioner retained Marderosian on April 16, 2011, and includes various allegations against Marderosian regarding his failure to vacate the settlement agreement and his purported advice concerning the no-contact provision.

¶ 66 We begin with the statute governing the underlying arbitration proceedings. The Act "embodies a legislative policy favoring enforcement of agreements to arbitrate future disputes." *Salsitz v. Kreiss*, 198 Ill. 2d 1, 13 (2001). "Arbitration is meant to provide finality" (*City of Chicago v. International Brotherhood of Electrical Workers, Local No. 9*, 2022 IL App (1st) 210850, ¶ 19), with the "object of arbitration" being to "avoid the formalities, delay and expenses of litigation in court." *Edward Electrical Co. v. Automation, Inc.*, 229 Ill. App. 3d 89, 96 (1992). Moreover, because "[a]rbitration is a choice, not something compelled," a party's recourse after arbitration is "strictly limit[ed.]" *City of Chicago v. Chicago Loop Parking LLC*, 2014 IL App (1st) 133020, ¶ 80; *Anderson v. Golf Mill Ford, Inc.*, 383 Ill. App. 3d 474, 479 (2008) (noting that judicial review of an arbitration award is even more limited than appellate review of a trial).

¶ 67 As such, our supreme court has instructed the lower courts to, "wherever possible," "construe arbitration awards so as to uphold their validity." *First Health Group Corp. v. Ruddick*, 393 Ill. App. 3d 40, 47 (2009) (quoting *Salsitz*, 198 Ill. 2d at 13); see also *Board of Trustees of Community College District No. 508 v. Cook County College Teachers Union, Local 1600*, 74 Ill. 2d 412, 418 (1979) (our supreme court has "long recognized the overriding interest in finality which inheres in the submission of disputes to arbitration, and, accordingly, has counseled against judicial review of the merits of arbitration awards.") (Citation omitted.) Thus, if an award "contains the honest decision of the arbitrator" following a "full and fair hearing," a reviewing court will not set it aside for error. (Internal citation and quotations omitted.) *Edward Electrical Co.*, 229 Ill. App. 3d at 96. This principle presumes that an arbitrator did not exceed his or her authority unless the award itself suggests otherwise. See *Herricane Graphics, Inc. v. Blinderman Construction Co., Inc.*, 354 Ill. App. 3d 151, 155 (2004); *Vascular and General Surgical Associates, Ltd. v. Loiterman*, 234 Ill. App. 3d 1, 8 (1992).

¶ 68 Given the presumptions in favor of an award's validity, a court will only grant a petition to vacate or modify an arbitration award in extraordinary circumstances. *Yorulmazoglu v. Lake Forest Hospital*, 359 Ill. App. 3d 554, 564 (2005). Relevant here, Section 12(a) of the Act allows vacating an award if "there was evident partiality by an arbitrator appointed as a neutral [party] or corruption in any of the arbitrators or misconduct prejudicing the rights of any party" (710 ILCS 5/12(a)(2) (West 2022)), or if the arbitrator exceeded his or her powers (710 ILCS 5/12(a)(3) (West 2022)). A party seeking to vacate an arbitration award must file an application to do so within 90 days of receiving a copy of the award. 710 ILCS 5/12(b) (West 2022). The circuit court may then enforce the agreement and enter judgment on the award if there are no grounds to vacate it. 710 ILCS 5/12(d), 15, 16 (West 2022).

¶ 69 B. Standard of Review

¶ 70 We agree with the parties that *de novo* review is warranted on this limited record. Here, no live testimony was offered either during the arbitration proceedings or before the circuit court, and some courts have found *de novo* review appropriate when all matters are resolved based on the pleadings, motions, and documentary exhibits. See *GPS USA, Inc. v. Performance Powdercoating*, 2015 IL App (2d) 131190, ¶ 20; *In re Marriage of Haleas*, 2017 IL App (2d) 160799, ¶ 21; *Herricane Graphics, Inc.*, 354 Ill. App. 3d at 157.

¶ 71 However, we juxtapose this with the well-established principle that our review of the arbitration award is "far more restricted than appellate review of a trial court's decision." *In re Marriage of Haleas*, 2017 IL App (2d) 160799, ¶ 18. Thus, the party who asserts that an award is invalid has the burden of proving so based on clear and convincing evidence. *Saville International, Inc. v. Galanti Group, Inc.*, 107 Ill. App. 3d 799, 800 (1982). We further observe that an arbitration award may be upheld even where: (1) the award is illogical or inconsistent; (2) the arbitrator made

errors of judgment or mistakes of law; or (3) the court would have reached a different result. *In re Marriage of Haleas*, 2017 IL App (2d) 160799, ¶ 18.

¶ 72 With this framework in mind, we now turn to the merits of petitioner's appeal.

¶ 73 C. Arguments

¶ 74 The essence of petitioner's arguments boils down to two main contentions: the circuit court's error in (1) finding no evidence of the arbitrator's partiality; and (2) refusing to vacate the arbitration award, which was entered without an evidentiary hearing.

¶ 75 1. Partiality Issue

¶ 76 Petitioner argues that the circuit court erred in failing to vacate the award based on the arbitrator's partiality towards Loftus. Petitioner contends that he met his burden in establishing partiality by showing evidence of Loftus' application for a position with the arbitrator's firm, their communications over Linkedin, and the arbitrator's general view of Loftus as a "competent attorney." On this last point, petitioner reasons that, by disclosing that the arbitrator viewed Loftus as competent, the arbitrator's position regarding Loftus' handling of petitioner's case was determined from the outset. Petitioner further claims that he was denied due process by not being granted a hearing on his objection to the arbitrator's reappointment, citing various AAA rules and other constitutional and statutory sources of law.

¶ 77 In response, although embedded towards the end of their brief, respondents contend that petitioner's argument regarding a lack of hearing after the arbitrator's reappointment is new and had never been raised before the circuit court, and thus should be considered forfeited. Respondents otherwise deem the argument meritless, given that petitioner agreed to abide by the AAA rules in the parties' agreement for legal services, which does not allow for such a hearing.

Substantively, respondents maintain that petitioner's claim of partiality is also unsupported by clear and convincing evidence.

¶ 78 In reply, petitioner maintains that he did not waive his right to a hearing regarding his objection to the arbitrator's appointment, given that he objected to it twice.

¶ 79 Although section 3 of the Act governs appointment of arbitrators, if the arbitration agreement does not provide for a method of appointment, the parties may appoint one by agreement. 710 ILCS 5/3 (West 2022). The Consumer Rules require an arbitrator to be "impartial" and "independent." Rules 16(c), 18(a), 19(a); see also Rule 19 of the Commercial Rules. Any appointed arbitrator "must provide information to the AAA of any circumstances likely to raise justifiable doubt as to whether the arbitrator can remain impartial or independent." Rule 18(a); see also Rule 18 of the Commercial Rules. Such disclosures are to include any: (1) bias; (2) financial interest in the arbitration; (3) personal interest in the result of the arbitration; or (4) past or present relationship with the parties or their representatives. Rule 18(a); see also Rule 18 of the Commercial Rules. However, the rules expressly note that disclosing such information does not mean that the arbitrator believes that he or she will no longer be able to be independent and impartial. Rules 18(c) of the Consumer and Commercial Rules.

¶ 80 Pursuant to Rule 19 of both sets of rules, the AAA reserves the right to disqualify any arbitrator who shows "(1) partiality or lack of independence; (2) inability or refusal to perform his or her duties with diligence and in good faith; or (3) any grounds for disqualification provided by applicable law." Rule 19(a). A party may also object to an arbitrator, and the AAA shall decide if the arbitrator shall be disqualified after gathering the opinions of the parties. Rule 19(b) of the Consumer Rules; Rule 19(c) of the Commercial Rules. Once that decision is made, it shall be

conclusive. Rule 19(c) of the Consumer Rules; Rule 19(b) of the Commercial Rules (adding in the phrase "final.")

¶ 81 We first address whether petitioner's claims regarding a lack of hearing on petitioner's objection to the arbitration choice was forfeited. Here, it is true that the petition did not expressly allege that petitioner was entitled to an additional hearing concerning the AAA's reaffirmance of Caruso as the arbitrator, and it is well-settled that appellant may not raise issues for the first time on appeal. *Pinske v. Allstate Property and Casualty Insurance Co.*, 2015 IL App (1st) 150537, ¶ 18. In any event, the AAA rules do not allow for a hearing concerning the selection of an arbitrator after a party's initial objection. See Rule 19(c) of the Commercial Rules; Rule 19(b) of the Consumer Rules. Forfeiture aside, petitioner's claim regarding the arbitrator's purported partiality violation still fails.

¶ 82 To vacate an award based on partiality, the party must show, by clear and convincing evidence, a "direct definite and demonstrable interest" by the arbitrator in relation to the outcome of the arbitration. *Saville International, Inc.*, 107 Ill. App. 3d at 799, 800. "Proof of partiality must be direct, definite, and capable of demonstration[,] rather than remote, uncertain, or speculative." (Internal citation and quotation marks omitted.) *Id.* Thus, "[m]ere allegations of prejudice cannot vitiate an award." *Christian Dior, Inc. v. Hart Schaffner & Marx*, 265 Ill. App. 3d 427, 436 (1992). These standards fall in line with the distinctive realities of arbitration proceedings, specifically with regard to the role of arbitrators. See *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 393 U.S. 145, 150 (1968) (White, J., concurring) ("It is often because [arbitrators] are men of affairs, not apart from but out of the marketplace, that they are effective in their adjudicatory function. * * * [A]rbitrators are not automatically disqualified by a business relationship with the parties before them if both parties are informed of the relationship in advance, or if they are

unaware of the facts but the relationship is trivial.") Significantly, because arbitration is a choice between the parties to avoid litigation, parties "accept a greater risk that the arbitrator will have a link to some party to the suit." *John E. Reid & Associates, Inc. v. Wicklander-Zulawski & Associates*, 255 Ill. App. 3d 533, 543 (1993).

¶ 83 After reviewing the record, we conclude that the circuit court correctly determined that petitioner had failed to establish proof of partiality. To begin, there is no evidence of any "significant, regular, or continuing" relationship between Loftus and the arbitrator, either in the past or at the time of arbitration. See *Freeport Construction Co. v. Star Forge, Inc.*, 61 Ill. App. 3d 999, 1005 (1978). Instead, the record reflects that Loftus interviewed with the arbitrator's firm four to five years ago, and thus never actually worked with or under his supervision. Compare *William B. Lucke v. Speigel*, 131 Ill. App. 2d 532, 536 (1970) (arbitrator's previous work as an independent contractor for one of arbitration's principal witnesses did not amount to evidence of partiality, where job only lasted for five days, and arbitrator worked for other companies during that time period).

¶ 84 Moreover, courts have also noted that the Act does not expressly preclude any party to an arbitration from selecting an arbitrator who may enjoy a business relationship or financial association with one of the parties, so long as such a disclosure is made. See *Bruder v. Country Mutual Insurance Co.*, 156 Ill. 2d 179, 196-97 (1993); *Freeport Construction Co.*, 61 Ill. App. 3d at 1003-04 (business dealings between an arbitrator and a non-party may create an impression of bias, but must be "substantial" enough to show evidence of partiality); *Commonwealth Coatings Corp.*, 393 U.S. at 148-49 ("It is true that arbitrators cannot sever all their ties with the business world, since they are not expected to get all their income from their work deciding cases, but we should, if anything, be more scrupulous to safeguard the impartiality of arbitrators[.]") Here, any

continuing contact between Loftus and the arbitrator occurred on Linkedin, a professional networking platform. This contact does not run afoul of our courts' continuing acknowledgement that arbitrators, unlike judges, are often involved in professional networks where they might often encounter individuals or organizations with whom they have dealt with in some fashion from time to time. See *Vascular and General Surgical Associates*, 234 Ill. App. 3d at 5, 11 (in arbitration matter between doctor and medical practice which held privileges at a particular hospital, no evidence of partiality where it was found that arbitrator worked at a law firm that provided legal services to same hospital on a sporadic basis years prior); *Drinane v. State Farm*, 153 Ill. 2d 207, 211, 216 (1992) (no partiality where arbitrator, as an advocate, had an existing arbitration claim against State Farm, a party to the proceeding over which he presided).

¶ 85 Thus, without evidence of more continuing or significant contact, we also agree with the circuit court that petitioner has only sought to create an appearance of impropriety by way of speculative allegation after the arbitrator was frank about knowing Loftus in his disclosure. *Bruder*, 156 Ill. 2d at 198; compare *Freeport*, 61 Ill. App. 3d at 1003-04 (lack of candor about relationship between arbitrator and other party related to the arbitration may appear misleading and create an impression of bias). As the circuit court noted, the arbitrator's appointment was reaffirmed by the AAA, and not the arbitrator himself, upon review of both the disclosure and petitioner's objection. Moreover, even when an arbitrator belatedly discloses his or her connection to a party *after* an award has been entered, courts have still been reluctant to vacate the award where there was no evident partiality *during* the proceedings. See *Drinane*, 153 Ill. 2d at 217 (after arbitration concluded and parties learned that arbitrator had a pending claim against one of the parties, court still upheld award even after admonishment that the relationship should have been disclosed prior).

¶ 86 Notably, although it is true that the arbitrator and Loftus directly knew each other, there is no indication in the record that the arbitrator would have been swayed towards Loftus. See *John E. Reid & Associates, Inc.*, 255 Ill. App. 3d 533, 543-44 (assessing partiality based on whether there was evidence or allegations that arbitrator had an interest in the outcome of arbitration proceedings). If anything, despite petitioner being represented by counsel at some points during the proceedings, the arbitrator still expressly outlined in his orders the specific burden that petitioner would have to meet to prove malpractice against respondents—which is perhaps behavior that respondents could have arguably contended showed partiality towards *petitioner* and against them. Further, the record reflects that the arbitrator ruled against respondents at least twice during the proceedings, when he denied in part respondents' first Rule 33 motion, as well as his initial denial of the second one. Finally, we also agree with the circuit court that merely because the arbitrator believed Loftus to be a competent attorney at one point in time did not necessarily equate to the conclusion that Loftus also could not be negligent in his representation of a client.

¶ 87 Thus, we find no direct or demonstrable bias towards petitioner in the arbitrator's handling of the proceedings that is necessary to sustain petitioner's high burden in vacating the final award. Accordingly, we affirm the circuit court's ruling on this basis.

¶ 88 2. Entry of Award Without Hearing

¶ 89 Next, petitioner argues that the circuit court erred in upholding the arbitration award where there had not been an evidentiary hearing. Petitioner contends that the arbitrator incorrectly determined that petitioner failed to raise a question of fact as to whether respondents had committed legal malpractice, where there was an "abundance" of evidence to sustain his claim, in particular Boynton's "unrebutted opinion" as to respondents' failure to amend a deficient

complaint and failure to include the proposed amended complaint in *Abramson II*'s appellate record.

¶ 90 Respondents maintain that petitioner's contention fails in numerous ways. First, respondents assert that petitioner failed to present any evidence of negligence separate from Marderosian's conduct already barred by collateral estoppel. Specifically, respondents assert, petitioner failed to show any evidence that Marderosian was negligent in advising petitioner about the time to vacate the settlement agreement between petitioner and his father, or that he negligently advised him about their further communications. Next, respondents contend that petitioner failed to show evidence of damages stemming from the remaining claims. Respondents reason that the most petitioner could show on this element were the penalties he continued to suffer by remaining in violation of the no-contact order—however, it was Boynton's testimony that petitioner had already been aware of his violations of that provision *prior* to retaining Marderosian. Finally, respondents maintain that petitioner failed to allege causation in that, but for the failure to include the proposed amended complaint in the appellate record, petitioner would have prevailed in *Abramson II*.

¶ 91 In reply, petitioner maintains that the Boynton report was sufficient in establishing that respondents refiled a defective complaint. He agrees with respondents that he did not allege additional claims against Marderosian, but notes that the failure to do so formed the basis of his malpractice claims against Loftus and his law firm. Petitioner reiterates that he sufficiently provided evidence to establish proximate cause in that, but for respondents' negligence, he would have gone to trial on his claims and would have established damages.

¶ 92 As discussed prior, the arbitrator resolved petitioner's claims by dispositive motion. Rule 32 of the AAA Consumer Rules provides that the parties must have "full and equal opportunity to

present any evidence that the arbitrator decides is material and relevant to deciding the dispute." Rule 32(b); see also Rule 32(a) (claimant must present evidence to support their claim); Rule 33 of the Commercial Rules; 710 ILCS 5/5(b) (West 2022) (parties entitled to a hearing to present evidence material to the controversy). However, "[a]n arbitrator will use his or her discretion to resolve the dispute as quickly as possible and may direct the parties to present the evidence in a certain order or split the proceedings into multiple parts and direct the parties in the presentation of evidence." Rule 32(c); Rule 33 of the Commercial Rules. Notably, Rule 33 allows for the resolution of a case by dispositive motion if the "arbitrator decides that the moving party has shown substantial cause that the motion is likely to succeed and dispose of or narrow the issues in the case."; see also Rule 34 of the Commercial Rules.

¶ 93 The current action alleged multiple levels of legal malpractice, *i.e.* a tort claim arising from an attorney-client relationship, where it is alleged that an attorney failed to exercise a reasonable degree of skill and care in the delivery of services. *Davis v. Loftus*, 334 Ill. App. 3d 761, 767 (2002) (citing *Christian v. Jones*, 83 Ill. App. 3d 334, 338 (1980)). The underlying principle in such a claim is that an attorney's negligence is alleged to have occurred during their representation of a client in the underlying action, and had there been no negligence, the client would not have lost in the underlying action and would have been compensated for their injury. *Webb v. Damisch*, 362 Ill. App. 3d 1032, 1038 (2005). In essence, the plaintiff must prove "a case within a case." *Id.* (quoting *Cedeno v. Gumbiner*, 347 Ill. App. 3d 169, 174 (2004)). Thus, a legal malpractice claim requires that the plaintiff allege: (1) the existence of an attorney-client relationship; (2) a negligent act or omission constituting a breach of the attorney's duty to the client; (3) that act or omission was the proximate cause of the claimant's injury; and (4) actual damages. *Powers v. Doll*, 2022 IL App (2d) 210007, ¶ 24. "Actual damages are never presumed in a legal malpractice action" and

the plaintiff must "establish what the result in the underlying action would have been, absent the alleged negligence." *Id.*

¶ 94 Clear from this record, petitioner's claims against Loftus ultimately involve claims concerning Marderosian and Chuhak's conduct. Thus, in order to prove that he had a successful claim against Loftus, petitioner also had to prove that the claims that Loftus attempted to bring against Marderosian would have also been successful, but for Loftus's negligence. Ultimately, the arbitrator determined that petitioner had failed to present a question of fact as to any remaining claims against Loftus. Mindful of the deference afforded an arbitration decision, as well as the parameters of our review, we have nonetheless thoroughly probed the evidence considered by the arbitrator in deciding petitioner's claims solely on the pleadings in "this case within a case within a case."

¶ 95 We initially observe that, as pointed out by respondents, petitioner did not file a Statement of Claim as per the AAA rules under which the parties agreed to arbitrate, which would have outlined his specific claims against respondents.[8] Instead, petitioner only filed the Boynton report apart from his initial demand, and thus his claims could only be discerned at best from his own submissions. Accordingly, in the first Rule 33 ruling, the arbitrator narrowed the claims that petitioner had to prove at hearing outside the ones barred by collateral estoppel. This, and consistent with petitioner's own assertions, included: (1) Marderosian's failure to pursue an excessive attorney fee claim against Chuhak; and (2) Marderosian's purported advice to petitioner concerning his continued communications with his father. Assuming that such claims could be

[8]See Rule 4(a)(iv)(d) of the AAA Commercial Arbitration Rules ("Information to be included with any arbitration filing includes *** a statement setting forth the nature of the claim[,] including the relief sought and the amount involved[.]"); Rule 4(b)(ii) (filing party must provide a copy of the demand and any supporting documentation to the opposing party); compare Rule 2(a)(1) of the AAA Consumer Arbitration Rules (claimant must file a demand which briefly explains the dispute).

proven, petitioner then needed to show that Loftus' failure to file an amended complaint including these claims, as well as his failure to place it into the appellate record, would have changed the ultimate result in *Abramson II*.

¶ 96 Petitioner relied mainly on his expert to support his claims. In her report, Boynton opined that, based on assumed facts, Marderosian had been negligent in prosecuting the claims against Chuhak by, *inter alia*, (a) failing to decline representation based on lack of legal malpractice experience; (b) failing to advise petitioner that pursuit of a fiduciary claim waived other claims against Chuhak; (c) filing a defective complaint; and (d) limiting his scope of representation. Thus, Boynton's opinion only discussed how Chuhak purportedly mishandled the settlement agreement, and Marderosian's failure to bring such claims against the firm, which had already been discussed and disposed of in *Abramson II*. Her report did not include discussion of the no-contact provision or claim for excessive attorney fees. In her deposition, she confirmed that she could only express an opinion as to the claims outlined in her report, although she viewed those two claims as "ancillary" to the ones she had discussed.

¶ 97 As noted by respondents, petitioner did not present any fact evidence as to any of the remaining claims against Marderosian, including by his own affidavit. Although petitioner did submit an affidavit as an exhibit to a reply brief, the affidavit solely focused on Loftus' conduct. Further, although it is true that the proposed amended complaint arguably encompassed some of the claims that the arbitrator initially believed to be viable, as also noted by the arbitrator in his second order, this submission was only relevant as to whether Loftus was negligent. Even then, as the arbitrator noted, the proposed complaint would have only shown the claims that petitioner sought to bring, but none of them constituted established facts nor ensured success or recovery of damages at the end of the litigation. Finally, even if the proposed complaint could establish such

facts, we note that parts of the complaint imply that Marderosian could not have been the sole proximate cause for some of petitioner's purported damages, such as for the alleged advice that caused petitioner to breach the no-contact clause. Specifically, the proposed complaint alleges that Marderosian was not retained until April 16, 2011, which was, by Boynton's own deposition testimony, well after petitioner received a cease and desist letter from his father.

¶ 98 We are mindful of the limited discretion on appeal following the circuit court's confirmation of an arbitration award. We are also observant of all the moving parts within this "case within a case within a case" proceeding. Ultimately, although the arbitrator initially believed that there were questions of fact related to the claim against Loftus, upon further review, the arbitrator determined that petitioner had failed to present any additional evidence to sustain the remaining claims and that continuing the proceedings would have been a waste of the parties' time and resources. Thus, absent evidence to the contrary, and in light of the arbitrator's detailed orders on the matter, we will not disturb the finding that petitioner's arbitration demand was best and properly resolved on the papers rather than at hearing. See *Braun/Sikba, Ltd. v. Orchard Partnership*, 177 Ill. App. 3d 331, 335 (1988) (noting that arbitrators need not even provide explanation or rationale on how they reached their conclusion); *Tim Huey Corp. v. Global Boiler and Mechanical, Inc.*, 272 Ill. App. 3d 100, 108-09 (1995) (upholding a disfavored arbitration award, even after reflecting that, had a jury entered the award, the award would likely have been reversed on appeal). Accordingly, we also affirm the circuit court's finding that the arbitrator properly entered an arbitration award in favor of respondents.

¶ 99 4. Sanctions Request

¶ 100 In their response brief, respondents request that sanctions be issued against petitioner based on his improper incorporation of an uncertified bystander's report in violation of Supreme Court

Rule 323. It is true that, in his brief, petitioner references a bystander's report, which is affixed as an exhibit to the appendix, and details the hearing on his petition to vacate before the circuit court. Illinois Supreme Court Rule 323(c) (eff. July 1, 2017) provides that a party may submit a bystander's report encompassing a circuit court's oral rulings or other proceedings in support of an appeal. Here, however, the circuit court refused to certify petitioner's proposed report based on the untimely request and the report's inaccurate content. Thus, we agree with respondents that the report is improper, and because it was not included in the official record on appeal, we have not considered it. See Ill. S. Ct. R. 342 (eff. Oct. 1, 2019). Further, we admonish petitioner, as did the circuit court, that although he is proceeding *pro se* in this appeal, he is still subject to the same rules of procedure by which all attorneys are bound. See *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 78. That said, however, we decline to impose a further sanction for petitioner's impropriety.

¶ 101 Respondents also urge this court to issue sanctions against petitioner pursuant to Supreme Court Rule 375(b) (eff. Feb. 1, 1994). According to respondents, petitioner's current appeal is "frivolous" in that is "not reasonably well grounded in fact and not warranted by existing law" where the circuit court's ruling was thoughtful, thorough and logical. Petitioner responds that his appeal was made in good faith.

¶ 102 Supreme Court Rule 375(b) provides that we may issue sanctions against a party if we determine that an appeal is frivolous, or not taken in good faith or for an improper purpose, "such as to harass or cause unnecessary delay or needless increase in the cost of litigation[.]" An appeal is deemed "frivolous" if it is "not reasonably well grounded in fact and not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law." *Id.* An

"improper purpose" may be shown where "the primary purpose of the appeal or other action is to delay, harass, or cause needless expense[.]" *Id.*

¶ 103 Based on our review of the record, we also do not find that a sanction is appropriate on this basis. The record reflects that the arbitrator initially did not find petitioner's claim to be frivolous when he determined that the arbitration demand could not be determined on a dispositive motion. Moreover, regardless of the ultimate outcome, we believe that petitioner had a good faith belief that he had not received the benefit of a full and fair arbitration proceeding pursuant to his rights outlined in the agreement between him and respondents. Accordingly, we deny respondents' other request for sanctions.

¶ 104 In sum, we further affirm the circuit court's order in its entirety, having found no basis to vacate the arbitration award entered against petitioner and in favor of respondents.

¶ 105 III. CONCLUSION

¶ 106 For the reasons stated, we affirm the judgment of the circuit court.

¶ 107 Affirmed.